

Before K. S. Tiwana and S. S. Dewan, JJ.

COURT ON ITS OWN MOTION,—Petitioner

versus

AJIT SINGH AND OTHERS,—Respondents

Criminal Original Contempt Petition No. 15 of 1984

August 12, 1985

Contempt of Courts Act (LXX of 1971)—Section 2(c)(i)—Litigant making scandalous and scurrilous allegations about the integrity of a Judge in a transfer application—Allegations later withdrawn being incorrect and having been made in haste—Such allegations—Whether amount to criminal contempt within the meaning of Section 2(c)(i)—Counsel drafting such an application—Whether could also be guilty of contempt—Duties of a counsel in such cases.

Held, that unwarranted attack on a Judge or a contempt by means of speech or writing is characterised as 'scandalisation' and is actionable under the law of contempt. Admittedly, false allegations have the effect of scandalising the Court and they tend to lower the authority of the Court. The law of contempt is not meant for protecting the Judges, but it is for the protection of the institution of judiciary from such like defamatory, libellous, scurrilous, vilificatory and unfounded attack and criticism against the system or the persons, who because of their official positions, preside over these institutions. Parties to the litigation and the counsel are given some latitude of over-expression in presentation of their case, in presenting the recorded or oral versions to the Court but they have to be careful and cannot be permitted to transgress the limits of decency or propriety to impute a bad faith to the Judge in open Court, outside the court or in transfer applications, grounds of appeal, revisions etc. which is treading the dangerous path. If some allegations, which are made in the oral or written representations, which turn out to be true, even then the petitions ridiculing the courts and lowering their position in the eyes of the general public are not permitted. It is the prestige of the Court, which is at stake, not the individual, who sits as a Judge. Contempt proceedings, therefore, are clearly to safeguard only the interest and prestige of the public justice. It is not the duty of a counsel to take interest in the application which contains scandalous allegations against the presiding officer of a court or having an effect of lowering his authority as a Judge without reasonably satisfying himself about the prima facie existence of adequate grounds therefor. On the contrary, his duty is to advise his client from making allegations of such a nature in pleadings or applications. Scandalous and scurrilous allegations about the integrity of a Judge in a transfer application which turn out to be false do fall within the ambit of Section 2(c)(i) of the Contempt of Courts Act, 1971.

(Paras 14, 17 and 18).

Held, that a lawyer cannot disclaim any liability if it ensues from the pleadings or the application which he himself has drafted for his client or was a privy to their drafting or had presented these in case these had been brought to him in a drafted condition. A lawyer guided by the principles of legal ethics, education, training in law and professional experience is expected to know what a transfer application has to contain. If the basis of the transfer application is the apprehension of the party in the matter of not getting justice from the particular court, this apprehension has to be stated and the reason in support has to be mentioned in such an application. The party has to abstain from making scandalous and scurrilous attack on the Judge. Before a lawyer drafts a transfer application he is to address himself a few questions like; Should he sign the transfer application at all? Are there scandalous allegations which are contumacious? Why should he associate himself with them? Why not advise the party to omit such allegations and confine himself to facts which bear proof? If it is a case of his own prestige and duty, is that clear in law and in fact? Is it a borderline case where two opinions may be possible? Is it not better to a void even such situations unless professional duty is imperative? Is he serving the interests of the administration of justice by his act or is it merely to satisfy his own ego, bias or personal satisfaction? Is the public benefited by his stand? Unless a lawyer gets a clear answer from his conscience satisfying these questions, which are illustrative and not exhaustive, he should not proceed further in pursuit of those allegations which either he or his client intends to make against a Judge. The ingenious mind of a lawyer can ponder over more possibilities of this type in a broad sphere to come to the conclusion whether he should take up or proceed with such a case, in which he is asked to appear by his client. Unhappiness of a lawyer with a Judge or lack of cordiality in relations between him and a judicial officer should not be permitted to have an upper hand to influence the mind of a legal attorney in such cases. The Advocates are the officers of the Court. It is one of their functions to maintain the dignity of the court and law, of which they are an integral part. A lawyer has to maintain a respectful attitude towards the court, not for the sake of temporary incumbent of the judicial office, but for the maintenance of its freedom. He not only himself is to maintain a courteous and respectful attitude towards the Judge of the court, but has to insist for a similar conduct on the part of his client. Remuneration alone does not matter nor the cordiality of the relations with the Judge. It is no duty of a counsel to his client to take interest in the pleadings applications, etc., which contain scandalous allegations against a presiding officer of a court or having an effect of lowering his authority as a Judge without reasonably satisfying himself about the prima facie existence of adequate grounds therefore. On the contrary, his duty is to advise his client from refraining from making allegations of such a nature in pleadings or applications.

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Proceedings taken up by this court on its own motion on a reference made by Shri N. K. Bansal, Sub Judge Ist Class, Phagwara for taking action under Section 15(2) of the Contempt of Courts Act 1971 read with the Contempt of Court to (Punjab and Haryana) Rules, 1974, forwarded to this Court through the District and Sessions Judge, Kapurthala.

J. S. Mann, D.A.G. (Punjab), for the Petitioner.

Ajit Singh countenner with T. S. Doabia, Advocate, for the Respondents.

N. D. Rahi contemner with H. S. Nagra, Advocate.

R. K. Sachdev contemner in person.

JUDGMENT

K. S. Tiwana, J.

(1) The facts leading to the initiation of the proceedings for contempt of Court against Sarvshri Ajit Singh, N. D. Rahi and R. K. Sachdeva are that a civil suit filed by Ajit Singh against Bimla Wati and others was pending in the court of Shri N. K. Bansal, Sub-Judge Ist Class, Phagwara. Shri R. K. Sachdeva Advocate was his counsel in that civil suit. Shri Ajit Singh filed a transfer application dated 6th of October, 1983, Annexure 'A' under section 24 of the Code of Civil Procedure in the court of the District Judge, Kapurthala, for the transfer of the case from the court of Shri N. K. Bansal, Sub-Judge Ist Class, Phagwara, to some other court. Since the transfer application contained scandalous accusations against the judicial conduct of Shri N. K. Bansal, on the basis of which the present notice for contempt of Court is issued, it is reproduced in detail for proper reference:—

“The plaintiff/petitioner prays as under:—

1. That the plaintiff-petitioner has filed a suit for permanent injunction and mandatory injunction against the defendants/respondents above-mentioned in the court of Shri N. K. Bansal P.C.S., Sub-Judge Ist Class, Phagwara, captioned “Ajit Singh vs. Bimlawati and others”. This case is fixed for 20th October, 1983.

2. That the petitioner apprehends that he will not have a fair trial in the said court in view of the reasons and submissions made in the following paras.
3. That the case is fixed for rebuttal evidence of the plaintiff. The plaintiff did not get the fair and impartial trial during whole of the proceedings of the case. The inclination and bent of mind of the learned presiding officer was always such as to provide undue favour to the opposite party. The witnesses of the plaintiff were harassed and humiliated during trial and at the time of recording the evidence, whereas the respondents, their counsel and their witnesses were treated as V.I.P. by the presiding officer. A warm welcome and V.I.P. treatment was given at every date of hearing of the case. The presiding officer always frowned at the plaintiff and his witnesses, whereas he smiled with the respondents and his behaviour was very mild affectionate.
4. That the learned Sub-Judge, Phagwara has expressed his opinion about the decision of the case he has openly said that he is sympathetic with the respondents and has a soft corner for them in his heart. The learned presiding officer has clearly and also by implication from his conduct and behaviour, expressed his desire to dismiss the suit against the respondents by unnecessary harassing and insulting the petitioner.
5. That the learned presiding officer's behaviour is very cruel, he loses his temper on petty matters. He always behaves in such a manner which created an atmosphere of terror and tension. He has been very rude and hard with the plaintiff and snubbed, insulted and overawed the plaintiff. He also harassed the witnesses of the plaintiff and gave undue favour and latitude to the witnesses of the respondents. The answers given by the plaintiffs' witnesses while their examination were omitted and not recorded which were favourable to the plaintiff and supported his case and they were compelled and confused to such an extent that they had to reply in a manner unfavourable to the petitioner's case. On the other hand while examining the respondents' witnesses, he deliberately

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recorded the evidence which supported the respondents' case on his own account whereas the witnesses replied nothing on those points and no evidence was given on that account.

6. That the learned presiding officer's integrity is doubtful. He has organised a gang of touts who approached the litigants to bribe him to get favourable decisions. One Kimti Lal Jain, resident of Phagwara also approached the petitioner and tried to induce the petitioner that presiding officer should be obliged. He disclosed that his own case was pending before Shri N. K. Bansal in which sarees worth lakhs of rupees were involved and legally he was not entitled to receive them. He managed to get the sarees on payment of a meagre amount of Rs. 3,000 to the Magistrate. He disclosed that his sarees were stolen and he lodged a report in P. S. City to that effect and subsequently certain sarees were recovered from some thieves and he became a witness in that case to compensate his loss. During trial it was learnt that he cannot get the sarees because the description of the sarees stolen differed from the sarees recovered. This fact was also inquired by the petitioner from his own sources and learnt that a case 'State vs. Balkar Singh, F.I.R. No. 139, dated 2nd August, 1980, under section 458/380 I.P.C. was decided on 6th May, 1982. The accused was acquitted. The number, description of the sarees stolen and mentioned in the F.I.R. lodged by Kimti Lal Jain did not tally with the sarees which were alleged to have been recovered from the accused. The complainant was not entitled to receive them, but on obliging the presiding officer, the sarees were given to him and he was allowed to sell them. The said Kimti Lal Jain insisted that the petitioner should oblige the presiding officer, he has got the direct intimacy with him and has obliged the presiding officer in so many cases and had the desired result.
7. That one of the respondents No. 4, Devinder Kumar is a Reader of Sub-Judge Phillaur, previously he was posted at Jalandhar, has got intimacy with Shri N. K. Bansal before whom the case is pending. He has approached

the learned presiding officer, himself personally and through the friends of the presiding officer. The petitioner has seen him sitting with the presiding officer in his retiring room. The conduct of the presiding officer clearly indicated that he has got a soft corner for respondents. The said respondent Devinder Kumar often threatens that he is employed in the judiciary and can influence the Judge because he knows certain weak points and drawbacks of them. He is often seen saying that the breath of a Judge is always in the hands of a reader. The mind of the learned presiding officer is badly influenced by respondent No. 3, being an employee of the judiciary and he is prejudiced against the petitioners. A fair and impartial dealing cannot be expected from him.

8. That the learned presiding officer had tried to demoralise the petitioner by overawing him, he has forgotten all the standards of courtesy and civility; the canons and principles of conduct which are expected of a judicial officer. His court depicted the picture of a cruel, merciless and reckless monarch and the presence of presiding officer seems to be that of a dictator, whenever the case was called, he gave the impression that the justice is beyond the approach of the petitioner and he should withdraw the case and abandon the prosecution. The learned presiding officer sticks to his words and passed the orders accordingly ignoring the law and facts of the case. He has not acted judicially and used his discretion arbitrarily to the detriment of the petitioner. The petitioner had to suffer a lot due to the short-temperament and sticky heights of the Sub-Judge. The learned Sub-Judge dismissed the application of the petitioner for appointment of a Local Commissioner on 4th October, 1983. He uttered that a Judge can do anything and left an impression that he was going to ruin the petitioner.
9. That by sending a messenger for getting something from the petitioner and the intimacy of respondent No. 4 with the presiding officer the general conduct and behaviour and the general reputation of the Judge has created a doubt in the mind of the petitioner that there

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is no possibility of a fair and impartial decision from Shri N. K. Bansal, P.C.S., Sub-Judge 1st Class, Phagwara.

10. It is, therefore, prayed that the suit be transferred to some other court having jurisdiction to try the same.

An affidavit in support of this petition has been filed along therewith.

Sd/-

6th October, 1983.

Ajit Singh petitioner."

An affidavit by Shri Ajit Singh containing the same matter was also filed with the transfer application. Shri N. D. Rahi, Advocate, Phagwara was engaged as a counsel for Shri Ajit Singh in this transfer application and he appeared before the District Judge, Kapurthala.

(2) The District Judge, Kapurthala, called for the comments of Shri N. K. Bansal, who denied the allegations made against him in the transfer application. He, however, expressed that he had no objection for the transfer of the case from his court. He requested the District Judge, Kapurthala, for initiating action for contempt of Court against the makers of these allegations against him, in his judicial capacity. The learned District Judge, Kapurthala,—vide orders, dated 2nd of December, 1983, transferred the case from the court of Shri N. K. Bansal to some other court. The District Judge suggested that Shri N. K. Bansal may make a move to initiate the contempt proceedings in accordance with law.

(3) Shri Ajit Singh on 13th of March, 1984, filed an application Annexure 'D' before the District Judge, Kapurthala, withdrawing the allegations, which he described to have been incorrectly made. The application is as under:—

"The applicant/plaintiff submits as under:—

1. That he had moved transfer application in this Hon'ble Court seeking transfer of his abovementioned suit from the court of Shri N. K. Bansal P.C.S., Sub-Judge 1st Class, Phagwara.

2. That in this application allegations which the applicant has now come to know and realised, were quite incorrect.
3. That the transfer application was drafted by his counsel who was conducting his said case in the lower court at Phagwara and other lawyer Shri N. D. Rahi, Advocate, Phagwara and the applicant had signed the same in great hurry and as such had not gone through its contents.
4. That the applicant wishes to withdraw all the allegations made in the said transfer application. He disassociates himself from all the allegations of the said transfer application and he prays that the same be struck off the record.
5. That the applicant offers unconditional apology also for the said allegations made in the manner submitted above which as already requested he wishes to withdraw.

It is, therefore prayed that this present application be accepted and allowed and my statement may kindly be recorded."

(4) Shri N. K. Bansal, Sub-Judge, 1st Class, Phagwara made a reference to this court through the District Judge, Kapurthala for initiating action for contempt of Court. Since he has made some references to the transfer cases against Shri N. D. Rahi pending in his court and also the complaint which this Advocate had made against him, it is reproduced *in extenso*.

"Respectfully showeth :

1. That a civil suit titled "Smt. Lachhmi vs. Niranjn Dass and others" was filed in the year 1981 (Suit No. 101 of 18th March, 1981) in the court of Sub-Judge 1st Class, Phagwara. On my assuming the charge at Phagwara, the said suit was transferred in my court for disposal. Shri Niranjn Dass Rahi, Advocate, Phagwara was one of the defendants in the suit and he filed a counter-claim in it. Later on, Smt. Lachhmi, the plaintiff

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withdrew her suit, but the counter-claim of the defendant, namely, Shri Niranjan Dass Rahi, Advocate, was tried and dismissed on 8th December, 1982.

2. That during the pendency of the above-mentioned suit, Shri Niranjan Dass Rahi, Advocate, wanted special treatment being an Advocate, which could not be given nor accorded and ultimately the decision was given against him on merits. This enraged Shri Niranjan Dass Rahi, Advocate, who filed a complaint against the presiding officer to the Hon'ble High Court, which was found to be false on enquiry, conducted by the learned District Judge, Kapurthala. There was another case pending "Niranjan Dass Rahi *vs.* Parkasho and others" (Suit No. 32 of 27th January 1981) in which Shri Niranjan Dass Rahi, Advocate, was the plaintiff. In this case also, Shri Niranjan Dass Bahi, Advocate, wanted a special treatment being an Advocate and when the same was not given then he got the case transferred from the court of the present presiding officer (i.e. myself) to the court of Shri S. K. Sharma, P.C.S., Sub-Judge 1st Class, Phagwara, where the suit was dismissed and was decided against Shri Niranjan Dass Rahi, Advocate.
3. That due to the above-mentioned facts, Shri Niranjan Dass Rahi Advocate nursed a grudge against the presiding officer of the court and was on a look out to harm him.
4. That a civil suit titled "Ajit Singh *vs.* Bimla Wati and others" was filed in the court of learned District Judge, Kapurthala and it was received by this court for disposal. In this suit (Suit No. 103-A of 1982) the evidence of the plaintiff and the defendant in the affirmative, was completed on 2nd September, 1983 and the case was fixed for arguments and evidence in rebuttal of the plaintiff for 8th September, 1983. On this date the plaintiff Ajit Singh did not produce any evidence and, therefore, an adjournment was granted and the next date was fixed on 14th September, 1983. But the plaintiff instead of completing his evidence in rebuttal, filed an application for appointment of local commissioner.

This application was ultimately dismissed on 4th October, 1983 and the case was fixed on 20th October, 1983 and 16th November, 1983 for rebuttal evidence but on 16th November, 1983 the presiding officer was informed that a transfer application had been moved by the plaintiff in the court of learned District Judge, Kapurthala and, "therefore request was made to stay the proceedings in the suit. It is significant to submit here that although the said transfer application had been filed in the Court of learned District Judge on 6th October, 1983, yet the presiding officer was informed only on 16th November, 1983. Although, no stay order had been communicated or shown to the court, still in the interest of justice, the presiding officer adjourned the case. It may be added that this transfer application was filed by the plaintiff (Ajit Singh) only after the dismissal of the application for appointment of Local Commissioner through Shri Niranjan Dass Rahi, Advocate, although the plaintiff's counsel in the main suit was Shri Raj Kishan Sachdeva, Advocate, Phagwara, who is still an Advocate even after the transfer of the case in the court of Shri S. K. Sharma P.C.S., Sub-Judge 1st Class, Phagwara. A copy of the transfer application is attached as Annexure 'A' the copy of comments furnished by the Presiding Officer to the transfer application as Annexure 'B' is attached with this reference. Copy of the order of the learned District Judge, Kapurthala, while disposing transfer application is Annexure 'C'.

(5) That in the transfer application Annexure 'A', the plaintiff Ajit Singh has levelled false, scandalous and contentuous allegations which are reproduced below:—

(a) That the learned presiding officer's integrity is doubtful. He has organised a gang of touts, who approached the litigants to bribe him to get favourable decisions (para 6 of the application).

(b) His court depicted the picture of cruel, merciless and reckless monarch and the presence of the presiding officer seems to be that of dictator (para 8 *ibid*).

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(c) That the learned presiding officer's behaviour is very cruel, he loses his temper on petty matters. He always behaves in such a manner which created an atmosphere of terror and tension (para 5 *ibid*).

(d) He deliberately recorded the evidence which support the respondents (i.e., defendants in the suit) on his own account whereas the witnesses replied nothing on those points and no evidence was given on that account (para 5 *ibid*).

(e) The learned presiding officer has tried to demoralise the petitioner, i.e., the plaintiff by overawing him. He has forgotten all standards of courtesy and civility. Whenever the case was called he gave the impression that the justice is beyond the approach of the petitioner (the plaintiff) and he should withdraw the case and abandon the prosecution. (Para 8 *ibid*).

(f) The one Kimti Lal Jain, resident of Phagwara approached the petitioner (the plaintiff) and tried to induce him (the petitioner) that the presiding officer should be obliged. He disclosed that in his own case which was pending before Shri N. K. Bansal, in which sarees worth lakhs of Rupees were involved and legally he was not entitled to receive them. He managed to get the sarees on payment of meagre amount of Rs. 3,000 to the Magistrate. He disclosed that his sarees were stolen and he lodged a report in P. S. City to that effect and subsequently certain sarees were recovered from some thieves and he became witness in that case to compensate his loss. During trial it was learnt that he cannot get the sarees because the description of sarees stolen differed from the sarees recovered.

(g) the complainant was not entitled to receive them but on obliging the presiding officer, the sarees were given to him and he was allowed to sell them. The said Kimti Lal Jain insisted that the petitioner should oblige the presiding officer. He has got the direct intimacy with him and he has obliged the presiding officer in so many cases and had desired result (*vide* para 6 *ibid*).

(h) That one of the respondents No. 4 Devinder Kumar is a Reader of Sub-Judge at Phillaur. He was approached the learned presiding officer himself personally and through the friends of the presiding officer..... The conduct of the presiding officer clearly indicates that he had a soft corner for respondents. (para 7 *ibid*).

6. That the above-mentioned extracts from the transfer application clearly indicate that Aji Singh plaintiff has tried to scandalise the court and has further lowered its authority by levelling false, preposterous and contemptuous allegations. Shri Niranjana Dass Rahi, Advocate, has drafted the transfer application in a most reckless manner and with a mala fide intention to harm the reputation of the presiding officer since the latter did not toe the line of the said Advocate while deciding the case in which he was personally involved as a party. The professional ethics demands that whenever a client is going to level serious charges against a judicial officer the lawyer concerned should be very careful and must verify the truthfulness of such allegations before putting them in black and white. In the present case, it appears that Shri Niranjana Dass Rahi Advocate was more eager to add as many false allegations as could be imagined. As such both the plaintiff Aji Singh as well as Shri Niranjana Dass Rahi, Advocate, have committed criminal contempt within the meaning of section 2(c) of the Contempt of Courts Act, 1971.

7. That I received a copy of application dated 13th March, 1984, signed by Aji Singh along with power of attorney of his Advocate Ch. Pishore Singh of Kapurthala, which is addressed to the learned District Judge, Kapurthala, with a prayer that he offers unconditional apology as the transfer application was drafted by his Advocate in the lower court and Shri N. D. Rahi. He signed the transfer application in great hurry without going through its contents and the allegations are incorrect. Copy of said application is Annexure 'D' and power of attorney is Annexure 'E'.

8. That the Criminal Contempt was committed when the contents of the transfer application became known to the presiding officer and all others during the pendency of the transfer application and, therefore, the initiation of contempt proceedings is within limitation.

In the light of the facts stated above, it is humbly prayed that this reference may kindly be placed before their Lordships of the Hon'ble High Court for taking appropriate action against the contemners in accordance with law."

5. Notice was issued to Shri Aji Singh and Shri N. D. Rahi, Advocate, by this Court under the Contempt of Courts Act.

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6. Shri Ajit Singh submitted an affidavit by way of reply, which is as under:—

“1. That the deponent submits unqualified apology and prays that the same may be accepted. As a matter of fact the answering respondent had filed similar application before the District Judge, Kapurthala on 13th March, 1984. This application reads as under:—

“The applicant/plaintiff submits as under:—

1. That he had moved transfer application in this Hon'ble Court seeking transfer of his above-mentioned suit from the court of Shri N. K. Bansal, P.C.S., Sub-Judge, 1st Class, Phagwara.
2. That in this application allegations which the applicant has now come to know and realised, were quite incorrect.
3. That the transfer application was drafted by his counsel who was conducting the said case in the lower court at Phagwara and other lawyer Shri N. D. Rahi, Advocate, Phagwara, and the applicant had signed the same in great hurry and as such had not gone through its contents.
4. That the applicant wishes to withdraw all the allegations made in the said transfer application. He disassociates himself from all the allegations of the said transfer application and he prays that the same may be struck off the record.
5. That the applicant offers unconditional apology also for the said allegations made in the manner submitted above which as already requested he wishes to withdraw:

It is, therefore, prayed that this present application be accepted and allowed and my statement may kindly be recorded.”

2. That the answering respondent as submitted above is submitting unqualified and unconditional apology and is truly repentent in the matter. As submitted above the transfer application was

drafted by his counsel. The submission made in para 3 of the application reproduced above may kindly be perused and may kindly be read as a part of this affidavit.

3. That the answering respondent has utmost respect for the courts and the system of administration of justice established under the Constitution of India and he accordingly submits an unqualified apology.

Sd./- AJIT SINGH
Dependent."

7. Shri N. D. Rahi, Advocate, in his reply, admitted that his personal cases were pending in the court of Shri N. K. Bansal, Sub-Judge, 1st Class, Phagwara, but he never expected any special treatment in those cases. He controverted the Statement of Shri N. K. Bansal, as contained in reference about Civil Suit No. 101/18th of March, 1981, and stated that the suit and the counter claim were dismissed. He, however, alleged that Shri N. K. Bansal forced him to enter into a compromise. He further averred that when the presiding officer (referring to Shri N. K. Bansal) started harassing him, he got Civil Suit No. 32 of 1981 *Niranjan Dass Rahi vs. Parkasho* transferred from his court. He admitted the filing of a written complaint against Shri N. K. Bansal, but showed ignorance about the result as it was not conveyed to him. He admitted to have appeared for Shri Ajit Singh in the transfer application before the District Judge, Kapurthala, but denied any knowledge of the allegations. According to him, the allegations were made by Shri Ajit Singh and he had nothing to do with those. In para 6 of his affidavit, he stated:—

"That the contents of para 6 of the petition are not admitted as alleged and are denied. It is categorically denied that the answering respondent drafted the said transfer application in a reckless manner or with malafide intention. The respondent No. 1 came to the answering respondent along with his counsel, Shri Raj Kishan Sachdeva, Advocate, of Phagwara appearing in trial court, with a prepared draft, signed application duly supported by affidavit of respondent No. 1 Ajit Singh in detail annexed with the reply as R/1, which the learned presiding officer has failed to file as Annexure to the present petition, and requested the answering respondent to appear before the learned District Judge on behalf of the respondent No. 1, as

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the answering respondent had already some cases pending, as Sansar Singh vs. Sohan Singh, Ram Karkash vs. Nakul Dev, etc., before the learned District Judge, Kapurthala and it was difficult for the Advocate of the applicant Ajit Singh to appear before the said Court. The answering respondent on going through the said application advised the respondent No. 1 not to level such charges and he must make himself sure of these allegations which he was levelling in the said transfer application, and refrained him not to move such application. The respondent No. 1, who is a well educated person and a responsible officer, employed in the Life Insurance Corporation of India, firmly told the answering respondent that he was very sure of the correctness of the allegations he was levelling and that is why he had not only verified those facts as per provisions of law but has also stated the same facts on oath in his affidavit filed in support of his application, mention of the affidavit is also made in the Annexure 'A' and Annexure 'B' of the petition. The version of the respondent No. 1 was also supported by the counsel of the respondent No. 1, Shri Raj Kishan Sachetva, Advocate, Phagwara, who had accompanied the respondent No. 1, saying that he (R. K. Sachdeva, Advocate), had been conducting the case of Ajit Singh and transfer application was also drafted by him. As regard allegations contained in para 6 of the said application (briefly stated in para 5 (f) of the petition), i.e., in the said case State vs. Balkar Singh, F.I.R. 139, dated 2nd August, 1980, under section 458/380 I.P.C. decided on 6th May, 1982, respondent Ajit Singh's counsel, Raj Kishan Sachdeva was Advocate for Balkar Singh and they confirmed that they are well conversant with the said allegations also. The answering respondent has no reasons to disbelieve a fellow Advocate, who had drafted the said application and the same being duly supported by an Affidavit by the respondent No. 1 and as such appeared on behalf of the respondent No. 1 in good faith. As such the answering respondent has not levelled any scandalous or contemptuous allegations nor the answering respondent has any intention to do so. The answering respondent has not committed any contempt of the Court.

He stated that Shri Ajit Singh is an educated person and a responsible officer in the Life Insurance Corporation of India and had not

signed the application in a hurry, but had done so after going through it. Tendering unconditional apology he threw himself at the mercy of the Court.

8. Shri Ajit Singh appearing as R.W. 1 admitted the pendency of his civil suit against Bimla Wati and others and also the moving of the transfer application in question. According to him Shri R. K. Sachdeva was his counsel, who drafted the transfer application, which was moved by him through Shri N. D. Rahi, Advocate. Shri N. D. Rahi, Advocate was engaged by him at the instance of Shri R. K. Sachdeva, Advocate in the transfer application. He had not read the application or the affidavit, which the Clerk of Shri R. K. Sachdeva had brought to him for his signatures. He had signed the register of the Oath Commissioner, which was brought to him by the Clerk of Shri R. K. Sachdeva. He accompanied Shri N. D. Rahi to Kapurthala for filing the transfer application.

9. Shri R. K. Uppal, Advocate, Phagwara, who remained as Oath Commissioner at Phagwara from 1982 to 1984, had attested the affidavit of Shri Ajit Singh on 6th of October, 1983 and entered it at Serial No. 532 of his register. He had read out the contents of the affidavit to Shri Ajit Singh before attesting it. Shri Ajit Singh was identified before him by Shri Mohinder, Clerk of Shri R. K. Sachdeva, Advocate.

10. Notice was also issued to Shri R. K. Sachdeva, Advocate. In his reply he denied to have drafted the transfer application. He stated that Shri Ajit Singh is a well-educated person and an officer with the Life Insurance Corporation of India. He is the Legal Adviser of the Homoeopaths Association of Phagwara.

11. Shri R. K. Sachdeva was examined as a witness at the instance of Shri Ajit Singh. He admitted to have moved the transfer application in the case *Resham Kaur vs. Shanti Devi* and Exhibit R. 2, Copy of the judgment in the case *State vs. Balkar Singh* under section 411 of the Indian Penal Code was tendered in evidence.

12. In para 1 of this judgment the transfer application has been reproduced. In this transfer application Shri Ajit Singh has levelled allegations of corruption and malice against Shri N. K. Bansal. He has accused Shri N.K. Bansal of bias against him and having a favourable incline towards his opponents. To justify this bias, he has accused Shri N. K. Bansal of harassing him and frowning at his witnesses.

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He has been accused of showing sympathy and giving V.I.P. treatment to the other party and its witnesses. He has accused Shri N. K. Bansal, even for preparing incorrect and untrue record, forcibly eliciting answers from the witnesses, to help the opposite party. The conduct of Shri N. K. Bansal in this regard has been described as:

“That the learned presiding officer had tried to demoralise the petitioner by overawing him, he has forgotten all the standards of courtesy and civility; the canons and principles of conduct which are expected of a judicial officer. His court depicted the picture of a cruel, merciless and reckless monarch and the presence of presiding officer seems to be that of a dictator, whenever the case was called, he gave the impression that the justice is beyond the approach of the petitioner and he should withdraw the case and abandon the prosecution.”

13. In his affidavit dated 13th of March, 1984, before the District Judge, Kapurthala, Shri Ajit Singh swore:—

“That in this application allegations which the applicant has now come to know and realised, were quite incorrect.”

He thus admitted that the allegations were incorrect or in other words were false. He in his affidavit before the District Judge, Kapurthala, in the application dated 13th of March, 1984, and reply in these proceedings by way of affidavit, took the position that he (Ajit Singh) was not personally aware of these allegations and the application for transfer was drafted by Shri R. K. Sachdeva, who was conducting his case in the court of Shri N. K. Bansal, and Shri N. D. Rahi. He, however, admitted to have signed the transfer application and the affidavit attached therewith. But Shri N. D. Rahi and Shri R. K. Sachdeva, Advocates, contemners, have not owned this that the allegations contained in the transfer application made against Shri N. K. Bansal were written by them or were incorrect. The admitted case of Shri Ajit Singh contemner is that the allegations made by him in the transfer application against Shri N. K. Bansal, were without any basis, incorrect or false.

14. The question which arises is whether such an incorrect or false accusations against a Judge fall within the ambit of criminal contempt as defined in section 2(c)(i) of the Contempt of Courts Act,

(1971, hereinafter referred as the Act, Section 2(c)(i) is as under:—

“2. In this Act, unless the context otherwise requires—

(a) * * * *

(b) * * * *

(c) ‘criminal contempt’ means the publication (whether by words, spoken or written, or by signs, or by visible representation or otherwise) of any matter or the doing of any other act whatsoever which—

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or”

We are concerned with section 2(c)(i) only as to whether the allegations contained in different paragraphs of the transfer application against Shri N. K. Bansal, Sub-Judge amount to scandalising the court or lowering the authority of the court, on which he was presiding. This question as to what scandalisation means came up for consideration in *Courts on its own motion vs. Comrade Ram Piara* (1). The observations in that case were quoted in *Court on its own motion vs. Comrade Ram Piara*, which are as:—

“The words, ‘scandalise’ as used in the Act does not have any special or technical meaning. Its ordinary meanings which are commonly understood, have to be taken into account in the context of section 2(c)(i) of the Act. We see a reason for it also because a man indulging in the scandalising of court may plead that he understood only the ordinary dictionary meanings of the word and was not conversant with the technical meanings given to it in a special context by the statute. We have to see whether the act of Ram Piara respondent falls within the ambit of scandalising the court in the meaning of that word, which is commonly understood, and also whether it comes within the ambit of section 2(c). The meaning of the word, ‘scandalise’ as given in Shorter Oxford English Dictionary, Volume II, 1959, Edition are: ‘To utter false or malicious

(1) Cr. O.C.P. No. 7/79 decided on 14th August, 1981.

(2) Cr. O.C.P. No. 4/83 decided on 25th January, 1984.

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reports of (a person's conduct, to slander, to talk scandal, to bring shame or discredit upon; to disgrace. "In Webster's World New International Dictionary, Volume III, the meanings of the word 'scandalize' given are: 'to speak falsely or maliciously of; defame; malign, to bring into reproach; dishonour, disgrace; to offend the feelings, conscience or propriety of by an action considered immoral, criminal or unseemly.'"

Ordinarily, the word 'scandal' is something said, which is false and injurious to reputation; disgrace, opprobrious, censure; 'Scandalise' is to give scandal or offence; to shock, to reproach, to libel; and scandalisation suggests and cannots defamation. Unwarranted attack on a Judge or a contempt by means of speech or writing is characterised as 'scandalisation', and is actionable under the law of contempt."

15. The allegations in the transfer application criticise the conduct of Shri N. K. Bansal as a Judge and not in his individual capacity. An attempt was made to depict him as a Judge biased against Ajit Singh and in favour of the opposite party. To highlight this, it was alleged that he frowned at Ajit Singh and his witnesses, but smiled at his opponents' witnesses and counsel. Dishonesty in preparation of the records was attributed to him for having prepared incorrect and untrue records to harm the interests of Ajit Singh and favour his opponents. This is the worst accusation, which can be made against a Judge, who is to give a fair deal to the parties in litigation before him. Such an allegation besmears the fair name of judiciary and lowers its image as well as authority in the eyes of the general public. It does great damage to the reputation of the court when it emanates from educated people and lawyers. When it is admitted to be false or is proved as such then the intent of the maker becomes manifest that it was done to scandalise the court or lower its authority.

Similarly, doubting the integrity of Shri N. K. Bansal and attributing corruption to him in the transfer application and caricaturing him as a despot were admittedly incorrect. Reference in para 6 of the transfer application to Kimti Lal's act in giving bribe to Shri N. K. Bansal was a false allegation. There cannot be any doubt that if any person casts a false reflection on the fair dealing of the Court, or attributes dishonesty or corruption to a Judge, then the act tends to shake the confidence of the public in the seat of justice.

16. These were not personal imputations made against Shri N. K. Bansal. His conduct as a Judge was adversely commented in an unbridled manner and in a vilificatory language in the transfer application. These accusations were admitted as incorrect by Shri Ajit Singh, on whose behalf these were made and published in the form of presentation of the transfer application, which after obtaining the comments of Shri N. K. Bansal and arguments was decided on merits. It was admitted by Shri Ajit Singh and was mentioned in the transfer application that the conduct of Shri N. K. Bansal in not appointing Commission on the request made on his behalf led to the filing of this transfer application. The order was passed on the judicial side. Getting annoyed by the order Shri Ajit Singh with the help of his Advocate started vilification of Shri N. K. Bansal, who for reasons, which he may have recorded, did not appoint a Commission. This conduct of Shri Ajit Singh in making the allegation noticed in the preceding paragraph was well thought and calculated. It was done with a design to defame the Judge, who, in his judicial capacity, did not accede to his request to appoint a Commission. This was done with an idea to ridicule Shri N. K. Bansal in the eyes of his superior officers, lawyers and the general public. The references to Divinder Kumar as a bribe-getter for Shri N. K. Bansal and *Balkar Singh's case* were uncalled for and had nothing to do with the transfer of the civil suit filed by Shri Ajit Singh and the comments were made only as a part of the scheme to defame Shri N. K. Bansal. Such libellous accusations on the judicial conduct of a judge scandalise or tend to scandalise the court. The references to the conduct of Shri N. K. Bansal in the transfer application are scandalous, scurrilous and were made with a determined effort to scandalise the court only for the reason that the request of Shri Ajit Singh for appointment of Commission in his case was not granted.

In *R. Subba Rao vs. Advocate General, A.P.* (3), an unsuccessful litigant issued notice to the Judge containing:—

- “3. In the said judgment (O.S. Nos. 101/73 and 275/72) your honour created new facts by making third version without evidence as detailed below among others.”
- “4. Your honour has intentionally with bad faith and maliciously, disordered the existing oral and documentary

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evidence with a view to help the plaintiff in O.S. No. 275/72 causing damage injury to me.”

“5. Your honour has maintained different standards in the same judgment with regard to Exhibits B-9, B-10, B-13 and A-19 to A-19 and A-20 to A-22 and B-11 and B-12 in para No. 25.

“6. Your honour has maintained different standards even with regard to self-serving statements.”

“16. Your honour has side-tracked the binding direct decisions of the High Courts and the Supreme Court disordering the contents of the said decision.”

“18. So under these circumstances it cannot be said that these acts done by your goodsself in the discharge of your honour’s judicial duty within the limits of your honour’s jurisdiction in good faith; for the above-said acts themselves prove that your honour has done these acts with *mala fide* exercise of powers without jurisdiction.”

4. In the concluding paragraphs of the notice, he stated:—

“Your honour has done these acts in excess of jurisdiction knowing the law regarding your own powers and duties. So, your honour is liable in tort to pay damages for the heavy monetary loss incurred by me and for the injury.

Hence, I request your honour to pay a sum of Rs. 30,000 by way of damages for the heavy monetary loss incurred by me and for the injury within a reasonable time, or else I will be compelled to seek legal redresses for the same.

I hereby reserve my right to take available legal actions against your honour under the other enactments.”

After issue of notice of contempt to R. Subha Rao, he was convicted by the High Court of Andhra Pradesh. Affirming the order of convicting, the Supreme Court observed:—

“We agree with the High Court that the tone, temper and contents of the notice, particularly of the passages extracted

earlier, which impute malice, partiality and dishonesty to the Subordinate Judge in the Judicial adjudication of the aforesaid suits against the appellant, constitute a deliberate attempt to scandalise the Judge, to terribly embarrass him and to lower the authority of his office and the Court. The act and conduct of the appellant in issuing this notice, therefore, fell squarely within sub-clause (i) and (ii) of the definition of 'criminal contempt' given in Section 2(c) of the Act."

In *Asharam M. Jain v. A. T. Gupta and others* (4), Asharam M. Jain in special leave petition before the Supreme Court filed an affidavit in which he made allegations against the Judges of the High Court in these terms:—

"The petitioner says that having found that they would no longer be justified in continuing to hear the Notice of Motion and appeal for the several true facts set out in the Transfer Application and the affidavits made by the petitioner and briefly hereinabove set about the learned Chief Justice tried by the said order to harm the petitioner as much as he could and made totally false and wrong observations quite unworthy of the head of the judiciary of the State of Maharashtra, and His Lordship Mr. Justice Pendse supported the learned Chief Justice. The said order, it is clear, has been made with the sole and dishonest object of causing prejudice in the minds of the Judges of the new Bench against the petitioner and depriving the Judges of the new Bench of their right to independently judicially decide the Notice of Motion on merits and which is proved by subsequent events."

The Supreme Court held:—

"There is never any risk of judicial hypersensitivity. The very nature of the judicial function makes Judges sympathetic and responsive. Their very training blesses them with 'insensitivity', as opposed to hypersensitivity. Judges are always seeking good reasons to explain wrong conduct. They know there are always two sides to a coin. They neither give nor take offence because they deal with persons and situations impersonally, though

(4) A.I.R. 1983 S.C. 1151.

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with understanding Judges more than others realise the foibles, the frustrations, the undercurrents and the tensions of litigants and litigation. But, as elsewhere, lines have to be drawn. The strains and mortification of litigation cannot be allowed to lead litigants to tarnish, terrorise and destroy the system of administration of justice by vilification of Judges. It is not that Judges need be protected; Judges may well take care of themselves. It is the right and interest of the public in the due administration of justice that has to be protected. We had occasion to point this out in *Advocate General, Bihar v. M. P. Khair Industries* (5), where we said:—

“But, on the other hand it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affect the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, because unless justice is so administered where is the peril of all rights and liberties perishing. The court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with power to commit for Contempt of Court, not in order to protect the dignity of the Court against insult or injury as the expression ‘Contempt of Court’ may seem to suggest, but to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with. ‘It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage.’ The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope’. So we approach the question not from the point of view of the Judge, whose honour and dignity require to be vindicated, but from the point of view of the public who have entrusted to us the task of due administration of justice. Having given our utmost consideration, we have come to the conclusion that it is not open to us to accept the easy and ready solution suggested by Mr. R. K. Garg of accepting the apology

and imposing a fine. We think that a contumacious disregard of all decencies, such as, that exhibited by the contemner in this case can only lead to a serious disturbance of the system of administration of justice, unless duly repaired at once by inflicting an appropriate punishment on the contemner which must be to send him to jail to atone for his misconduct and thereafter to come out of prison a chastened but a better citizen."

17. Admittedly, false allegations have the effect of scandalising the Court. They tend to lower the authority of the Court. The law of contempt is not meant for protecting the Judges, but it is for the protection of the institution of judiciary from such like defamatory, libellous, scurrilous, vilificatory and unfounded attack and criticism against the system or the persons, who because of their official positions, preside over these institutions. Parties to the litigation and the counsel are given some latitude of over-expression in presentation of their case, in presenting the recorded or oral versions to the Court, but they have to be careful and cannot be permitted to transgress the limits of decency or propriety to impute a bad faith to the Judge in open court, outside the court or in transfer applications, grounds of appeal, revisions, etc., which is treading the dangerous path. If some allegations, which are made in the oral or written representations, which turn out to be true, even then the petitions ridiculing the courts and lowering their position in the eyes of the general public are not permitted. It is the prestige of the court, which is at stake not the individual, who sits as a Judge. Contempt proceedings, therefore, are clearly to safeguard only the interest and prestige of the public justice. It is not the duty of a counsel to take interest in the application, which contains scandalous allegations against the presiding officer of a court or having an effect of lowering his authority as a Judge without reasonably satisfying himself about the *prima facie* existence of adequate grounds, therefore. On the contrary his duty is to advise his client from refraining from making allegations of such a nature in pleadings or applicatons.

18. After examining the allegations in the transfer application, which have been discussed above, we find that these fall within the ambit of section 2(c)(i) of the Act.

19. All the three contemnners have tried to wriggle out of the liability for contempt of Court by making efforts to dissociate themselves from the drafting or filing of the transfer application. Out of

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the contemnors, the first person who comes to the fore is Shri Ajit Singh, who was a party in the civil suit and who had signed the transfer application and the affidavit and filed these before the District Judge, Kapurthala. His plea that he never read the transfer application or the affidavit before signing those is too fanciful to be believed. He is M.A., and is employed as an officer in the Life Insurance Corporation of India. It was he, who was dissatisfied with the order of Shri N. K. Bansal in declining his prayer for appointment of a Commission. His education and status do not permit us to accept his word of mouth that he had signed those documents only at the instance of his counsel. He tried to take the benefit of mental depression because of illness of a relative. Shri R. K. Uppal, Oath Commissioner, gave a direct lie to his plea when he stated that the affidavit before attestation was read out to Shri Ajit Singh. Shri Uppal's evidence cannot be doubted and mere assertion by Shri Ajit Singh, who motivated by the urge to get the case transferred had made false accusations, cannot override the testimony of the Oath Commissioner. It may be that the allegations may not have been totally the creation of Shri Ajit Singh, but he cannot escape from this in the manner he has tried to adopt. He was conscious of the falsity and effect of these allegations. He started worrying about those after 5th of December, 1983, when the learned District Judge, Kapurthala, had suggested the initiation of the contempt proceedings on the basis of the unfounded and false allegations. He now tried to cash on the application made by him on 13th of March, 1984 before the District Judge, Kapurthala, withdrawing the allegations. This application cannot extend any help to him in the face of his admission that these allegations were incorrect. Moreover, the application was made after more than three months of the order passed by the learned District Judge, Kapurthala, in which Shri N. K. Bansal was advised to move the contempt proceedings. He cannot derive any benefit from the application of 13th of March, 1984.

The contemptuous matter was filed in the court in his case by him after signing the application and supported by his affidavit. He is the person, who had published the accusations in a written form. He cannot escape culpability of his act and is guilty of committing 'criminal contempt' as defined in section 2(c)(i).

20. Next comes the case of Shri N. D. Rahi, Advocate, who appeared for Shri Ajit Singh in this transfer application before the District Judge, Kapurthala. An argument was raised on his behalf that

he only appeared as a counsel and had not drafted the transfer application. It was also argued that he tried to restrain Shri Ajit Singh from making such contemptuous allegations against a judicial officer. The fact of the matter is that he appeared in the transfer application before the District Judge, Kapurthala, and not Shri R. K. Sachdeva, who was the counsel for Shri Ajit Singh in the civil suit and continued representing him even after the transfer of the case from the court of Shri N. K. Bansal. Shri Ajit Singh has stated that the transfer application was drafted by Sarvshri N. D. Rahi and R. K. Sachdeva, Advocates. He had taken this position even in the application dated 15th of March, 1984, before the District Judge, Kapurthala. There seems to be truth in the statement of Shri Ajit Singh. It is admitted by Shri N. K. Rahi that he was not happy with the conduct of Shri N. K. Bansal, who had dismissed his cross-objections in a civil case. He got a civil suit, in which he was a party, transferred from the court of Shri N. K. Bansal. He had even made a complaint in writing against Shri Bansal, which, according to the reference made by Shri N. K. Bansal was rejected. This demonstrates the unhappiness of Shri N. D. Rahi with Shri N. K. Bansal. It appears that it was for this reason that Shri N. D. Rahi was engaged to move the application for transfer of the case of Shri Ajit Singh from the court of Shri N. K. Bansal, against whom this Advocate had grudge. Normally, a lawyer will not accept the brief with the grounds already drafted when his own relations with the officer, because of the attitude in his personal case, are not happy. The association of Shri N. D. Rahi with the drafting of the application has to be inferred. There is nothing on the record to contradict this inference. He may have been engaged at the instance of Shri R. K. Sachdeva because of his unhappy relations with Shri N. K. Bansal.

21. A lawyer cannot disclaim any liability if it ensues from the pleadings or the application which he himself has drafted for his client or was a privy to their drafting or had presented these in case these had been brought to him in a drafted condition. More than three decades ago, the Supreme Court in *M. Y. Shareef and another v. Hon'ble Judges of the Nagpur High Court and others* (6) observed:—

“.....that counsel who sign applications or pleadings containing matter scandalizing the Court without reasonably satisfying themselves about the *prima facie* existence of

(6) A.I.R. 1955 S.C. 19.

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adequate grounds, therefor, with a view to prevent or delay the course of justice, are themselves guilty of contempt of Court....."

A lawyer guided by the principles of legal ethics, education, training in law and professional experience is expected to know what a transfer application has to contain. If the basis of the transfer application is the apprehension of the party in the matter of not getting justice from the particular court, this apprehension has to be stated and the reason in support has to be mentioned in such application. The party has to abstain from making scandalous and scurrilous attack on the Judge. Before a lawyer drafts a transfer application, he is to address himself a few questions; like; Should he sign the transfer application at all? Are there scandalous allegations which are contumacious? Why should he associate himself with them? Why not advise the party to omit such allegations and confine himself to facts which bear proof? If it is a case of his own prestige and duty, is that clear in law and in fact? Is it a borderline case where no opinions may be possible? Is it not better to avoid even such situations unless professional duty is imperative? Is he serving the interests of the administration of justice by his act or is it merely to satisfy his own ego, bias or personal satisfaction? Is the public benefited by his stand? Unless a lawyer gets a clear answer from his conscience satisfying these questions, which are illustrative and not exhaustive, he should not proceed further in pursuit of those allegations which either he or his client intends to make against a Judge. The ingenious mind of a lawyer ponder over more possibilities of this type in a broad sphere to come to the conclusion whether he should take up or proceed with such a case, in which he is asked to appear by his client. Unhappiness of a lawyer with a Judge or lack of cordiality in relations between him and a judicial officer should not be permitted to have an upper hand to influence the mind of a legal attorney in such cases. The Advocates are the officers of the Court. It is one of their functions to maintain the dignity of the court and law, of which they are an integral part. A lawyer has to maintain a respectful attitude towards the court, not for the sake of temporary incumbent of the judicial office, but for the maintenance of its freedom. He not only himself is to maintain a courteous and respectful attitude towards the Judge of the court, but has to insist for a similar conduct on the part of his client. Remuneration alone does not matter nor the cordiality of the relations with the Judge. It is no duty of a counsel to his client to take interest in the pleadings applications, ect., which contain scandalous allegations against a presiding officer

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of a court or having an effect of lowering his authority as a Judge without reasonably satisfying himself about the *prima facie* existence of adequate grounds therefor; on the contrary, his duty is to advise his client from refraining from making allegations of such nature in pleadings or applications.

22. Shri N. D. Rahi cannot get away by simply saying that he had advised Shri Ajit Singh not to make these allegations. If he had done so, then guided by the professional ethics and cognizant of the law of the land for the contempt of Court, which he being an Advocate was expected to know, he should have excused himself from the transfer application. On the other hand it appears that he wanted to settle his own scores with Shri N. K. Bansal against whom he had already moved a complaint in writing and an application for the transfer of his personal case. He made himself available to pursue the accusations levelled against Shri N. K. Bansal in the transfer application, although he was not the counsel of Shri Ajit Singh in the case before the transfer application nor was engaged later on in spite of the success of the transfer application. He got himself engaged only for the purpose of this application. He practises at Phagwara and not at Kapurthala. He was only engaged for the transfer application. Being a counsel to file and pursue the transfer application, he must have been associated with its drafting. Being personally aggrieved against Shri N. K. Bansal, he could not stay away from the drafting. He was a party to the drafting as well as prosecution of the transfer application, which contained contumacious matter, which has been noticed in the earlier part of the judgment. He was not only a privy to the drafting but also for the prosecution of the contumacious matter. He is thus guilty for committing contempt of Court as defined in section 2(c) (i) of the Act.

23. The case of Shri R. K. Sachdeva comes next. He was the counsel of Shri Ajit Singh and represented him in the case in the court of Shri N. K. Bansal and also in the court to which the case was later transferred. He has denied to have drafted the transfer application or the affidavit. Shri Ajit Singh was positive that the transfer application and the affidavit were drafted by Shri R. K. Sachdeva. The same was the position of Shri N. D. Rahi, when he stated that Shri Ajit Singh accompanied by Shri R. K. Sachdeva with a prepared application came to him. The drafting of the transfer application with the help of Shri R. K. Sachdeva is made out. There is yet another aspect of the case, which goes to prove conclusively that the brain behind the drafting of the transfer application was Shri R. K.

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Sachdeva, Advocate. It was admitted by him that he was a counsel in case *Resham Kaur vs. Shanti Devi*, which was pending in the court of Shri N. K. Bansal. He admitted to have filed an application for the transfer of that case from the court of Shri N. K. Bansal. Exhibit R. 1 is the attested copy of the transfer application in *Resham Kaur's case*. The language of the allegations made in the transfer application filed by Shri Ajit Singh and Exhibit R. 1 at many places is approximately the same. In regard to the motive imputed to Shri N. K. Bansal. In para 3 of Exhibit R. 1 it is recorded: "That the petitioner apprehends that she will not have a fair trial in the said court of rent Controller, Phagwara, in view of the following submissions and reasons.....". Similar is para 2 of the application filed by Shri Ajit Singh except with the reference of the parties and their description. In para 3(iii) of Exhibit R. 1, it is recorded:—

"The behaviour of the presiding officer with the witnesses has been very rude, cruel and the applicant too was insulted, humiliated and harassed by the Presiding Officer whenever the case was called for hearing."

In para 3 of the application filed by Shri Ajit Singh, the reference is approximately the same.

In para 3 (vi) of Exhibit R. 1 it is recorded:—

"The Court depicts the scene of a cruel, merciless and reckless monarch and the presence of presiding officer seems to be that of a dictator, when the case is called.

The same language is used in para 8 of the transfer application filed by Shri Ajit Singh.

In para 3(vi) of Exhibit R. 1 it is recorded:—

"The learned Rent Controller frowns at applicant and smiles with the respondent during the proceedings of the case, by his conduct and deposition, he tried to demoralise the applicant."

Exactly the same words are used in para 8 of the transfer application filed by Shri Ajit Singh. The allegations about the treatment of the party, the witnesses and the recording of the evidence are same

in both the transfer applications, that is, one filed by Shri Ajit Singh and Exhibit R. 1.

There is yet another thing, which could be known to Shri R. K. Sachdeva and not to Shri Ajit Singh. It is the reference to the case of Balkar Singh. In Balkar Singh's case, Shri R. K. Sachdeva, Advocate, was the counsel and the facts of that case and the circumstances, which led to the making of the allegations, could only be known to him. The allegations made about *Balkar Singh's case*, which had no connection with *Ajit Singh's case* amount to attributing corruption to Shri N. K. Bansal. No cause has been shown for the making of these allegations in the transfer application. Shri Ajit Singh had admitted the allegations to be incorrect in his application dated 13th of March, 1984.

These facts when considered cumulatively go to show that the author of the transfer application copy of which is Exhibit R.1 in *Resham Kaur's case* and the transfer application in *Ajit Singh's case* was one and the same person. It could be nobody else except Shri R. K. Sachdeva, who was a counsel in both the cases, and both the transfer applications were his brain-child. The authorship of the transfer applications in spite of the denial by Shri R. K. Sachdeva is brought home to him.

44. Shri Ajit Singh wanted the transfer of his case from the court of Shri N. K. Bansal. Shri N. D. Rahi wanted to give vent to his feelings of dissatisfaction against Shri N. K. Bansal. They were brought together by Shri R. K. Sachdeva and he provided the material to be incorporated in the transfer application. Shri R. K. Sachdeva kept aside by not joining in the presentation of the transfer application. Shri R. K. Sachdeva too has committed contempt of the Court under section 2(c) of the Act. All of them by their conduct committed the offence of scandalising the court and to lower its dignity, as defined in section 2(c)(i) of the Act.

25. Shri N. D. Rahi and Shri Ajit Singh have tendered apology and it was urged that their apologies may be accepted. Shri Ajit Singh in his affidavit stated that he highly felt repentant and submitted an unqualified apology. Shri N. D. Rahi contested the notice issued to him, but in the beginning of the affidavit he tendered apology, which has been noticed in the earlier part of the judgment. Apology has to be really a contrition and should not be a means to escape the liability. Before accepting the apology the court has

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to see the circumstances which led to the activity resulting in the proceedings for contempt of Court. In this case the statement of Shri Ajit Singh and the transfer application show that there was one order, which was not to the liking of Shri Ajit Singh, that is, declining of his prayer by Shri N. K. Bansal for the appointment of Commission. The order may have been very innocuous and could be agitated in a superior court. Stung by the adverse order, Shri Ajit Singh with the help of Shri R. K. Sachdeva and Shri N. D. Rahi, Advocates took to maligning the Judge. The intentional use of the language levelling the accusations noticed above cannot be taken to be honest. The intention was dishonest and the effort was to deliberately malign the court. The accusations were made with a design and were not simply thoughtless. The transfer application was used as a mode to make the vilificatory attack on Shri N. K. Bansal. In *Gibind Ram v. State of Maharashtra* (7), it was held that: "in the garb of a transfer application a person cannot be allowed to commit contempt of court by making allegations of a serious and scurrilous nature scandalising the court and and imputing improper motives to the Judge trying the case.

The litigant and the lawyer are to take care not to over-step the limits of courtesy, propriety and decency. They cannot malign or ridicule the judicial officers in their judicial capacity, as has been done in the case in hand. In the circumstances of the case, we feel that Shri Ajit Singh started realising his folly only when the learned District Judge disclosed his mind on 5th of December, 1983, regarding the initiating of proceedings for contempt of Court. Shri N. D. Rahi was still justifying his conduit during the course of arguments before us in spite of his apology. Shri R. K. Sachdeva till the last did not feel apologetic and contested his liability. On the peculiar facts of this case we do not feel satisfied if the apology tendered by Sarvshri Ajit Singh and N. D. Rahi, Advocates, really flows from their mind. These days such incidents of insubordination and use of improper language towards the Judges is on the increase. The apology, after doing the mischief, is taken as a cover to avoid punishment. We do not mean to say that because of the increase of such incidents, we are ignoring the apology in this case. We have taken a positive view in the circumstances of this case to ignore the apology. A litigant and a lawyer have to know and understand the stage where they have to stop their criticism of the Judges and also have to be watchful about the language in which criticism has been couched.

(7) A.I.R. 1972 S.C. 989.

In a case of this type, which is serious, the contemner cannot be allowed to get away by simply feeling sorry by way of apology as the easiest way. In the special circumstances of this case, and the principle laid down in *Asharam M. Jain's case* (supra), we do not accept the apology tendered by Sarvshri Ajit Singh and N. D. Rahi, Advocates.

26. For the foregoing reasons, Sarvshri Ajit Singh, N. D. Rahi, Advocates and R. K. Sachdeva, Advocate have been proved guilty for committing the contempt of Court under section 2(c)(i) of the Act. They are convicted for this offence accordingly. Each of them is sentenced to pay Rs. 2,000 as fine. In case of default in payment of fine, each of them, that is, Sarvshri Ajit Singh, N. D. Rahi and R. K. Sachdeva shall undergo simple imprisonment for fifteen days. The fine shall be deposited within three weeks from today.

N.K.S.

Before S. P. Goyal, J.

M. M. SEHGAL,—*Petitioner*

versus

SEHGAL PAPERS LIMITED,—*Respondents.*

*Company Application No. 200 of 1983 in Company Petition
No. 97 of 1983*

August 23, 1985

Companies Act (1 of 1956)—Sections 391, 392 and 394—Companies Court Rules, 1959—Company ordered to be wound up under orders of the Court—Former Chairman of the Board of Directors filing petition under Section 391, 392 and 394 for a direction to hold a meeting of the share-holders and creditors to consider the scheme to revive the company—Scheme approved by all except the secured creditors—Petitioner making application under rule 79 for sanction of the proposed scheme—Such application—Whether maintainable—Allegations of malafide and arbitrary action against the secured creditors—Company Judge—Whether has the jurisdiction to go into this matter.

Held, that a reading of rule 79 of the Companies Court Rules, 1959, would show that an application for sanction of the proposed compromise or arrangement is maintainable only if it has been