
Before Binod Kumar Roy, C.J. & Rajive Bhalla, J.

COURT ON ITS OWN MOTION,—*Petitioner*

versus

MANEESH CHHIBER,—*Respondent*

C.O.C.P. No. 18 OF 2002

29th May, 2004

Contempt of Courts Act, 1971—Ss. 2(c) & 15—Criminal Contempt—Cognizance taken of contempt by Hon'ble the Chief Justice on the basis of a note put up by a High Court Judge against a journalist—Notice of criminal contempt issued to journalist for visiting residence of a High Court Judge at night to verify information received that a CBI raid was being conducted there—Information found to be incorrect by Journalist himself leading to publication in newspaper by the very correspondent that canards were being spread by some mischievous elements about some judges and lawyers of the High Court and the same were found to be disinformation campaign—Duty of journalist as a member of Fourth Estate—Verification before publication of facts—Defence taken that publication in newspaper was an attempt to verify rumours circulated and was done in bona fide discharge of duties of the Fourth Estate—Bounds of journalistic licence not exceeded in making such verification—Action does not amount to contempt in absence of 'publication' or 'words spoken'—Such action does not amount to criminal contempt but may be categorised as irresponsible—No motive found in the newspaper report—The contemner found neither the source nor the disseminator of rumours and, therefore, his attempt to verify information which turned out to be false cannot be construed to be an attempt to scandalise or tend to scandalise, prejudice or interfere or tended to interfere with the due course of any judicial proceeding or interfered or tended to interfere with or obstructed or tended to obstruct the administration of justice—Standard of proof required in criminal contempt—Held, beyond reasonable doubt—The act although caused indignation but does not fall in the vice of criminal contempt—Rule discharged—The Court, however, cautioning that the expression of opinion of the Court in the present case be not construed as a licence to attack the institution of the judiciary and that silence would not be an option for the Court when things are ill done.

Held, that it is duty of a journalist as a member of the Fourth Estate to verify, before publishing any facts that come to his knowledge. The visit of the contemner, to the residence of the Hon'ble Judge, was an attempt to verify rumours circulated and, therefore, was done in a *bona fide* discharge of his duties as a member of the Fourth Estate. The contemner did not exceed the bounds of journalistic licence and, therefore, cannot be held liable for contempt.

(Para 15)

Further held, that detailed analysis of the definition of criminal contempt, as laid down in Section 2(c) of the Act and as held by the Hon'ble Supreme Court in various judgements leads us to the conclusion that for an act to constitute criminal contempt, the first essential ingredient is "publication", whether by words spoken or written, or by signs or by visible representations or otherwise. The act, alleged to constitute contempt, must have been "published" in the manner stated above. Upon "publication", the act then must also fall with the mischief, detailed in Section 2(c) clause (i), (ii) and (iii) of the Act. The existence of one or the other will not constitute criminal contempt. In order to constitute criminal contempt, both "publication" and the ingredients of clause (i), (ii) and (iii) of Section 2(1) of the Act must co-exist. However, if an act is not criminal contempt, for lack of "publication", such an act would fall within the residuary category of the doing of any other act whatsoever. The common factor for both is the capability of the act to scandalise or tends to scandalise etc.

(Para 21)

Further held, that the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt.

(Para 27)

Further held, that the Fourth Estate, although it is vested with a constitutional right of freedom of expression, cannot invent or exaggerate, abuse of unfairly present matters pertaining to Judges or the Courts of law. If there is a vulgar misuse or violation of the freedom of the press against the Court, no excuse of journalistic licence or freedom of the press would prevent appropriate punishment for such misuse/violation. However, in democratic societies, it would be

in the fitness of things for the Courts to show indulgence rather than indignation. The powers conferred upon the Courts to punish for contempt cannot be exercised on a mere question of misconduct or impropriety. The breach, with respect to the publication or the conduct of the contemner, must be (a) an act done or writing calculated to bring a Court or a Judge into contempt or to undermine his authority amounts to contempt of Court and it can briefly be characterised as scandalizing the court itself, (b) any act or writing which prejudices mankind against persons or tends to obstruct or interfere with the due course of justice or the lawful process of the Court is contempt of Court.

(Para 28)

Further held, that the act of the contemner in visiting the residence of the Hon'ble Judge, with the object of verifying an information received by him does not constitute an act that would fall within the definition of a criminal conempt, as defined in Section 2(c) of the Act. The attempt to verify a set of facts, albeit rumours so as to establish their correctness or falsity cannot be construed to be an act falling within the mischief of Contempt. The Fourth Estate, of which the alleged contemner is a member, by its very nature, is required to verify all facts before reporting them. The visit, to the residence of an Hon'ble Judge, at an unearthly hour could, at the most, be categorised as irresponsible. The conduct of the alleged contemner must have caused a great deal of indignation, anger and irritation. However, the said act falls far short of the test of criminal contempt, as laid down in Section 2(c) clauses (i), (ii) and (iii) of the Act. The object of the alleged contemner was to confirm for himself, the virulent rumours that were being disseminated by mischievous and unscrupulous elements. The contemner was neither the source nor the disseminator of these rumours and, therefore, his attempt to verify information received, which turned out to be false, cannot be construed to be an attempt to scandalise or tends to scandalise, prejudices or interferes or tends to interfere with the due course of any judicial proceeding or interferes or tends to interfere with or obstructs or tends to obstruct, the administration of justice in any manner.

(Para 30)

Further held, that a detailed perusal of the newspaper report shows that the contemner sought to dispel, rumours about the conduct of C.B.I. raids/investigations directed at certain Hon'ble

Judge of the High Court and then proceeds on to re-count the falsity of these rumours, the falsity thereof having been verified by the alleged contemner, after a visit to the residence of the Hon'ble Judge.

(Para 31)

Further held, that the said report, in fact, discounts these rumours and exposes their falsity. If the endeavour of the alleged contemner was to bring to the notice of the public at large, rumours about alleged raids/investigations, no such intent can be inferred from the newspaper report. We cannot read a motive into the report, where there is none. No inference of contempt can be drawn from the newspaper report.

(Para 31)

Further held, that the conduct of the alleged contemner in visiting the residence of an Hon'ble Judge, making a telephone call to the residence of another Hon'ble Judge and the subsequent publishing of newspaper report do not amount to contempt. The material on record is insufficient to establish, beyond reasonable doubt, that the alleged contemner is guilty of having committed criminal contempt of this Court.

(Para 32)

Further held, that as the act and conduct of the alleged contemner when scrutinised in the light of the definition of criminal contempt, set down in Section 2(c) of the Act and as elucidated by the Hon'ble Supreme Court in various judgments, does not, in any manner, constitute a conduct so abhorrent as to cause this Court to exercise its powers to punish for contempt. In view of above, no charge, as envisaged under Section 15 of the Act, can be framed.

(Para 33)

Further held, that the Fourth Estate, must, however, not construe the present expression of opinion as a licence to attack the institution of the judiciary.

(Para 34)

R. S. Cheema, Sr. Advocate, with Sumeet Goel & D.S. Nalwa, Advocate, *for the contemner Maneesh Chhiber.*

H. L. Sibbal, Sr. Advocate with Hrishikesh Barua and Sapan Dhir, Advocates, *for Manish Tiwari.*

Randhir Singh, Sr. D.A.G., Haryana.

Augustine George Masih, D.A.G., Punjab.

JUDGMENT

RAJIVE BHALLA, J :

(1) The genesis of this Criminal Contempt Proceeding is a note, addressed by Hon'ble Mr. Justice, R. L. Anand (as His Lordship then was), to the then Hon'ble the Chief Justice of this Court. The said note reads as follow :—

“Hon'ble the Chief Justice.

The following lines are submitted for your kind consideration and information please :—

On the night intervening 19th/20th July, 2002, at about 11.45 P.M., I was asleep in my bed-room when Shri Yom Bahadur, High Court Chaukidar, who has been attached with me and resides in the servant quarter of my house, woke me up and handed over a 'visiting card' of Shri Maneesh Chhibber, Senior Correspondent. “The Hindustan Times Ltd”, and told me the following words :—

“The Santry guard on duty stationed outside my residence has told him that our bungalow has been raided by the police.”

I came out from my residence and made inquiries from the Santry guard who told me the following facts :—

“Few minutes earlier at the first instance one person on a scooter came and he enquired from me that C.B.I. raid has been conducted at the residence of Judge Sahib. What is the matter? I told to the said correspondent that nothing

has happened like this. It is all false. That correspondent even handed over the enclosed visiting card to me. That santry guard noted the number of the scooter 9700. He further told me that after the arrival of that correspondent one car (Zen) No. 9730 came there. It was occupied by two or three persons including a young lady. Those persons had a talk with the correspondent and they stayed there for five minutes. Those correspondent also inquired from the santry guard whether the raid by the CBI has been conducted or not. The santry guard again replied to them that nothing has been happened. After waiting for five minutes those persons went away." Santry guard gave a bell and woke Yom Bahadur from the servant quarter and handed over the visiting card to him.

When I entered inside the residential premises I received a telephonic call. A person inquired my name when I told to him that I am speaking Justice Anand, he told me the following words on telephone :—

"In what connection the raid is going on in your premises."

I became upset and annoyed. I tried to inquire from him his name. He said on telephone "sorry Sir" and he banged the telephone. I immediately brought this fact to the notice of Hon'ble Mr. Justice, G. S. Singhvi who was pleased to give me the advise "to have a calm, go to the sleep and in the morning he will take up this matter with your good self."

On Saturday i.e. 20th July, 2002 Shri Maneesh Chibber, Sr. Correspondent again gave me a telephone call and confessed that he visited my premises on the last night and handed over the visiting card to the santry guard. He requested me to apologise him. Regarding this call, I again telephoned Justice Sighvi and brought to the notice of His Lordship about this telephone call. After 15/20 minutes that correspondent again gave me the telephone call and repeated the

same request regarding apology. I was very much upset on telephone with him and so much so I even snubbed him.

(2) On receiving the aforementioned note, the then Hon'ble Chief Justice passed the following order :—

“Initiate *suo motu* action for contempt of Court.”

(3) Thereafter, the matter was ordered to be listed before Vth DB consisting of Hon'ble Mr. Justice V. K. Bali and Hon'ble Mr. Justice Satish Kumar Mittal. The said Bench passed the following order :—

“For the reasons mentioned in a separate note of even date, let this matter be put up before an Hon'ble Bench in which, one of us (V. K. Bali, J) is not a member.”

(4) A separate note was also recorded by Hon'ble Mr. Justice V. K. Bali to the following effect :—

“The very Correspondent, namely, Mr. Maneesh Chhibber, on the same very day, i.e. 19th July, 2002 (Friday) telephoned at my residence at about 11.15 P.M. I was asleep at that time and telephone was picked up by servant of my father-in-law, who was staying with us on that day since last few days. Meanwhile, my wife also got up and took the telephone from the servant. The gentleman on telephone informed my wife that he was Press Correspondent-Maneesh Chibber and enquired as to whether this was residence of Justice V.K. Bali. On affirmation of the fact that the residence was indeed of Justice V. K. Bali, he asked my wife that he would like to talk to me. He was told that I am asleep and she (my wife) would not wake me up. He then enquired about Puneet. When asked who Puneet, he said Puneet Bali (my son). He was told that my son was not residing with me. All these facts were told to me by my wife on the next morning, i.e. 20th July, 2002.”

(5) The matter was then placed before another Division Bench consisting of Hon'ble Mr. Justice G. S. Singhvi and Hon'ble Mrs. Justice Kiran Anand Lall. The said Bench,—*vide* order dated 23rd July, 2002, after taking note of the aforesaid letter, addressed by Justice R.L. Anand to the then Hon'ble the Chief Justice and the note recorded by Hon'ble Mr. Justice V. K. Bali, formed a *prima facie* opinion that Shri Maneesh Chhibber, the contemner, a Senior Correspondent of the Hindustan Times Ltd. had intentionally tried to interfere with the administration of justice and by his act and conduct, had tried to create a situation which was likely to undermine the independence of judiciary. The operative part of the order dated 23rd July, 2002 reads as follows :—

“We have carefully gone through the letter written by R. L. Anand, J., to Hon'ble the Chief Justice and the note recorded by V. K. Bali, J. We are *prima-facie* convinced that Shri Maneesh Chhibber, who has been described as Senior Correspondent of the Hindustan Times Limited has intentionally tried to interfere with the administrative of justice. By his act and conduct, Shri Maneesh Chhibber has tried to create a situation which is likely to undermine the independence of judiciary.

Let a notice be issued to Shri Maneesh Chhibber, Senior Correspondent of Hindustan Times, Chandigarh to show cause as to why proceedings may not be initiated against him for contempt of Court.

Looking to the nature of the issues likely to arise for consideration before the Court, we request the learned Advocates General, Punjab and Haryana to assist the Court. Shri Harbhagwan Singh and Shri Surya Kant, Advocates General, Punjab and Haryana have readily agreed to assist the Court.”

(6) In response to the aforementioned show cause notice, Shri Maneesh Chhibber appeared through a counsel and filed a reply, dated 16th August, 2002. In his reply, the contemner re-counted in detail the incident of the night intervening 19th/20th July, 2002 to the effect that he received a message from his colleague in The Hindustan Times, namely, Shri Manish Tiwari, informing him of an

on-going raid by the Central Bureau of Investigation at the residence of Hon'ble Mr. Justice R.L. Anand. The contemner was asked to verify the information and when he was unable to establish the veracity of the aforementioned information, he decided to physically verify the facts for himself by making a visit to the area near the residence of the Hon'ble Judge. With the object of an impartial and dispassionate verification of the information received, the contemner visited the area near the residence of Hon'ble Mr. Justice R. L. Anand, on his scooter at about 11.15/11.30 P.M. From a visual examination of the scene, it became clear to the contemner that there was no unusual activity in the surroundings and the so-called information was not reliable. The contemner further avers that he made discreet inquiries from the guard. After some time, Shri Manish Tiwari arrived in his car. The guard present outside the residence of the Hon'ble Judge enquired about the contemner's name and designation, whereupon he handed over his visiting card. The contemner did not disturb the Hon'ble Judge nor did he attempt to make any contact on the night intervening 19th/20th July, 2002. The contemner has categorically denied that he made any phone call to the residence of the Hon'ble Judge late on the night of 19th July, 2002. However, the contemner admits that on 20th July, 2002, he tendered an unqualified and unconditional apology to the Hon'ble Judge over the telephone, but as the Hon'ble Judge was thoroughly annoyed, the contemner repeated the apology by way of another telephone call, made a few minutes later. The contemner further states that he had visited the area outside the residence of Hon'ble Judge with an intent to verify the rumours that had been circulating for the last few days regarding on-going inquiries and impending raids and after he was convinced that the entire matter was baseless, he filed a report to his newspaper, exposing the falsity of these rumours. The said report, which was published on 21th July, 2002, is re-produced hereunder :—

“HINDUSTAN TIMES.”

News Item

Chandigarh, July 21, 2002

Legal Fraternity disturbed over canards

HT Correspondent Chandigarh, July 20 : THE LEGAL fraternity is deeply perturbed over the continuing canards being spread purportedly by some mischievous elements about some judges and lawyers of the Punjab and Haryana High Court.

Unfounded reports have been doing the rounds about inquiries and raids being conducted by Central investigating agencies against judicial officers. A section of the legal fraternity suspects that this could be the handiwork of elements who may have been hauled up for professional misdemeanor from time to time.

In more than one case during the past two weeks, media persons and newspaper offices have received calls providing "information" about such raids. In fact, one such call around midnight last night made a specific mention of a "raid" being carried out at the residence of a High Court Judge in full public glare.

When a team from this newspaper rushed to the spot and made inquiries, it found no such thing — apparently the call was part of the disinformation campaign."

(7) In so far as the telephone call, to the residence of Hon'ble Mr. Justice V.K. Bali, the contemner has merely stated that he telephoned the residence of Hon'ble Judge to find out the whereabouts of Mr. Puneet Bali, who is known to him and, therefore, it was an innocent inquiry as is apparent from the fact that the contemner immediately revealed his identity over the telephone. The contention of the contemner primarily is that if his conduct, in the discharge of his duty, as a Journalist, appears to have cast a reflection on the high institution of the judiciary, he tenders unconditional and unqualified apology.

(8) The above mentioned reply, filed by the contemner, was considered by a Division Bench of this Court on 21st August, 2002 and the following interim order was passed :—

"We have minutely gone through the reply of Shri Maneesh Chhiber and the annexed documents. He has, while justifying his action to visit the residence of one of the Judges at 11.15/11.30 P.M. on 19th July, 2002 on the basis of some unfounded information allegedly received by him about the C.B.I. raid and his act of trying to contact another Judge almost at the same time without any ostensible reason, tendered conditional apology. In our opinion, the apology tendered by him is neither bona fide nor sincere. Hence, the same is rejected.

We are further of the view that the actions of Shri Maneesh Chhiber of visiting the residence of one Judge and trying to contact another Judge at late hours in the night were calculated to overawe the concerned Judges by spreading false rumour of CBI raid and to bring the entire judiciary to disrepute. To us, his actions appear to be a part of larger conspiracy to scandalise the judiciary by false propaganda of CBI raids at the residence of the Judges and this amounts to contempt of Court.

Shri Maneesh Chhiber is given notice to show cause as to why he may not be punished for having committed contempt of Court.

Shri R.S. Cheema, Senior counsel for Shri Maneesh Chhiber requests that the case may be fixed for hearing after two weeks.

The request of Shri Cheema is accepted.

Put up on 18th September, 2002.”

(9) Pursuant to the aforementioned order, notice to show cause as to why the contemner be not punished for having committed contempt of court was issued to Shri Maneesh Chhiber.

(10) On 17th September, 2002, after hearing the learned Advocates General, as well as the learned counsel for the contemner, the matter was adjourned to 25th October, 2002, with the direction that summons be issued to Shri Manish Tiwari, Correspondent, Hindustan Times, Chandigarh and Shri Maneesh Chhibber (the contemner) to appear in person to give their respective statements. Thereafter, Shri Manish Tiwari filed an affidavit dated 25th March, 2003. In the said affidavit, Shri Manish Tiwari claims that upon receipt of information regarding a CBI raid, it was his duty, as a Journalist, to verify the correctness or otherwise of the information and as he was not the Correspondent covering the news relating to the High Court, he passed on the information, to the Resident Editor of the Hindustan Times, Chandigarh, who instructed him to pass on the information to Shri Maneesh Chhibber, which was duly done. It is further averred that on verification by the deponent, it was revealed that the information regarding the CBI raid was incorrect.

(11) The submission of Shri Randhir Singh, learned Senior Deputy Advocate General, Haryana and Shri A.G. Masih, learned Deputy Advocate General, Punjab is that gross contempts have been committed by the contemner-Maneesh Chhiber, whereas, on the contrary, it was pointed out that there was no publication, envisaged under the Contempt of Courts Act and thereby no criminal contempt at-all was committed. It was contended that the news item, as also the visit by the contemner and Shri Manish Tiwari to the residence of an Hon'ble Judge in the middle of the night was not an honest attempt at journalistic investigation but was an attempt to overawe the Hon'ble Judge by confronting him with the allegations of a raid, being conducted at his residence. The news item has to be read between the lines. It is further argued that the said news item is not as innocent as it appears. In case the contemner was convinced about the fact that there was no raid, being conducted, there was no occasion for him to file a report to that effect. The news item is a clear "publication" to the public at large that certain Judges of the Punjab and Haryana High Court were under the scrutiny of the Central Bureau of Investigation. The motive of the contemner was to bring the Institution of the High Court into dis-repute and in fact, it was the news item which spread the false rumours of a CBI raid. It is further contended that the contemner, being a Journalist, was required to exercise restraint and there were no compelling reasons for him to report a fact which, as per his own report, had been found to be false. The act of the contemner, apart from being wholly irresponsible, tends to undermine the independence of the judiciary, interfere in the administration of justice and bring the entire judiciary into disrepute and, therefore, the contemner should be punished for criminal contempt of Court.

(12) It was pointed out on behalf of the contemner that the very heading of the news item namely "Legal fraternity disturbed over canards" by the use of the word "canards" sets the tone for the news report i.e. the endeavour of the newspaper is to discount false and mischievous rumours.

(13) The body of the report clearly and categorically sets down that the "legal fraternity" is deeply perturbed over the continuing "canards" being spread purportedly by some "mischievous elements", about some Judges and Lawyers of the Punjab and Haryana High

Court. The very opening line of the report by the use of word “canards” sets the tone for the rest of the report and the use of the words “mischievous elements” further reveals that the report merely attempted to condemn the rumours circulated, at the behest of certain mischievous elements. The report in clear and categorical words states that these unfounded reports could be the handiwork of certain elements who have been hauled up for professional misdemeanour. The report further re-counts the experience of the contemner, when he received one such call around mid night making a specific mention of a raid, being carried out at the residence of High Court Judge, which was found to be false and apparently the part of the disinformation campaign. It was pointed out that the contemner did not scandalise or attempt to scandalise by any act direct or inferential or by any words spoken or published, any Judge of the High Court or the judiciary as such. The news item was an honest attempt to report a set of facts that had been circulating and that the said facts were entirely baseless and the handiwork of some disgruntled members of the legal fraternity. The contemner has merely reported what came to his notice and it was his duty, as a Journalist, to investigate and inform the public about the falsity of the news. The contemner has merely discharged his duty as a Journalist and no part of the news item can be construed to hinder/obstruct or interfere with the due course of administration of justice or in any manner can be construed as a calculated move to overawe the concerned Judges and to bring the entire judiciary or any Hon’ble Judge to disrepute. It is further argued that a mere information, received by the contemner, found to be false and the reporting of the falsity of the said information, cannot be construed to be an attempt to undermine the independence of the judiciary or an attempt to interfere in the administration of justice so as to invite proceeding under the Contempt of Courts Act, 1971 (hereinafter referred to as “the Act”). Continuing his arguments, learned counsel for the contemner states that the incident of the night intervening 19th/20th, July, 2002, when the contemner inquired from the guard, posted outside the residence of the Hon’ble Judge, was an attempt on the part of the contemner, in the discharge of his duties, as a Journalist, to verify the information received by him. The contemner did not violate the privacy of the Hon’ble Judge nor did he seek to obtain the comments of the Hon’ble Judge. In case the guard or the Hon’ble Judge’s personal servant woke up the

Hon'ble Judge, the said act cannot be attributed to the contemner. It is further contended that the very fact that the contemner left his visiting card with the Guard, would be a pointer to be the bona fides of the contemner. The aforementioned acts do not, in any manner, constitute a conduct, so scandalous, as to invite the wrath of the Court, while exercising jurisdiction under the Act. The acts of the contemner have not interfered, substantially or otherwise, with the administration of justice and in no manner, cast any aspersion upon any Hon'ble Judge of this Court or upon the court as a whole.

(14) In so far as the telephone call made to the residence of Hon'ble Mr. Justice V.K. Bali, it was pointed out that it was an attempt by the petitioner to get in touch with the son of Hon'ble Judge and, therefore, it cannot be construed as a contempt.

(15) It was also pointed out that at best, the act of the contemner, in visiting the residence of the Hon'ble Judge, near midnight, could be termed as inappropriate or irresponsible for which he has already tendered an unqualified apology. It is his duty as a member of the Fourth Estate to verify, before publishing any facts that come to his knowledge. The visit of the contemner, to the residence of the Hon'ble Judge, was an attempt to verify rumours circulated and, therefore, was done in a *bona fide* discharge of his duties as member of the Fourth Estate. The contemner did not exceed the bounds of journalistic licence and, therefore, cannot be held liable for contempt.

(16) The stand taken on behalf Shri Manish Tiwari, who was summoned as a witness, is to the same effect and, therefore does not merit repetition.

(17) Before proceeding to decide the present controversy, it would be appropriate to refer to the statutory provisions of the Act. Section 2(c) of the Act reads as under :—

“2(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

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- (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding ; or
 - (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.”

Section 15 of the Act reads as follows :—

“15 **Cognizance of criminal contempt in other cases.**—

(1) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by —

- (a) the Advocate-General, or
- (b) any other person, with the consent in writing to the Advocate-General, (or) (c) in relation to the High Court for the Union Territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.

(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or, in relation to a Union Territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.”

(18) The various facets of criminal contempt, apart from being defined under Section 2(c) of the Act, have been elucidated by the Hon'ble Supreme Court in numerous judgments. In **S.K. Sundaram (1)**, the Hon'ble Supreme Court held as under :—

“13. Criminal contempt is thus vivisected into two categories. One is publication of any matter which scandalises or tends to scandalise the authority of any court etc. etc. Second is

the doing of any act whatsoever, which scandalises or tends to scandalise the authority of any court etc. etc. If an act is not a criminal contempt merely because there was no publication such act would automatically fall within the purview of the other category because the latter consists of "the doing of any other act whatsoever". The latter category is thus a residuary category so wide enough from which no act of criminal contempt can possibly escape. The common denominator for both is that it scandalises or tends to scandalise etc. etc. of any court."

(19) In **Delhi Judicial Service Association, Tis Hazari Court, Delhi versus State of Gujarat and others(2)**, criminal contempt has been defined thus :-

"42. What constitutes contempt of Court ? The Common Law definition of contempt of court is : "An act or omission calculated to interfere with the due administration of justice." The contempt of court as defined by the Contempt of Courts Act, 1971 includes civil and criminal contempt. Criminal contempt as defined in Section 2(c) by the Act :-

"means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which;

- (i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or
- (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

interferes, or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner." The definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or would lower the authority of court. The public have a vital stake in effective and orderly administration of justice. The Court has the duty of

protecting the interest of the community in the due administration of justice and, so, it is entrusted with the power to commit for contempt of Court, not to protect the dignity of the Court against insult or injury, but, to protect and vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with.

(20) In **Dr. D.C. Saxena versus Hon'ble The Chief Justice of India (3)**, while defining criminal contempt, it was held by the Hon'ble Supreme Court as under :—

“40. Scandalising the Court, therefore, would mean hostile criticism of judges as judges or judiciary. Any personal attack upon a judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the judge as a judge brings the court or judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. Any caricature of a judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It would, therefore, be scandalising the judge as a judge, in other words, imputing partiality, corruption, bias, improper motives to a judge is scandalisation of the court and would be contempt of the court. Even imputation of lack of impartiality or fairness to a judge in the discharge of his official duties amounts to contempt. The gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. When the contemner challenges the authority of the court, he interferes with the performance of duties of judge's office or judicial process or administration of justice or generation or production of tendency bringing the judge or judiciary into contempt. Section 2(c) of the Act, therefore, defines criminal contempt in wider articulation that any publication, whether by words, spoken or written, or by signs, or by visible representations, or otherwise of any matter or the doing of any other act whatsoever which scandalises or tends to

scandalise, or lowers or tends to lower the authority of any court; or prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner, is a criminal contempt. Therefore, a tendency to scandalise the court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt. The offending act apart, any tendency if it may lead to or tends to lower the authority of the court is a criminal contempt. Any conduct of the contemner which has the tendency or produces a tendency to bring the judge or court into contempt or tends to lower the authority of the court would also be contempt of the court."

(21) A detailed analysis of the definition of criminal contempt, as laid down in Section 2(c) of the Act and as held by the Hon'ble Supreme Court in the above referred judgments leads us to the conclusion that for an act to constitute criminal contempt, the first essential ingredient is "publication", whether by words spoken or written, or by signs or by visible representations or otherwise. The act, alleged to constitute contempt, must have been "published" in the manner stated above. Upon "publication", the act then must also fall with the mischief, detailed in Section 2(c) clause (i), (ii) and (iii) of the Act. The existence of one or the other will not constitute criminal contempt. In order to constitute criminal contempt, both "publication" and the ingredients of clause (i), (ii) and (iii) of Section 2(1) of the Act must co-exist. However, if an act is not criminal contempt, for lack of "publication", such an act would, as held by the Hon'ble Supreme Court in **S.K. Sundaram's case** (*supra*), fall within the residuary category of the doing of any other act whatsoever. The common factor for both is the capability of the act to scandalise or tends to scandalise etc. etc.

(22) The alleged act must also, bring the Court or Judges into contempt, serious impediment to justice and as in road on the majesty of justice. As held by the Hon'ble Supreme Court in **Dr. D.C. Saxena's case** (*supra*), the gravamen of the offence is the lowering

of the dignity or authority or an attempt to undermine the majesty of justice. Furthermore, any conduct of the contemner which has the tendency to produce or a tendency to bring the judge or court into disrepute or tends to lower the authority of the court would also be contempt of the court.

(23) It would also be appropriate, before we proceed to adjudicate upon the alleged misdemeanours of the contemner to refer to a few judgments of the Hon'ble Supreme Court regarding the exercise of the powers of contempt in relation to the Fourth Estate. In **Re S. Mulgaokar**,⁽⁴⁾ the Hon'ble Supreme Court held as under :—

- (1) Wise economy of the use of the contempt power by the court. The Court should act with seriousness and severity where justice is jeopardized by a gross and/or unfounded attack on the Judges, where the attack is calculated to obstruct or destroy the judicial process. Otherwise, the court should ignore—the dogs may bark, the caravan will pass.
- (2) The Constitutional values of free criticism including the Fourth Estate and the need for fearless curial process and its presiding functionary, the Judge, must be harmonised and a happy balance must be struck between the two.
- (3) The difference between personal protection of a libelled Judge and prevention of obstruction of public justice and the community's confidence in that great process must be clearly kept in mind because, the former is not contempt, but the latter is.
- (4) The fourth Estate which is an indispensable intermediary between the State and the people and necessary instrumentality in strengthening the forces of democracy should be given free play within responsible limits when the focus or its critical attention is the court including the highest court.
- (5) Judges should not be hypersensitive even when distortions and criticisms overstep the limits but they should deflate such vulgar denunciations by dignified bearing, condescending indifference and repudiation by judicial rectitude; and

(4) (1978) 3 S.C.C. 339

(6) If the court consider, after evaluating the totality of factors, that the attack on the Judge or Judges was scurrilous offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must, in the name of public interest and public justice, strike a blow on him who challenges the supremacy of the rule of Law by fouling its source and stream.

(24) The aforesaid judgment of the Hon'ble Supreme Court was referred to in **P.N. Duda versus P. Shiv Shanker (5)**. The observations of the Hon'ble Supreme Court were as follows :-

“Krishna Iyer, J. in his judgement observed that the Court should act with seriousness and severity where justice is jeopardized by a gross and/or unfounded attack on the Judges, where the attack was calculated to obstruct or destroy the judicial process. The court must harmonize the constitutional values of free criticism, and the need for a fearless curial process and its presiding functionary, the Judge. To criticize a Judge fairly albeit fiercely, is no crime but a necessary right. Where freedom of expression subserves public interest in reasonable measure, public justice cannot gag it or manacle it. The Court must avoid confusion between personal protection of a libelled Judge and prevention of obstruction of public justice and the community's confidence in that great process. The former is not contempt but latter is, although overlapping spaces abound. The fourth functional canon is that the Fourth Estate should be given free play within responsible limits even when the focus of its critical attention is the court, including the higher court. The fifth normative guideline for the Judges to observe is not to be hypersensitive even where distortions and criticisms overstep the limits, but to deflate vulgar denunciation by dignified bearing, and the sixth consideration is that if the Court considers the attack on the Judge or Judges as scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must strike a blow on him who challenges the supremacy of the rule of law by fouling its sources and stream.”

(25) The another judgment of the Hon'ble Supreme Court that merits reference is, **Special Reference No. 1 of 1964, (6)**. A relevant portion of the said judgment reads thus :-

“We ought never to forget that the power to punish for contempt, large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by restraint, dignity and decorum which they observe in their judicial conduct.”

(26) In so far as the quantum of proof required to establish the charge of contempt is concerned, the Hon'ble Supreme Court in **Mrityunjy Das and another versus Sayed Hasibur Rahaman and others (7)**, had held as follows :-

“14. The other aspect of the matter ought also to be noticed at this juncture, viz., the burden and standard of proof. The common English phrase “he who asserts must prove” has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the “standard of proof”, be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt. The observations of Lord Denning in *Bramblevale Ltd. Re*, lend support to the aforesaid. Lord Denning in *Re Brahmleval* stated :

“A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt.

(6) AIR 1965 S.C. 745

(7) (2001) 3 S.C.C. 739

It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence..... Where there are two equally consistent possibilities open to the court, it is not right to hold that the offence is proved beyond reasonable doubt."

(27) It is, thus, apparent that the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt.

(28) From a perusal of the statutory provisions of the Act and the judgments of the Hon'ble Supreme Court, referred to above, it is apparent that the Fourth Estate, although, it is vested with a constitutional right of freedom of expression, cannot invent or exaggerate, abuse or unfairly present matters pertaining to Judges or the courts of law. If there is a vulgar misuse or violation of the freedom of the press against the Court, no excuse of journalistic licence or freedom of the press would prevent appropriate punishment for such misuse/violation. However, in democratic societies, it would be in the fitness of things for the Courts to show indulgence rather than indignation. The powers, conferred upon the Courts, to punish for contempt cannot be exercised on a mere question of misconduct or impropriety. The breach, with respect to the publication or the conduct of the contemner, must be (a) an act done or writing published calculated to bring a court or a Judge into contempt or to undermine his authority amounts to contempt of court and it can briefly be characterised as scandalizing the court itself, (b) any act or writing which prejudices mankind against persons or tends to obstruct or interfere with the due course of justice or the lawful process of the court is contempt of court.

(29) Now we proceed to examine the conduct of the alleged contemner, in the light of the principles of law, enunciated above and to determine whether the alleged contemner is guilty or not ?

(30) The first step in the chain of events, that led to the issuance of show cause notice for contempt, is the visit by the alleged contemner to the residence of an Hon'ble Judge on the night intervening 19th/20th July, 2002. As is apparent from the facts, reproduced hereinabove, and which facts have not been denied by the

alleged contemner, he received a communication from Shri Manish Tiwari directing him to verify as to whether a CBI raid was being conducted at the residence of an Hon'ble Judge of the High Court. The contemner claims to have visited the area around the residence of the Hon'ble Judge, made inquiries from the guard posted outside, handed over his visiting card to the guard and convinced that the allegations regarding a CBI raid were absolutely false, waited for Shri Manish Tiwari to arrive. After Shri Manish Tiwari arrived, they left. The act of the contemner in visiting the residence of the Hon'ble Judge, with the object of verifying an information received by him does not constitute an act that would fall within the definition of a criminal contempt, as defined in Section 2(c) of the Act. The attempt to verify a set of facts, *albeit* rumours so as to establish their correctness or falsity cannot be construed to be an act falling within the mischief of contempt. The Fourth Estate, of which the alleged contemner is a member; by its very nature, is required to verify all facts before reporting them. The visit, to the residence of an Hon'ble Judge, at an unearthly hour could, at the most, be categorised as irresponsible. The conduct of the alleged contemner must have caused a great deal of indignation, anger and irritation. However, the said act falls far short of the test of criminal contempt, as laid down in Section 2(c) clauses (i), (ii) and (iii) of the Act. The object of the alleged contemner was to confirm for himself, the virulent rumours that were being disseminated by mischievous and unscrupulous elements. The contemner was neither the source nor the disseminator of these rumours and, therefore, his attempt to verify information received, which turned out to be false, cannot be construed to be an attempt to scandalise or tends to scandalise, prejudices or interferes or tends to interfere with the due course of any judicial proceeding or interferes or tends to interfere with or obstructs or tends to obstruct, the administration of justice in any other manner.

(31) The news paper report is titled as "Legal fraternity disturbed over canards". The use of the words "canards" is itself indicative of the *bona fides* of the report. The word "canards" means rumours/half truths. The word "canard" sets the tone for the subsequent news item. A detailed perusal of the newspaper report shows that the contemner sought to dispel, rumours about the conduct of CBI raids/ investigations directed at certain Hon'ble Judges of the High Court and then proceeds on to re-count the falsity of these rumours, the falsity thereof having been verified by the alleged

contemner, after a visit to the residence of the Hon'ble Judge. The argument, raised by learned Deputy Advocates General, that the said report has to be read between the lines and that in case the alleged contemner had come to a conclusion that the rumours were false, there was no need to publish the same is, on the face of it, fallacious. A set of facts came to the notice of the alleged contemner, which, upon verification, were found to be fake. In order to set at rest, rumours circulating, the alleged contemner thought it fit to file a report that the rumours were false. We are unable to fathom as to how the publication of the aforementioned report would construe, publication of any material that would tend to scandalise, prejudice or interfere in any judicial proceedings or obstruct the administration of justice. The said report, in fact, discounts these rumours and exposes their falsity. If the endeavour of the alleged contemner was to bring to the notice of the public at large, rumours about alleged raids/ investigations, no such intent can be inferred from the newspaper report. We cannot read a motive into the report, where there is none. No inference of contempt can be drawn from the newspaper report.

(32) The newspaper report, in fact, debunked rumours/half truths. It reports mere facts and not views. Reporting of facts, with the object of exposing an attempt to spread rumours, cannot fall within the purview of criminal contempt. The alleged contemner, reported the falsity of the rumours and recounted his own verification of their falsity. In essence, he put paid to these rumours and, therefore, the newspaper report cannot be categorized as an attempt to scandalise, prejudice or interfere with or obstruct the administration of justice in any manner. It is, thus, apparent that the conduct of the alleged contemner in visiting the residence of an Hon'ble Judge, making a telephone call to the residence of another Hon'ble Judge and the subsequent publishing of newspaper report do not amount to contempt. The material on record is insufficient to establish, beyond reasonable doubt, that the alleged contemner is guilty of having committed criminal contempt of this Court.

(33) As the act and conduct of the alleged contemner Shri Maneesh Chhibber, when scrutinised in the light of the definition of criminal contempt, set down in Section 2(c) of the Act and as elucidated by the Hon'ble Supreme Court in various judgments, does not, in any manner, constitute a conduct so abhorrent as to cause this Court to exercise its powers to punish for contempt. In view of what has been stated above, no charge, as envisaged under Section 15 of the Act, can be framed. During the course of the proceedings, the

learned counsel, representing the Advocates General, Punjab and Haryana, were directed to frame charge. However, they failed to frame any charge.

(34) The Fourth Estate, must, however, not construe the present expression of opinion as a licence to attack the institution of the judiciary and must take note of the words of Lord Denning, which are as under :—

“Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself.

It is the right of every man, in Parliament or out of it, in the Press or cover the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticize us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication.

Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done.”

(35) In view of what has been discussed above, it is apparent that the alleged contemner Shri Maneesh Chhibber is not guilty of having committed criminal contempt of this Court.

(37) Consequently, rule is discharged.