scheme was varied to the extent that the order impliedly varied it, the order would have been competent. What has not been expressly stated is still, implicit in the order and if it is otherwise valid, it cannot be disturbed for lack of expression alone. A reading of the whole order leaves no doubt that the scheme has been varied in one particular and this the State Government was under the amended Act competent to do.

ORDER BY THE COURT

The appeal (Letters Patent Appeal No. 284 of 1958) is allowed and the writ petition (Civil Writ No. 728 of 1957) is dismissed and the parties left to their own costs throughout.

R. S.

CRIMINAL ORIGINAL

Before Tek Chand, J.

COURT ON BEHALF OF THE STATE,—*Petitioner*

versus

RADHA KRISHNA KHANNA AND OTHER,—*Respondents.*

Criminal Original No. 18 of 1960

Contempt of Court—What constitutes—Nature of the offence—Power to punish for contempt—Whether inheres in the Court—How and when to be exercised—"Clear and present danger test rule"—Whether applicable in India—Affidavit filed in answer to contempt petition—Allegations in—Whether can amount to contempt—Fair criticism—How far to be allowed.

1960

Nov., 9th

Held, that a reflection on the Court imputing unfairness or ignorance is regarded as a contempt. The acts constituting contempt no doubt cover a wide range. Some are usually committed in the course of adjudication of a

cause or the execution of the Court's order. Such acts are calculated to hinder, delay and obstruct the administration of justice. Another class of facts are those, which bring the Court into disrepute or disrespect or which offend its dignity, affront its majesty or challenge its authority. It is contempt of Court either to file papers or to otherwise publish writings using grossly scandalous language charging the Court with improper motives in rendering its decisions. A criminal contempt is thus a conduct directed against the dignity and authority of the Court. It is in essence an offence against organised society and public justice. Broadly speaking, the act which is calculated to lessen the authority of the Court or its dignity, is a contempt as much as any act, which is calculated to embarrass, hinder or obstruct the Court in the administration of justice. The actual language used as also the surrounding circumstances and the context have to be examined. The power to punish for contempt is said to inhere in a Court because it is an essential auxiliary to the due administration of justice, it being necessary for self-protection and for the execution of judicial function and for the preservation of the Court's authority, dignity and decorum. The purpose being assentially protective, a resort to these extraordinary powers is justified where its exercise is necessary in the interest of justice and against substantial rather than trivial offences. Like all discretionary powers, the power to punish for contempt of Court should be exercised sparingly and cautiously and only where it is necessary in the higher interest and out of no personal consideration for the Judge or the litigant.

Held, that the "clear and present danger test" rule, which has been adopted by some Courts in the United States, has not been followed either in England or in India. It is not necessary to show that there is an imminent danger to the administration of justice because of the allegedly contemptuous publication. The law in this country punishes as contempt of Court any conduct that tends to bring the administration of justice into disrespect or to obstruct or interfere with the due course of justice. Any act done or writing published calculated to bring the Court into contempt or to lower its authority is a contempt of Court, whether corruption is imputed, or misconduct or incapacity in the discharge of the judicial duties, is suggested. Allegation of extraneous considerations weighing

with a Judge in deciding a case amounts to contempt of Court. What is true of other publications equally applies to allegations made in an affidavit, casting reflections on the Court's integrity or impartiality or charging the Court with improper motives in rendering decisions, and they constitute contempt.

Held that, it is in the public interest, that the confidence, that people repose in Courts of Justice, should not be impaired and their prestige should not be lowered. It is not the purpose of law of contempt to stifle criticism, so long as the language employed is not undignified or indecorous and motives imputed are not prejudicial. It will not be in the public interest to permit unwarranted attacks upon the impartiality and integrity of the Judges. A contempt does not cease to be so, because of general aspersion made in regard to the conduct of the presiding officers in Courts of law, as such expressions create distrust, in the mind of the public in the Courts, and tend to destroy the confidence which is reposed in them. If such an act is allowed to go unpunished, the confidence of the community, in the administration of justice, will be undermined, and this will result in mischief, the consequences of which can be very grave.

Case taken up by the Court on its own motion under the Contempt of Courts Act against Shree Radha Krishna Khanna, Author of the Booklet 'Economics of Prosperity' and M/s Atma. Ram & Sons, Distributors and Publishers to show cause why action should not be taken against them in respect of the certain passages in the booklet.

D. D. JAIN, ADVOCATE, for the Petitioner.

D. D. KHANNA, ABNASHA SINGH, *M. R.* SHARMA FOR K. S. CHAWALA, ADVOCATES, for the Respondents.

ORDER

TEK CHAND, J.—The two respondents have been proceeded with under the Contempt of Courts Act on account of certain passage in the booklet "Economics of Prosperity". The first respondent, Shri Radha Krishna Khanna, is the author and the second respondent is a firm of publishers and distributors. This booklet is in two parts. The first 72 pages are under the heading "Economics of

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Prosperity" and the subsequent 16 pages, which have been separately numbered are under the caption "The Punjab National Bank Case". By order of the Hon'ble the Chief Justice, dated the 24th of March, 1960, notice has been issued to the author and the firm of publishers and distributors to show cause why action should not be taken against them in respect of certain passages in the booklet at pages 71 *et seq.* The second respondent has filed an affidavit denying knowledge about the publication, printing, distribution or sale of the booklet written by respondent No. 1. It is stated that this respondent had no knowledge of the book till show cause notice from the High Court was received. It was also deposed that this respondent never gave any express or implied consent for the publication, printing, distribution or sale of the booklet and had nothing to do with it. In view of the above affidavit and in the absence of any proof that the second respondent had anything to do with the printing, publication, sale or distribution of the booklet, the rule against M/s Atma Ram & Sons is discharged.

The first respondent has admitted that he is the author of the booklet. In his affidavit, dated the 13th of May, 1960, he stated that he was a retired Irrigation Engineer from the Punjab and had written a number of books and pamphlets, and "Economics of Prosperity" is one of such publications. In the first 71 pages of his booklet, the author has criticised the economic policy of the Government and the planning undertaken by it. These pages have no reference to Courts of law or to matters having any bearing on these proceedings. In the last two paragraphs of the booklet at pages 71 and 72, the author has made animadversions on certain matters pertaining to administration of law and justice. He began by referring to

a lecture delivered at the Madras University by Shri C. D. Deshmukh, wherein he is reported to have said that comprehensive review by a high-level Commission of the law and order situation in the country was needed, and that if such a Commission was established, he would make a beginning by lodging half a dozen informations himself. In the last paragraph, respondent No. 1 says.—

> "The author could also place before such a Commission half a dozen or more informations to show how corruption in the lower courts has been growing, sense of responsibility of the magistrates and judges, sometimes reaching even up to High Court stage, has been declining, and in cosequence the quality of justice dealt out to the people has been deteriorating, ever since the Government took to socialistic planning and started neglecting the duties and functions of a good government, which neglect has continued to grow with catastrophic consequences to the general administration and administration of law and justice in the country. The author by his personal experience of law courts for the past ten years can say and can prove, that in the present day administration of justice, it is not the merits of disputes but the degree of approach that a party commands, and the whims and fancies of magistrates and judges that finally decide the results in many cases. In a case in which a single issue was involved, a judge decided the issue in favour of one party and

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gave the verdict in favour of the other. A judge on being suitably approached decided a case without taking any evidence at all, and yet discussed all the merits of the case from his personal impressions of bazar talks. Complaints made to the Chief Justice that the lower Court judge had no evidence or data on which to base his judgment, only evoked the reply that the aggrieved party should take legal action against the judge. A powerful party may even remove or destory inconvenient documents from court files, and may win the case, which admittedly he could not have done without the removal or destruction of documents, although it may be within the specific knowledge of the presiding magistrate that relevant documents had been done away with. Appeals to the higher courts can become mere formalities and matter of luck, and when there are concurrent judgments of two courts in a case, the Supreme Court in cases of special leave to appeal, may not think it necessary or convenient to interfere without much caring to go into the merits and points of law involved."

The next 16 pages which have been separately numbered are under the caption "The Punjab National Bank Case". In these pages, he refers to personal litigation that he has had with the Punjab National Bank wherein he has alleged that there have been flagrant denial of justice, which denial he has attributed to the influence of the Bank officers with the presiding officers of the

Courts. There are some passages under this heading, which according to the learned counsel for the State are contemptuous of this Court and the Courts Subordinate to it. At page 1, my attention has been drawn to the following passage :—

> "A number of cases are still going on in various courts, one of them of more than 10 years duration, about which cases nothing may be said. But one case of flagrant denial of justice, which has gone through all the stages, including twice to the Supreme Court for special leave to appeal, may be cited here as an example of the quality of justice that is dealt out by law courts in India, and to show that it becomes impossible to get even a hearing of complaints of cheating, criminal breach of trust, forgeries of ledgers, vouchers, account books and documents on a colossal scale, against bank officers, as the bank is a powerful body, and besides having the right approach and influence can be desperate enough and resourceful enough to be able to tamper with court records and remove or destroy court documents. This case was an off-shoot of the dispute with the bank connected with the Delhi factory account."

It is not necessary to go into detailed history of the litigation, which furnished occasion for writing passages to which objections have been made on the ground that they are contemptuous of the Courts. In broad outline, all that need be said for understanding the context in which the particular passages were referred to, is that respondent No. 1, Shri Khanna, had an overdraft account with the

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Panipat Branch of the Punjab National Bank, Ltd., which he had opened in January, 1946. In this account, he had pledged with the Bank six life insurance policies. The proceeds of two such policies had been realised by the bank some time in 1951. There remained pledged with the bank four life policies. The bank demanded payment to meet the overdue liabilities of the respondent and according to the respondent despite realising Rs. 1,170, on the maturity of one of these four policies, the bank had failed to pay the monthly premium on postal life policy. The difference between the parties led to lengthy correspondence between them. Some of these policies were stated to have been surrendered by the bank to the insurance companies, and it is alleged, that due credit was not given, of the realisations by the bank, to the respondent. After perusal of a copy of the account supplied by the bank, the respondent noticed certain additions and interpolations, and he, thereupon, lodged criminal complaint in the Court of the resident Magistrate alleging, that credit had been given to him, in his account, of Rs. 3,880-4-6, by means of a fictitious entry in place of Rs. 4,854-14-0, which was the correct amount. This complaint had been lodged on 18th of August, 1953, and was dismissed by the Magistrate. The respondent, on the advice of his counsel, filed another complaint based upon certain facts, which, he alleged, came to his knowledge after the filing of the first complaint. This complaint had been filed under sections 409, 420 and 468, Indian Penal Code, against certain bank employees. Shri Amar Singh, Magistrate Ist Class, who ultimately decided this case, found that the offences were not made out against the accused, who were discharged. The respondent, then sought the revision of the order of discharge,

in the Court of Sessions Judge and his petition came up before Shri E. F. Barlow, Additional Sessions Judge, who dismissed it. The respondent then filed a petition for revision in the High Court, which came up for hearing before Passey, J., on the 31st of January, 1957, and on the 1st of February, 1957. This revision petition was dismissed by Passey, J., as he thought that the allegations of the respondent that the policies had been surrendered by the bank without his information were false and frivolous. With reference to these proceedings, respondent No. 1, wrote as follows at pages 3 and 4:—

> "An appeal against the judgment of the trying magistrate was straightaway dismissed by the Sessions Judge without much argument, and without even calling for the forged ledgers and registers as the appellant had applied for. In revision in the High Court, the honourable judge made it clear at the very outset, that it was only a revision and not an appeal, so his Lordship would deal with the matter expeditiously. When the complainant's lawyer, who is himself now a High Court Judge, started explaining his case from his lengthy brief, his Lordship cut him short and directed him to explain the case not as an appeal but as revision only. The lawyer naturally got upset, on which, the complainant made request that he be allowed to argue his own case, which request was granted by his Lordship. The complainant rushed through his case as his Lordship was hurrying him on, and among other things, he

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urged, that the forged copy of the account supplied to him, be compared with the forged entry in the ledger, which his Lordship did, by calling for the ledger on the dais. But at the same time he observed that he was not concerned with forgeries. After lengthy arguments by the counsel for the opposite party, which lasted for more than three hours the next day, the complainant was allowed just half an hour to say what he wanted, because twice during the proceedings a lawyer from Delhi had interrupted his Lordship to say that he had specially come from Delhi and his Lordship promised that his case would be taken up after lunch. His Lordship took extensive notes of the arguments, including the ruling of the Supreme Court, 1956 S.C. 575(s). A.I.R. of the 4th May, 1956, on the point of entrustment, which the complainant had cited in order to show that the learned magistrate's findings on the point of entrustment was wrong. But immediately the complainant stopped speaking his Lordship dismissed the revision."

Referring to Passey, J., he said :—

"Basing the entire judgment on the wrong assumption that the bank had held a decree against the complainant, when the respondents committed their various acts, his Lordship further showed his displeasure against the complainant by observing, that 'The allegation that the Sunlight and the Oriental Policies had

> been surrendered without his information must in view of the facts given above be spurned as false and frivolous."

He then said that an application for special leave to appeal was dismissed by the Supreme Court *in limine* in view of the scathing judgment of his Lordship. The second camplaint resulted in the discharge of the accused. There were, however, certain interlocutory matters, which came up for adjudication before the Sessions Judge prior to the discharge of the accused. After the Magistrate 1st Class, by his order, dated the 21st of September, 1957, had ordered the issue of summonses to the accused, the latter under section 435, Criminal Procedure Code, applied to the Sessions Judge (Shri Badri Parshad Puri), for revision of the order of the trying Magistrate, who had declined to discharge the accused. With reference to Mr. Puri, respondent No. 1, at page 15 wrote :—

> "The Sessions Judge happened to be a person who had personal grudge against the complainant, because he had made two complaints against him to the Chief Justice for illegally deciding cases by fully discussing the merits of the cases without taking any evidence at all. So, although it was represented to the learned Sessions Judge that the refusal of the magistrate to discharge the accused at their bidding, without taking any evidence, could not be challenged under section 435, Cr. P.C., on the ground of its not being a correct, legal or proper order, yet the learned Sessions Judge, took cognizance of the matter,

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and by reproducing in his report long portions of the judgment of the High Court in the previous case, which had no relevance to the complaint in question, and by grossly distorting facts recommended the case to the High Court for the quashing of proceedings."

This case came up before Falshaw, J., and with reference to him, the respondent wrote :

"In the High Court the honourable Judge did not let the case come to the stage of arguments at all. The only proceedings that took place there was the reading by the opposite lawyer of the judgment of the High Court in the previous complaint, and that was enough to so exasperate his Lordship, that instead of considering the revision petition, he started finding out the provisions of law under which he could forthwith punish the complainant for having brought up a false complaint. Books of law were consulted and it was found that his Lordship had no jurisdiction to award compensation. After this, when his Lordship started thinking of punishing the complainant for contempt of Court for his having stated in one of his applications that the previous Judge's order in the first complaint could not apply to the second complaint, the complainant was advised to leave the court lest his Lordship should haul him up. The complainant could barely save his skin by slipping out of the court and his two able lawyers were left behind to sit dumb-foundered at the tragic course the proceedings had taken and their

lengthy briefs had remained unopened. The concluding portion of his Lordship's judgment reads :—

"I therefore hold that the complaint is an abuse of the process of court, and that it is a proper case in which this court should exercise its powers under section 561-A, of the Code of Criminal Procedure and quash the proceedings, and I order accordingly. I may add that if under the Code this court had the power granted to magistrate under section 250 of awarding compensation when a complaint is dismissed as being false, frivolous or vexatious, I should not have hesitated to use these powers in the present case to the full."

The last passage in the booklet at page 16 runs thus :—

"Thus in spite of more than five years' persistent efforts of the complainant to bring home the guilt of the offences of cheating, criminal breach of trust and numerous manifest forgeries committed by responsible officers of a large banking concern, the accused have got off by their own desperate acts of tampering with court records and destroying court's documents, kindness and consideration of obliging magistrates, coupled with the help of a lawyer of great manipulating abilities and an easy conscience and the help of a learned Sessions Judge who bears special grudge against the complainant."

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In answer to the notice, Shri Khanna has filed two affidavits, dated the 13th of May, 1960, and the 26th of September, 1960, In the former affidavit, there are certain passages, which are also said to offend against the Contempt of Courts Act and reference to them is also necessary.

In para 6 of the affidavit, dated the 13th of May, 1960, Shri Khanna, said that particular care was taken by him not to refer to any pending cases, as specifically mentioned in the pamphlet itself, and that instances were quoted only "to illustrate the nature of the abuses and the cursory manner in which some of he Courts, sometimes reaching up to the High Court stage, continue to administer justice, without giving much thought to the points involved and the law of the land and even in disregard of the Constitution itself."

In para 7 of the affidavit, the respondent has justified statements made at page 72 of the booklet (this passage has already been reproduced) stating that they have all reference to concrete cases. In para 8 he goes on to say that what he has said with reference to specific cases was provable from the Court record, but it was not his desire to give "undue publicity to ugly things happening in Courts that I put them down in the pamphlet". He had done so in order to prevent some of the prevailing evils in law Courts, and after bringing to the notice of the constituted authority "some glaring instances of the wrong doings of officers of law". He then proceeds on to deal with what he calls, his sad experiences of the working of the law Courts. Para 9 deals with Shri Badri Parshad Puri, who disposed of some of the cases of the respondent, when he was a Senior Subordinate Judge. With respect to these matters, he said that the

Senior Subordinate Judge, meaning Mr. Badri Parshad Puri, decided two suits for damages of Rs. one lac each in "complete disregard of all law and procedure and yet discussed the merits of one of the cases at some length from his impressions of bazar talks with the openly declared intention in Courts of somehow dismissing the suits with heavy costs unless these were voluntarily withdrawn". In Para 10 of the affidavit, referring to Mr. Puri, he says—

> "that unfortunately for me the same judicial officer who as Senior Sub-Judge, had unjustly decided my cases without taking any evidence came back to Karnal as District and Sessions Judge, and on account of his old grudge against me for not withdrawing the suits at his bidding and for having complained against him to Hon'ble the Chief Justice, he again did me the utmost harm, although I had quite forgotten the old incident."

He then refers to the case already adverted to under section 435, Criminal Procedure Code, and says that an application under section 435, Criminal Procedure Code, should not have been entertained by him and the normal procedure was for the other party to go direct to the Court for getting the proceedings quashed. With reference to the report made to the High Court, by Mr. Puri, he says—

> "but by making a highly distorted report, contrary to law and facts of the case, he created so much prejudice against me that my complaint was outright thrown out, without my two able lawyers being allowed to speak literally one single word to present my case."

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In para II of the affidavit, referring to Mr. Puri, the respondent says—

> "that the same officer in his capacity of District Judge, Karnal, dug up the case of an execution of a decree against my son, and as per order recorded by the Sub-Judge, Panipat, in whose Court the proceedings had been going on since many months, the learned District Judge had discussed the case with the Sub-Judge previously, the result of which was that just in the middle of the arguments of the parties after the completion of all evidence, Sub-Judge, Panipat stayed further arguments, and without any request from either of the parties for the transfer of the case, sent it up to the District Judge, for transfer to some other Court. The other Sub-Judge, to whose Court the case was tranferred had finally to resort to recording two contradictory orders on the same date, viz., 29th January, 1959, the fake order recorded in the order sheet or *chitha* and announced in the Court, and the real operative order not announced in Court and kept secret in order to be able to give an adverse verdict against my son, based on the document illegally and surreptitiously placed on the Court file by means of the order not announced in Court file and kept secret, and at the same time deprive my son of his legal right and opportunity to make a revision petition in the High Court against the illegal admission of the document on record,

which the Sub-Judge used for the purpose of giving an adverse finding against my son, without the document being even proved."

In para 12, Mr. Khanna has attacked the conduct of two Magistrates, Shri H. G. Trighatia, Magistrate, and Shri Udham Singh, Additional District Magistrate. Referring to them he said—

"that two Magistrates, one of them the Additional District Magistrate, Karnal, himself, joined hands with a lawyer friend of theirs in dishonestly launching a false prosecution against myself and my two highly educated sons, on serious charges of cheating, theft and criminal breach of trust and carrying on the false prosecution with the utmost vindictiveness and venom for nine or ten months, with a view to apply coercion in order to destroy the self-respect and resistance against wrong of persons of known respectability and status,"

In paragraph 14 of the affidavit, there is a reference to the Additional Sessions Judge (Shri Barlow) against whom it is said that he "did not even touch upon the question of entrustment. As regards forgeries without caring to call for the forged ledgers and registers, for which an application had been made to him, he improved upon the finding of the learned trial magistrate.....". In para 16, reference is made to Passey, J., in the following words:—

"Thus by prohibiting discussion of the crucial points involved in the case and even refusing to consider a Supreme Court ruling in disregard of Article 141 of the Constitution of India, his Lordship dismissed the revision petition giving the

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verdicts that 'no element of fraud or criminal breach of trust was involved' in the bank not returning the monies and securities after the closing of an account,....."

In para 18 of the affidavit, there are references both to Mr. Badri Parshad Puri and to Mr. Justice Falshaw. In this paragraph, he said—

> But as mentioned in the pamphlet, things in the High Court took an unfortunate turn. The Hon'ble Judge of the High Court was led into an extremely angry mood by Dewan Ram Lal Anand's reading out the judgment of Mr. Justice Passey and making some choice observations of his own, suitably interspersed between some of the strongly worded passages of the judgment. Dewan Ram Lal Anand, did not have to speak one single word on the merits of the complaint itself, as his Lordship while still in the grip of anger had already decided that the case was false and vexatious and had ordered the reader to look up the law as to what was the maximum amount of compensation that his Lordship could award under section 250. When the reader after looking up the book of law replied that magistrates only could award compensation, Dewan Ram Lal Anand suggested that as I had by means of an application said that Mr. Justice Passey's judgment had no relevance to the case, I was liable to be punished for Contempt of Court. When serious discussion started about contempt proceedings being taken

against me, it was suggested that the Hon'ble Judge in the existing mood might award to me punishment for contempt of Court if I should continue to remain inside the court room, and so I was advised to quietly slip out. My son and my two lawyers who had remained inside the Court told me afterwards that when my lawyers had stood up to say something, his Lordship said it was quite useless to say anything. Thus ended the proceedings of my last complaint, without the learned Sessions Judge even looking up the facts of the case before making his report for the quashing of proceedings, and without a single word being spoken by either of the parties on the merits of the case before his Lordship, and the Hon'ble Judge of the High Court giving the verdict.....".

There are some other passages of a comparatively minor nature to which reference becomes unnecessary in view of the passages which have already been cited *in extenso*.

Before discussing how far the passages noticed above taken singly or cumulatively amount to breach of the law of Contempt of Court, it will be proper at this stage to take note of the principles of law governing contempt of Court. As pointed out in Halsbury's Laws of England, Third Edition, Volume 8, pages 6 and 7,—

"Any act done or writing published which is calculated to bring a court or a judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the court, is a contempt of court. Any episode in

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the administration of justice may, however, be publicly or privately criticised, provided that the criticism is fair and temperate and made in good faith..... Temperate criticism in good faith is immune. The punishment is inflicted, not for the purpose of protecting either the court as a whole or the individual judges of the court from a repetition of the attack, but of protecting the public, and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the court, from the mischief they will incur if the authority of the tribunal is undermined or impaired.

Foot-note (f), at page 7, reads :—

"It has been said that when a trial has taken place the judge is given over to criticism, and that committals for contempt by scandalising the court itself have become obsolete in this country. (*McLeod* v. *St. Aubyn* (1899) A.C. 549, P.C., at P. 561, per Lord Morris), but this statement is too wide."

A reflection on the Court imputing unfairness or ignorance is regarded as a contempt. The acts constituting contempt no doubt cover a wide range. Some are usually committeed in the course of adjudication of a cause or the execution of the Court's order. Such acts are calculated to hinder, delay and obstruct the administration of justice. Another class of acts are those, which bring the Court into disrepute or disrespect or which offend its dignity, affront its majesty or challenge its authority. It is contempt of Court either to file papers or to otherwise publish writings using

grossly scandalous language charging the Courts with improper motives in rendering its decisions. A Criminal Contempt is thus a conduct directed against the dignity and authority of the Court. It is in essence an offence against organised society and public justice. Broadly speaking, the act which is calculated to lessen the authority of the Court or its dignity, is a contempt asmuch, as any act, which is calculated to embarass, hinder or obstruct the Court in the administration of justice. The actual language used as also the surrounding circumstances and the context have to be examined. The power to punish for contempt is said to inhere in a Court because it is an essential auxiliary to the due administration of justice, it being necessary for self-protection and for the execution of judicial functions and for the preservation of the Court's authority, dignity and decorum. The purpose being essentially protective, a resort to these extraordinary powers is justified where its exercise is necessary in the interest of justice and against substantial rather than trivial offences. Like all discretionary powers, the power to punish for contempt of Court should be exercised sparingly and cautiously and only where it is necessary in the higher interest and out of no personal consideration for the Judge or the litigant.

As observed in *Ex parte Whitmore* (1)—

> The law punishes the contemnor out of *no* personal consideration for the judge. The punishment is not meted out as a 'balm to hurt mind'. Nor is there in the law aught of malice against him who is punished. The power is exercised by the Court as a representative in this

(1) 35 P. 524 (529): 17 C.J.S. 133.

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respect of the people—the ultimate sovereigns and in their interest and for their good. The maintenance of the authority of the judiciary is indispensable to the stability of the Government."

Mr. D. D. Khanna, learned counsel for the respondent has placed reliance upon the American doctrine of 'clear and present danger test' and has drawn my attention to the undermentioned observations in the majority opinion in an American case *Conway C. Craig* v. *John B. Harney* (1).

Mr. Justice Doughlas said :—

> "The vehemence of the language used in newspaper publications concerning a judge's decision is not alone the measure of the power to punish for contempt. The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil."

Reference was also made to *John D. Pennekamp* v. *State of Florida* (2). In *Harry Bridges v. State of California* (3), it was said that the possibility of engendering disrespect for the judiciary as a result of the published criticism of a judge is not such a substantive evil as will justify impairment of the constitutional right of freedom of speech and press.

The "clear and present danger test" rule which has been adopted by some Courts in the United States, has not been followed either in England or

(1) 331 U.S. 367=91 Lawyers' Edition page 1546.
(2) 328 U.S. 331=90 Lawyers' Edition 1295.
(3) 314 U.S. 252=86 Lawyers' Edition 192.

in India. It is not necessary to show that there is an imminent danger to the administration of justice because of the allegedly contemptuous publication. This matter was recently considered by a Full Bench of Patna High Court in *the matter of Basanta Chandra Ghosh* (1), and it was held that the American Law relating to contempt of Court in so far as it departs from the principles followed in England cannot be accepted as good law in this country. The American law circumscribing the limits of Courts to punish for contempt of Court has been influenced by peculiar conditions prevailing in that country and cannot be deemed a part of the Indian system. In India, there is no elective judiciary and the statutory law does not define and curtail the jurisdiction of the Courts in this matter. Article 372(1) of the Constitution keeps intact the summary jurisdiction of the High Courts to punish for contempt.

The law in this country punishes as contempt of Court any conduct that tends to bring the administration of justice into disrespect or to obstruct or interefere with the due course of justice. Any act done or writing published calculated to bring the Court into contempt or to lower its authority is a contempt of Court, whether corruption is imputed, or misconduct or incapacity in the discharge of the judicial duties, is suggested. Allegation of extraneous considerations weighing with a Judge in deciding a case amounts to contempt of Court, vide *R.* v. *Gray* (2), *Bathina Ramakrishna* v. *State of Madras* (3), *Surendranath* v. *Chief Justice* (4), and *In re Times of India* (5).

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(1) A.I.R. 1960 Pat. 430.
(2) (1900) 2 Q. B. 36(46).
(3) (1952) S.C.R. 425.
(4) I.L.R. 10 Cal. 109 (P.C.).
(5) (1953) S.C.R. 215.

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The Privy Council in *Andre Paul Terence Ambard* v. *The Attorney-General of Trinidad and Tobago* (1), cited with approval the observations of Lord Russell of Killowen in *R.* v. *Gray* (2), to the effect that:—

> "Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt, or to lower his authority, is a contempt of Court."

This category was styled by Lord Hardwicke, L. C., in *Re Read and Huggonson* (3), as 'scandalising a Court or a Judge'. The Privy Council in *Ambard's* case said that no wrong was committed by any member of the public who exercised the ordinary right of criticising in good faith in private or public the public act done in the seat of justice. Lord Atkin observed :—

> "The path of criticism is a public way: the wrongheaded are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken 'comments of ordinary men."

What is true of other publications equally applies to allegations made in an affidavit, casting reflections on the Court's integrity or impartiality or charging the Court with improper motives in

(1) A.I.R. 1936 P.C. 141.
(2) (1900) 26 B 36 (46).
(3) (1742) 2 Atk. 469.

rendering decisions, and they constitute contempt.

It is in the public interest, that the confidence, that people repose in Courts of jusice, should not be impaired and their prestige should not be lowered. It is not the purpose of law of contempt to stifle criticism, so long as the language employed is not undignified or indecorous and motives imputed are not prejudicial. It will not be in the public interest to permit unwarranted attacks upon the impartiality and integrity of the Judges. A contempt does not cease to be so, because of general aspersions made in regard to the conduct of the presiding officers in Courts of law, as, such expressions create distrust, in the mind of the public, in the Courts, and tend to destroy the confidence which is reposed in them. If such an act is allowed to go unpunished, the confidence of the community, in the administration of justice, will be undermined, and this will result in mischief, the consequences of which can be very grave.

The respondent in this case had cast all discretion to the winds and he lashed out in unmeasured language at the Courts and at the presiding officers who had the misfortune to deal with the cases in which he was personally interested. He has not spared the Magistrates, the District Judges or the Judges of the High Court. He has questioned the impartiality and integrity of the Magistrates, the District Judge, the Additional District Judge, and has imputed improper motives, unfairness and undue haste, to the Judges of the High Court. In his booklet, he has referred to his case as one of flagrant denial of justice, which had gone through all the stages including twice to the Supreme Court for special leave to appeal. Criticising the quality of justice dealt out by the law Courts, he referred to his own case and said that

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it became impossible for him to get even a hearing of his complaints of cheating, criminal breach of trust, forgeries of record, against the officers of a powerful body like the Punjab National Bank, because of its influence and resources to tamper with the Court's record. Personal grudge, ill-will and prejudice were ascribed to the Sessions Judge. To the High Court Judges he imputed that they administer justice in a cursory manner without giving thought to the points involved and of being intemperate, in language, and impatient and unjust.

What is said in the affidavit of the respondent, further aggravates his offence as his attack on the dignity and integrity of the Courts is more pointed and less restrained. With regard to the two Magistrates it is stated in the affidavit that they had joined hands with lawyer friend of theirs in dishonestly launching a false prosecution against the respondent and his two sons. Two Judges of the High Court, the District and Sessions Judge, the Additional Sessions Judge and the Magistrates have been scandalised in odious language, calculated to lessen their dignity and authority treating them with disrespect and even contumely. The affidavit which contains serious allegations and had been filed in further justification of the imputations made in the booklet constitutes a further act of contempt.

It was suggested in the course of the arguments by the learned counsel for the respondent that the language was libellous and as such his client should have been prosecuted under section 499 of the Indian Penal Code and not dealt with under the law of contempt of court. It was observed by the Supreme Court in *Bathina*

Ramakrishna Reddy v. *The State of Madras*, (1), that "the fact that defamation of a Judge of a subordinate Court constitutes an offence under section 499 of the Indian Penal Code does not, therefore, oust the jurisdiction of the High Court to take cognisance of the act as a contempt of Court." Mukherjea, J., at page 433, observed:

> "What is said is, that if a libel is published againstt a judge in respect of his judicial functions, that also is defamation within the meaning of section 499 of the Indian Penal Code and as such libel constitutes a contempt of Court, it may be said with perfect propriety that libel on a Judge is punishable as contempt under the Indian Penal Code. We do not think that this contention can be accepted as sound. A libellous reflection upon the conduct of a Judge in respect of his judicial duties may certainly come under section 499 of the Indian Penal Code and it may be open to the judge to take steps against the libeller in the ordinary way for vindication of his character and personal dignity as a judge; but such libel may or may not amount to contempt of court.....When the act of defaming a judge is calculated to obstruct or interfere with the due course of justice or proper administration of law, it would certainly amount to contempt. The offence of contempt is really a wrong done to the public by weakening the authority and influence of courts of law which exist for their good.....What is

(1) 1952 S.C.R. 425.

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made punishable in the Indian Penal Code is the offence of defamation as as defamation and not as contempt of court. If the defamation of a subordinate court amounts to contempt of court, proceedings can certainly be taken under section 2 of the Contempt of Courts Act, quite apart from the fact that other remedy may be open to the aggrieved officer under section 499 of the Indian Penal Code."

In this case the respondent has not only persisted in making aspersions in the affidavit filed in this Court, but at no time, during the proceedings of this case, or in the course of the arguments, he has expressed contrition for having cast reflections upon the Judges of the High Court and of the subordinate Courts. By this conduct he has made his offence, already serious, graver. Under the circumstances, the animadversion, indulged in by him, cannot be overlooked. It was within his power in palliation of his offence to offer unreserved apology which he has not tendered. An unreserved, apology, in less serious cases, has the effect of taking the sting out of contempt. The respondent, by his conduct, has done nothing to mitigate his offence and has rather invited upon himself a deterrent punishment. There has been no expression of any remorse of any kind. In view of the respondent having used grossly contemptuous language in his booklet, which was further justified in the affidavit, I am left with no alternative except to pass a sentence, sufficiently deterrent, as to bring home to him the error of his conduct. I find respondent Radha Krishna Khanna guilty of having committed gross contempt of this Court and also of the Courts of the District

and Sessions Judge and the two Magistrates and impose upon him a sentence of two months' simple imprisonment.

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B. R. T.

CIVIL MISCELLANEOUS

Before Bishan Narain, J.

BISHAN DASS,—*Petitioner.*

versus

WALAITI LAL BHAMBRI AND ANOTHER,—*Respondents.*

Civil Writ No. 1010 of 1959

Life Insurance Corporation Act (XXXI of 1956)—Section 3—Life Insurance Corporation—Whether a part of the Government department or an agent or servant of the Government.

1960

Nov., 11th

Held, that the Life Insurance Corporation constituted under section 3 of The Life Insurance Corporation Act is an independent juristic entity to carry on life insurance business in public interest. The Government cannot interfere in its day to day working. It can give directions in public interest involving matters of policy. It has no power to employ or dismiss the employees of the Corporation nor can it alter their terms of service. Hence the Corporation is neither a part of a Government department nor is an agent or servant of the Government.

Application under Article 226 of the Constitution of India praying that a writ in the nature of quo-warranto *or* mandamum *be issued removing respondent No. 1 from the membership of the Committee and for declaring his seat in Municipal Committee, Pathankot as vacant.*

K. N. TEWARI, ADVOCATE, for the Petitioner.

H. L. SIBAL AND L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE-GENERAL, for the Respondents.

ORDER

BISHAN NARAIN, J.—In 1953-54, elections were held to elect members of the Municipal Committee, Pathankot. Amongst others Madan Lal Mohindru

Bishan Narain, J.