PROCEEDINGS OF THE ADVOCATE GENERAL FOR TAMIL NADU,
HIGH COURT, CHENNAI.

Present: Thiru Vijay Narayan, Advocate General for Tamil Nadu

Dated 31st March 2021

Consent Petition No. 1 of 2021

S. Doraisamy,
Advocate,
No.223, N.S.C. Bose Road,
Y.M.C.A. Building,
2nd Floor, Chennai – 600001 .... Petitioner

Vs

S.Gurumurthy,
Editor, Thuglak Tamil Magazine,
No.166, Greenways Road,
Crescent Avenue,
Kesavaperumalpuram,
Raja Annamalai Puram,
Chennai – 600028 ..... Respondent

ORDER

This application is filed under Section 15 of the Contempt of Courts Act, 1971, seeking consent of the Advocate General for initiating criminal contempt proceedings against the respondent.

The case of the petitioner, a senior advocate practising in the Madras High Court, is that at a public meeting to commemorate the anniversary of the Thuglak magazine on 14.1.2021, the respondent made a statement about the

Honourable Supreme Court Judges and Honourable High Court Judges, a translation of which reads as follows:

I have an involvement in the fight against corruption ever since 1986, and I am satisfied in such fight. Even though I have faced several hardships, I am doing it as I believe that corruption should be eliminated from this nation. I share my experience in this regard.

Now this telephone exchange scam is known, Dayanidhi Maran scam. 400 telephone, upstairs somewhere in his house. Sufficient evidence is available on this charge. The Government exchequer lost Rupees Fifty Crores per month and cumulatively the Government has sustained a loss of Rupees Four Hundred and Fifty Crores. CBI registered a case for this offence. Putting all this together, they file a case with the CBI. Opposing the case, they say, all this is nonsense. One crore and fifty lakh rupees was put in this cable (Cost). If required, we will pay it. The matter went to the Supreme Court. In the Supreme Court, the judge asks, What if one and a half crore rupees is paid up, isn't it okay? How can corruption be eliminated when mercy is extended by the Court to those who indulge in corruption.

The reason is that the judges who are now in the court, the judges who are in the Supreme Court, are all appointed by politicians.

Many judges have come by going through someone, referred by someone and falling at the feet of someone. This is one of the things we should be very sad about today, if judges are appointed on merit, this will not be the case. I filed a case against it in the Supreme Court, and only then did they file an FIR. The CBI personnel who investigate ignored relevant evidence. Thus so much effort has to be taken to pursue a case. How many times can one take such steps? How many obstacles and complications are there in such matters. So do not think that merely because the government changes the corrupt person would be caught. There are several steps. Change in political scenario, resulting in removal of obstacles at police and CBI and thereafter at Court, high Court and Supreme Court. One has to cross so many obstacles to imprison corrupt persons.

Diplomat, an internationally reputed journal wrote about P. Chidambaram. The quantum of cash and the travel of such cash from that cash from India to Singapore and thereon to other countries is referred to there. He is a member of Rajya Sabha and he preaches about honesty and integrity. Such speeches are published by newspapers. Did at least

one press reporter ask P. Chidambaram on the article published in Diplomat?

We see corrupt people and honest people alike. The honest people face a big problem. There is no charge against Narendra Modi. There is no second opinion on the integrity and honesty of Narendra Modi. One of his brothers is a priest in a temple and another a clerk and third at a Petrol Bunk. How many challenges is he facing? They want to remove him. He is honest and rules well. All those who go to Delhi are aware that there is no corruption in Central Government today but in Tamil Nadu they say Modi go back. Please understand, the existence of people like Narendra Modi, creates problem for others. Honest persons being in power causes problem everywhere not only in politics but also in Courts. It is difficult to set right such deep degradation in our nation. I am saying this because, I know the difficulties we had in Bofors case and the offenders were caught red handed. Government changed and they all escaped. It is very difficult to send corrupt people to jail. Let us understand this.

According to the petitioner, this statement amounts to criminal contempt as defined in Section 2(c) of the Contempt of Courts Act, 1971.

The respondent has filed a detailed counter affidavit in which he has stated that at the annual function of the Thuglak magazine a question was raised by a reader, which can be loosely translated as:

> "The campaign against corruption paved the way for Modiji's electoral victory in the year 2014. Will those corrupt politicians in Tamil Nadu be imprisoned at least before the year 2024?"

It was in this context that the answer was given and it was never the intention of the respondent to denigrate the court or the judicial system in any manner but the response

was meant to explain the systematic flaws and delays in the enquiry, investigation, administrative, executive and legal process. The responses was meant to highlight the opportunities that arise for the allegedly corrupt persons to utilise the system to dragon proceedings and to obstruct and eventually escape the legal process.

The respondent has further stated that after the function, when he reviewed the events, on the next day, he realised that he could have been misunderstood or misquoted or may have lacked clarity in responding to the question and therefore immediately on 15.1.2021 at around 7 PM he published a statement on the platform Twitter in which he stated that having fought corruption as a journalist for decades, his experience has been frustrating with judicial delays and cases like Bofors getting outdated by sheer delay. He has also stated that he faulted the CBI for their investigation in the Maran telephone scam case and in the heat of the moment, he mentioned judges instead of candidates, which was an error for which he regretted. In his statement he also stated that what happened was unintended and he has always held the judiciary in high esteem. In the counter, he has also mentioned about his efforts in repeatedly approaching the court to seek relief in matters of public concern and he has also given a detailed account of his past credentials as a reputed writer, journalist, a chartered accountant and corporate advisor. However, for the

purpose of this application, it is not necessary for me to refer to those facts.

I have heard Mr V. Elangovan, Advocate for the petitioner and Mr S. Ravi, Advocate for the respondent in detail and I have also perused the application, the counter affidavit of the respondent as well as the reply affidavit of the petitioner.

While Mr. Elangovan reiterated the submissions made in the petition as well as the rejoinder by reading extensively from the pleadings made by his client, Mr. S. Ravi placed reliance on 3 judgements, two of the Honourable Supreme Court and one of the Bombay High Court.

In ***P.N. Duda v. P. Shiv Shanker*, (1988) 3 SCC 167,** a Union Law Minister delivered a speech before the Bar Council of Hyderabad, in which he made certain intemperate and undignified remarks against the Supreme Court. A practising advocate filed a petition to initiate criminal contempt proceedings against him and in that context, the Supreme Court made the following observations:

> **22.** If anyone draws attention to this danger and aspect and measures an institution by the class content he does not minimise its dignity or denigrate its authority. Looked at in that perspective though at places little intemperate, the statement of the Minister in this case cannot be said to amount to interference with the administration of justice and as to amount to contempt of court. The Minister's statement does not interfere with the administration of justice. Administration of justice in this country stands on surer foundation.

28. As we have mentioned before the speech of the Minister has to be read in its entirety. In the speech as we have set out hereinbefore it appears that Shri P. Shiv Shanker was making a study of the attitude of this Court. In the portion set out hereinbefore, it was stated that the Supreme Court was composed of the element from the elite class. Whether it is factually correct or not is another matter. In our public life, where the champions of the down-trodden and the politicians are mostly from the so-called elite class, if the class composition is analysed, it may reveal interesting factors as to whether elite class is dominant as the champions of the oppressed or of social legislations and the same is the position in the Judiciary. But the Minister went on to say that because the judges had their "unconcealed sympathy for the haves" they interpreted the expression "compensation" in the manner they did. The expression "unconcealed" is unfortunate. But this is also an expression of opinion about an institutional pattern. Then the Minister went on to say that because of this the word 'compensation' in Article 31 was interpreted contrary to the spirit and the intendment of the Constitution. The Constitution therefore had to be amended by the 1st, 14th and 17th Amendments to remove this "oligarchic" approach of the Supreme Court with little or no help. The interaction of the decisions of this Court and the constitutional amendments have been viewed by the Minister in his speech, but that is nothing new. This by itself does not affect the administration of justice. On the other hand, such a study perhaps is important for the understanding of the evolution of the constitutional development. The next portion to which reference may be made where the speaker has referred to Holmes Alexander in his column entitled "9 Men of Terror Squad" making a frontal attack on the functions of the U.S. Supreme Court. There was a comparison after making the quotation as we have set out hereinbefore,: "One should ask the question how true Holmes Alexander was in the Indian context." This is also a poser on the performance of the Supreme Court. According to the speaker twenty years of valuable time was lost in this confrontation presented by the judiciary in introducing and implementing basic agrarian reforms for removal of poverty what is the ultimate result. The nation did not exhibit the political will to implement the land reform laws. The removal of the Maharajas and Rajas and privy purses were criticised because of the view taken by this Court which according to the speaker was contrary to the whole national upsurge. This is a study in the historical perspective. Then he made a reference to the *Kesavananda Bharati* [*Kesavananda Bharati* v. *State of Kerala*, (1973) 4 SCC 225] and *Golak Nath* [*I.C. Golak Nath* v. *State of Punjab*, AIR 1967 SC 1643] cases and observed that a representative of the elitist culture of this country, ably supported by

industrialists and beneficiaries of independence, got higher compensation by the intervention of the Supreme Court in *Cooper case* [*R.C. Cooper* v. *Union of India*, (1970) 1 SCC 248] . This is also a criticism of the judgment in *R.C. Cooper case* [*R.C. Cooper* v. *Union of India*, (1970) 1 SCC 248] . Whether that is right or wrong is another matter, but criticism of judgments is permissible in a free society. There is, however, one paragraph which appears to us to be rather intemperate and that is to the following effect:

> "Anti-social elements i.e. FERA violators, bride burners and a whole horde of reactionaries have found their haven in the Supreme Court."

30. Bearing in mind the trend in the law of contempt as noticed before, as well as some of the decisions noticed by Krishna Iyer, J. in *S. Mulgaokar case* [(1978) 3 SCC 339 : 1978 SCC (Cri) 402 : AIR 1978 SC 727 : (1978) 3 SCR 162] the speech of the Minister read in its proper perspective, did not bring the administration of justice into disrepute or impair administration of justice. In some portions of the speech the language used could have been avoided by the Minister having the background of being a former judge of the High Court. The Minister perhaps could have achieved his purpose by making his language mild but his facts deadly. With these observations, it must be held that there was no imminent danger of interference with the administration of justice, nor of bringing administration into disrepute. In that view it must be held that the Minister was not guilty of contempt of this Court.

S. RANGANATHAN, J.— (*Concurring*) I agree with the conclusion of my learned brother that no case has been made out for initiating contempt proceedings against Respondent 1. The principles applicable to, and the case law on, the subject have been discussed by him at length and I do not have much to add. The impugned comments were made by Respondent 1 in the course of his keynote address at a seminar on "Accountability of the Legislature, Executive and Judiciary under the Constitution of India" organised by a Bar Council. Though, in view of the position held by the speaker, the contents of the speech, and, in particular, some "savoury" passages therefrom have been highlighted in a section of the press, the speech was made before an audience comprising essentially of lawyers, jurists and judges. The speech represented primarily an exercise by the speaker to evaluate the roles of the executive, legislature and judiciary in this country since its independence and to put forward the theory that, like the executive and the legislature, the judiciary must also be accountable to the people. The petitioner contends that there are certain passages in the speech which seem to attribute a subconscious partiality, bias or predilection in judges in disposing of various matters before them and that these

comments fall within the scope of the decision of this Court in the case of *E.M. Sankaran Namboodiripad* v. *T. Narayanan Nambiar* [(1970) 2 SCC 325 : 1970 SCC (Cri) 451 : (1971) 1 SCR 697] . Barrie & Lowe in their *"Law of Contempt"*, (Second Edition, pp. 233, 240-1) and Arlidge and Bady in their *"Law of Contempt"* (Second Edition, pp. 162-3, 168), on a review of the judicial decisions on the topic, seem to suggest that even allegation of partiality and bias on the part of Judges may not amount to contempt so long as it is free from the taint of "scurrilous abuse" and can be considered to be "fair comment". The observations made by the Lord Justice Phillimore Committee on Contempt of Court in 1974 on this type of contempt (paras 160 and 161) also make interesting reading. I do not, however, think it is necessary to pursue this aspect of the matter. In the present case, it true, as pointed out by my learned brother, there are passages in the speech which, torn out of context, may be liable to be misunderstood. But reading the speech as a whole and bearing in mind the select audience to which it was addressed, I agree with my learned brother no contempt has been committed. I think that we should accept, at its face value, the affidavit of Respondent 1 that the speech was only a theoretical dissertation and that he intended no disrespect to this Court or its functioning.

In ***Hari Singh Nagra v. Kapil Sibal*, (2010) 7 SCC 502,** a senior advocate practising in the Supreme Court made certain remarks in an article contributed by him and, for the purpose of better appreciation, a few of the remarks are extracted below with emphasis supplied:

> "The public image of the legal community is at its nadir. Influx of large numbers into the profession, deterioration of moral standards of the legal community, **questionable integrity of some of those who are in the judiciary** and the sheer economic cost of starting as a professional and sustaining oneself have contributed to these falling standards.
>
> It seems that Judges have started disciplining lawyers. **Judges themselves need disciplining. The judiciary has failed in its efforts to eradicate the phenomenon of corruption. This phenomenon includes receiving monetary benefits for judicial pronouncements rendering blatantly dishonest judgments, kowtowing with political personalities and obviously favouring the Government and thereby losing all sense of objectivity.**

When criminal contempt proceedings were sought to be initiated against him, the Supreme Court held as follows:

21. There is no manner of doubt that Judges are accountable to the society and their accountability must be judged by their conscience and oath of their office. Any criticism about the judicial system or the Judges which hampers the administration of justice or brings administration of justice into ridicule must be prevented. The contempt of court proceedings arise out of that attempt. National interest requires that all criticisms of the judiciary must be strictly rational and sober and proceed from the highest motives without being coloured by any partisan spirit or tactics.

24. On the facts of the case, the message sent by Mr Sibal to be published in the souvenir of Mehfil will have to be regarded as fair criticism of his senior colleagues for their failure to bring up the Junior Bar and of those members of the Bar who were shouting at each other and threatening the Judges. The message is nothing but concerns of a senior advocate who has practised long in this Court who noticed that the public image of the legal community was its nadir. The article nowhere targets a particular Judge. This is not a case of an attack on a Judge which is scurrilous, offensive, intimidatory or malicious beyond condonable limits, in respect of a judgment or his conduct. The article is an expression of opinion about an institutional pattern. The article by itself does not affect the administration of justice.

27. In *Vishwanath* v. *E.S. Venkatramaih* [1990 Cri LJ 2179 (Bom)] Mr E.S. Venkataramiah, former Chief Justice of India, gave an interview to a noted journalist Kuldeep Nair at the eve of his retirement on 17-12-1989 which was published in several newspapers. In course of interview, the former Chief Justice is stated to have made the following statement: "The judiciary in India has deteriorated in its standards because such Judges are appointed as are willing to be *influenced by lavish parties & whisky bottles*". In every High Court, Justice Venkataramiah said, there are at least 4 to 5 Judges who are practically out every evening, wining and dining either at a lawyer's house or foreign embassy. He estimates the number of such Judges around 90 and favours transferring them to other High Courts.

28. Chief Justice Venkataramiah reiterated that close relations of the Judges be debarred from practising in the same High Courts. He expressed himself strongly against sons-in-law and brothers of the Judges appearing in the courts where the

latter are on the Bench. Most relations of the Judges are practising in the High Courts of Allahabad, Chandigarh, Delhi and Patna. According to Chief Justice Venkataramiah practically in all the 22 High Courts in the country close relations of the Judges are thriving. There are allegations that certain judgments have been influenced through them even though they have not been directly engaged as lawyers in such case. It is hard to believe the reports that every brother, son or son-in-law of a Judge whatever his merit or lack of it as lawyer can be sure of earning an income of more than Rs 10,000 a month.

29. The Division Bench of the Bombay High Court in *Vishwanath case* [1990 Cri LJ 2179 (Bom)] held that the words complained of did not amount to contempt of court on the grounds that (*1*) the entire interview appears to have been given with the idea to improve the judiciary; (*2*) the Supreme Court had dismissed Writ Petition (C) No. 126 of 1990 filed on behalf of State Legal Aid Committee, J&K for an appropriate writ commanding the Union of India or any other appropriate authority to disclose the names of 90 Judges as mentioned by the former Chief Justice of India.

34. On the facts and in the circumstances of the case, this Court is of the opinion that this is not a fit case where formal proceedings for contempt should be drawn up and, therefore, notices issued to them will have to be discharged and the petition will have to be dismissed.

The last judgement relied upon by the Learned counsel for the respondent, is a case where criminal contempt proceedings were sought to be initiated against a former Chief Justice of India before the Division Bench of the Bombay High Court and it would be useful to extract the following paragraphs:

This extract is taken from *Vishwanath v. E.S. Venkatramiah*, 1990 SCC OnLine Bom 441 :

4. Mr. Palshikar contended that the above statement scandalises the entire judiciary in the country and therefore, the said statement clearly amounts to contempt Mr. Badar, learned Government Pleader, appearing on behalf of the State has repelled this argument by submitting that the above statement refers to only

such judges who are willing to be influenced by lavish parties and whisky bottles. The statement, therefore, according to him, is qualified and cannot be read *de hors* the rest of the interview. It is also not in such general terms as alleged. Mr. Palshikar has taken exception to the following portions in the statement, which read as under.

> "In every High Court', Justice Venkataramiah said, 'there are at least 4 to 5 Judges who are practically out every evening, wining and dining either at a lawyer's house or a foreign embassy.' He estimates the number of such Judges around 90 and favours transferring them to other High Courts.
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> According to Chief Justice Venkataramiah, practically in all the 22 High Courts in the country close relations of Judges are thriving. There are allegations that certain judgments have been influenced through them even though they have not been directly engaged as lawyers in such cases. It is hard to disregard the reports that every brother, son or son-in-law of a Judge, whatever his merit or lack of it as a lawyer, can be sure of earning an income of more than Rs. 10,000/- a month."

6. Commenting on the interview given by the former Chief Justice, Mr. Palshikar submitted that the former Chief Justice has crossed the boundary between fair criticism and contempt of court when he uttered that about 90 Judges indulge in wining and dining at the cost of lawyers. According to him, the statement is *ex facie* scandalous and casts reflection on the interest, integrity and independence of the Courts in India and the Judges thereof. The allegations, according to him, are so wild and pervading that they are lowering down the prestige of judiciary in India, more so because they are coming from a person who was the former Chief Justice of India.

22. Mr. Palshikar contended that had the former Chief Justice of India disclosed the names of 90 Judges, it would have been a different matter. But, that not having been done, every Judge of the High Court becomes suspect. We do not think, there

is any, substance in this contention. We are reminded of a Chinese proverb "As long as you are up-right, do not care if your shadow is crooked." It is not possible to appreciate as to how every Judge would become vulnerable merely because the names are not disclosed. It is obvious from the statement as a whole that it refers only to such Judges who are practically indulging in every evening in wining and dining at a lawyer's place or a foreign embassy or whose sons, sons-in-law and brothers are minting money by abusing their position. Having regard to these facts, we do not think it is a fit case where *suo motu* action for contempt is called for as requested by the petitioner. The petition is accordingly dismissed on merits as well as on the point of maintainability

Applying the law laid down in the above judgements, if one views the statement made by the respondent in its entirety, it would be seen that the statement was made impromptu at a question and answer session and the very next day, the respondent issued a clarification which has been referred to above. If the statement is read in its entirety, it would be seen that there was no intention to either scandalise the court or to interfere with the administration of justice. Though some of the remarks pertaining to the judiciary could have been avoided, the statement taken in its entirety, was meantto explain the systematic flaws and delays in the enquiry, investigation, administrative, executive and legal process and it was also based on the personal experience of the respondent in pursuing certain cases against politicians.

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On the facts and circumstances of this case and by application of the law laid down in the three judgements cited above, I do not think that any case is made out to initiate criminal contempt proceedings against the respondent.

Accordingly the consent sought for is not granted.

ADVOCATE GENERAL OF TAMIL NADU