Serial No. 1
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Cont.Cas(C) No. 37 of 2018
Arising out of WP(C) No. 337 of 2018

Date of Hearing : 25.02.2019
& 01.03.2019
Date of Decision: 08.03.2019

The Registrar General, High Court of Meghalaya. Vs. Smti. Patricia Mukhim & Anr.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Chief Justice
Hon'ble Mr. Justice S.R. Sen, Judge

Appearance:

For the Petitioner(s)/Appellant(s) : Mr. S. Dey, Amicus Curiae.
Mr. N. Syngkon, Amicus Curiae.
Mr. K. Ch. Gautam, Amicus Curiae.
Mr. C.H. Mawlong, Amicus Curiae.

For the Respondent(s) : Mr. K. Paul, Adv. with
Mr. S. Thapa, Adv.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

S.R. Sen, 'J'

1. This contempt proceeding had to be initiated on the basis of the reports published in the "Shillong Times" dated 06.12.2018 and 10.12.2018 under the caption "When Judges judge for themselves". The contents of the news item are reproduced herein below for ready reference and perusal:

'High Court pursues retirement benefits to judges, family

By Our Reporter

SHILLONG: *The High Court of Meghalaya has said the government should include spouse and children of retired judges for medical treatment and other facilities.*

During the hearing of the petition of Registrar General, the High Court of Meghalaya against the State Government on Wednesday, the single bench headed by Justice SR Sen said the additional advocate general filed an affidavit regarding medical facilities to retired judges.

However, the court said it appears that the benefits as per the affidavit were given only to retired judges.

"The government is directed to revise the said rule as follows: 'Retired judges spouse/children'. So, it means that they should include spouse and children for medical treatment. The Law Secretary is directed to revise the same as ordered above within a week," the order said.

Protocol, guest rules

As for the protocol service/Meghalaya State Guest Rules of retired judges, it was informed to the court that the matter was under process by the GAD.

According to the court, the Meghalaya State Guest Rule, 1991, was there at the inception of the High Court but suddenly it was withdrawn without consultation of the High Court by some officers.

The government had issued a notification on October 4 this year whereby it had amended Rule 10(a) of the Meghalaya State Guest Rule, 1991.

"It is unfortunate that such amendment was made without consultation with the High Court. Accordingly, the notification dated October 4, 2018, is hereby set aside," the court said.

The court also directed the GAD to make protocol service as well as the Meghalaya State Guest Rules "at the same tune and equal facilities to be provided as is applicable to sitting judges, including spouse and children".

Domestic help

On February 20 this year, the full court passed a resolution for enhancement of domestic helps for retired judges but the same was sent back for reconsideration by the full court.

"I am not pressing right now for enhancement of domestic help and it is left with the discretion of the government. However, domestic allowances as per the resolution, government should also include spouse/children of retired judges," the court said.

The matter relating to reimbursement of phone bills of retired chief justice, retired judges of the High Court was fixed at Rs. 10,000 per month in the full court.

Mobile Bill

"In that regard, the government (is) to issue a notification with immediate effect. That means retired chief justice and judges will be entitled for Rs. 10,000 only per month for mobile bill, landline, internet bills etc as well as to fix mobile at the rate of Rs 80,000 only for the judges," the order said.

The order said one-and-a-half months ago, the chief justice had convened a meeting comprising chief secretary, additional chief secretary, GAD and law secretary, but it appears that nothing has happened till date.

Deadline

"This whole exercise is to be completed within a week from the date of the order otherwise this court will be compelled to take suo motu contempt against the officers," the court said.

The matter will come up for hearing on December, 13.

"When judges judge for themselves

By Our Reporter

***SHILLONG**: The recent order of Justice SR Sen to provide facilities for retired judges and their families is reminiscent of the order passed by former chief justice of the High Court of Meghalaya Uma Nath Singh and former justice TNK Singh.*

Prior to their retirement, the chief justice had ordered on January 7, 2016 to provide Z category security to him and Y category for the former judge Singh.

However, after state resident Sajay Laloo challenged this in the Supreme Court, only normal security arrangement was allowed for them.

In a suo motu proceeding, the former chief justice wanted the state government to provide permanent security for him and other retired judges.

In the recent order, Justice SR Sen, who is set to retire in March, wanted several facilities for the retired chief justice and judges, their spouses and children. Besides providing medical

facilities for the spouses and children, the order stressed the need for providing protocol, guest houses, domestic help, mobile/internet charge at the rate of Rs 10,000 and mobile for Rs. 80,000 for judges".

Accordingly, a contempt case was registered as Cont.Cas(C) No. 37 of 2018 arising out of WP(C) No. 337 of 2018 in the case of Registrar General, High Court of Meghalaya v. Smti. Patricia Mukhim & Anr and show cause notice was issued to both the contemnors, ***Smti. Patricia Mukhim, Editor Shillong Times*** *and* ***Smti. Shobha Chaudhuri, Publisher Shillong Times*** who appeared in person with their respective counsel, Mr. K. Paul.

2. Learned counsels, Mr. S. Dey, Mr. N. Syngkon, Mr. K. Ch. Gautam and Mr. C.H. Mawlong volunteered to stand as Amicus Curiae.

3. Mr. K. Paul, learned counsel submits that the contemnors mentioned above have filed an affidavit/show cause.

4. Mr. K. Ch. Gautam, learned Amicus Curiae filed a rejoinder affidavit against the affidavit filed by the contemnors, wherein he made a mention at Para 4, 5 & 6 which are reproduced herein below:

"4. That in reply to Paragraph-3, the answering amicus begs to submit that the newspaper report in question not only is in bad taste but also shows this Hon'ble High Court in very poor light. The said report is not based on facts and has been published without any research only to scandalize the order of this Hon'ble Court.

5. That in reply to Paragraph-5 the answering amicus most humbly submits that the report dated 10/12/2018 in question is very aptly highlighted in color and the language is scornful. The said article lucidly portrays Learned Single Judge and this Hon'ble High Court in poor light and the article in a way conveys to the general public that the said order has been passed solely for the benefit of Learned Single Judge who is due to retire soon.

6. That in reply to paragraph 6, 7, 8 & 9 of the affidavit the answering amicus most respectfully submits that the

newspaper report in question said to be free factual and fair reporting by the Respondent/ Contemnors does not come within the definition of fair reporting, especially when the caption of the report reads ***"WHEN JUDGES JUDGE FOR THEMSELVES"*** *the caption of news report itself is malicious and contemptuous, in the garb of free and fair reporting the Respondents/ Contemnors have shown utter disregard to the majesty of this Hon'ble Court and have tried their best to stubbornly portray it as free and fair reporting in their Affidavit/Show cause".*

Further, it also appears from the rejoinder affidavit filed by the learned Amicus Curiae that the contemnor, Smti. Patricia Mukhim took the help of social media and even gone to the extent of mocking the judicial system of this country. For ready reference, the same are reproduced herein below:

"(a)4:14

Patricia Mukhim

14 December

I salute the CPI (M) for upholding constitutional morality. All other political parties seem to be in a stupor. The less we talk about Meghalaya Political parties the better. The UDP, HSPDP, KHNAM et al choose to remain silent in the face of this judicial on onslaught and have decided to remain silent. All totally spineless. They only know how to chant for votes. No wonder we give birth to the despots. And what about Congress? Still Celebrating their win in 3 states? Not recovered from the euphoria yet?

(b) 4:15

Patricia Mukhim

17 December

Today while appearing in this court, as a Christian, I wondered if we will be judged similarly on the Day of Judgment. Will God sit at the top of the pile looking down on us so he can mock us poor sinful creatures who are prone to errors? Will God reserve the choicest abuses for us journalists? That's what the earthly Gods to believe.

(c) 4:13

Patricia Mukhim

18 December

I need few clarifications from friends well versed with legal jurisprudence and those in the legal profession.

1. *In a court room should there be a climate of terror where the accused can have no say?*

2. *Should the legal counsel for the accused be told by a judge to literally "Shut up" and not speak? Then what's the role of an advocate if he is shouted down?*

3. *Should there not be a prescribed decorum in court where lawyers and those they represent are not treated as guilty and condemned right at the preliminary stage?*

4. *And if any judge misbehaves and exhibits behavior that is intolerant, capricious, brusque, judge mental and bordering on extreme rudeness what relief can those appearing in his Court claim?*

For a long time lawyers in Meghalaya have put up with this judicial extremism. There was a case when a district officer was pulled up for failing to provide relief to a disabled person. She was berated in Court and asks "Who is your husband? Isn't he in a junior position than you? How can you marry someone inferior?" The lady was devastated and wept out of sheer humiliation. Is this justice? Why should judges not stick with their brief? And who feeds them all this gossip if not a coterie lawyers who are selectively called as amicus curiae?

We are in a very oppressive system where a climate of impunity is sought to be imposed on citizen so that our voices and our rights are pulverized. Should citizen take all this lying down? Let's face one fact: The rights of citizens are eroded every single day. It's time we had a public debate on this instead of simple gossiping and discussion these issues in hushed tones.

And BTW the contempt law has been struck down by most democratic nations including the country from whom India borrowed its legal jurisprudence. Why is this country still enslaved to these colonial laws?

Further, the news daily in question on 14/12/2018 also published another contemnor's article under the heading HC JUDGE SHOULD STEP DOWN: HNCL

It is pertinent to mention herein that the Respondent/Contemnor (namely Smti Patricia Mukhim) has not only lowered the Majesty of this Hon'ble Court but she has also made serious accusations upon the lawyers who are appointed as amicus curiae.

8. *The answering amicus further submits that the conduct of one of the Respondents/Contemnors after drawing of contempt proceedings in posting distasteful posts in her social media page questioning the majesty of our judicial system and the dignity of amicus curiae and terming them as a group who feed gossip to judges shows how adamant the contemnor is and how little respect she has for the majesty of this Hon'ble Court.*

9. *That the answering counsel further submits that According to Section 2(c) of the Contempt of Courts Act, 1971, "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) 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

   (iii) 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 of a person which would tend to interfere with the administration of justice or which would lower the authority of the court.

10. *The answering amicus further submits that to constitute a criminal contempt. It is not necessary that the publication or other acts have actually resulted in scandalizing on lowering the authority of the court, but it is enough that the act is likely to result in scandalizing. Thus the offence of content is complete by mere attempt and does not depend on the actual deflection of justice.*

11. *That the Hon'ble Apex Court in AIR 2002 SC 1375* ***Arundhati Roy vs Unknown in paragraph 2 observed as under:***

   "*No person can flout the mandate of law of respecting the courts for establishment of rule of law under the cloak of freedoms of*

speech and expression guaranteed by the Constitution. Such a freedom is subject to reasonable restrictions imposed by any law. Where a provision, in the law, relating to contempt imposes reasonable restrictions, no citizen can take the liberty of scandalizing the authority of the institution of judiciary. Freedom of speech and expression, so far as they do not contravene the statutory limits as contained in the Contempt of Courts Act, are to prevail without any hindrance. However, it must be remembered that the maintenance of dignity of courts is one of the cardinal principles of rule of law in a democratic set up and any criticism of the judicial institution couched in language that apparently appears to be mere criticism but ultimately results in undermining the dignity of the courts cannot be permitted when found crossed the limits and has to be punished. This Court in In Re: Harijai Singh and Anr. has pointed out that a free and healthy press in indispensable to the function of a true democracy but, at the same time, cautioned that the freedom of Press is not absolute, unlimited and unfettered at all times and in all circumstances. Lord Dening in his Book "Road to Justice" observed that Press is the watchdog to see that ever trial is conducted fairly, openly and above broad but the watchdog may sometimes break loose and has to be punished for misbehavior. Frankfurther, J. in Pennekamp v. Florida [(1946) 90 Led 1295 at p. 1313] observed:

"If men, including Judges and journalists where angels, there would be no problems of contempt of Court Angelic Judges would be undisturbed by extraneous influences and angelic journalists would not seek to influence them. The power to punish for contempt, as a means of safeguarding Judges in deciding on behalf of the community as impartially as is given to the lot of men to decide, is not a privilege accorded to Judges. The power to punish for contempt of court is a safeguard not for Judges as persons but for the function which they exercise."

12. *The answering counsel most respectfully submits that the action of the contemnors grossly falls under the definition of criminal contempt as defined under the statute and as such the notice of contempt upon the Respondents/Contemnors for unnecessarily scandalizing this Hon'ble Court without verifying the true facts is not uncalled for.*

13. *That the statements made in paragraphs 1, 2, 4 and 5 are true to the best of my knowledge, those made in paragraphs 3, 6, 7, 8 ,9, 10, 11, 12 and 13 are true to the best of my information derived from reports, which I believe to be true and the rest are my humble submission before this Hon'ble court.*

And I sign this affidavit on this the 6th day of February, 2019 at Shillong".

5. Thereafter on 25.02.2019, Mr. S. Thapa, learned counsel appeared on behalf of the contemnors mentioned above and filed an additional affidavit/reply against the affidavit filed by the learned Amicus Curiae.

The learned counsel further submits that he has no submissions as because the case is between the contemnors and the Court.

On the other hand, learned Amicus Curiae, Mr. K. Ch. Gautam submit that when the matter is sub judice before this Court, the contemnors had posted bad remarks in the social media against the Amicus Curiae, which is a dangerous attack to the entire legal fraternity and publishing such false report is scandalizing the Court. He also further stated that the media has the right to express under Article 19 (a) of the Constitution of India, but subject to certain limitation. Mr. K. Ch. Gautam also submits that nowhere it is found mentioned in the additional affidavit/reply that the contemnors asked for apology. He also contended that why the contemnors target the lawyers and the judicial system.

Mr. C.H. Mawlong, learned Amicus Curiae submits that with regard to the news item under the caption 'When judges judge for themselves' he stated that it is very unfair, intimidating and threatening and such type of reports brings a wrong message to the public. He also stated that the contemnors are giving wrong statements in the media with regard to lawyers. He also cited a judgment in the case of ***Bal Kishan Giri v. State of Uttar Pradesh: (2014) 7 SCC 280 Para 11, 22 & 23*****.** The learned Amicus Curiae also submit that there is no apology from the contemnors.

Mr. N. Syngkon, learned Amicus Curiae referred to the order dated 27.05.2015 passed by the Full Bench of this High Court in WP(C) No. 127 of 2015 that this Court had directed the media not to publish any statement of HNLC or any organization, but the contemnors on 14.12.2018 published an Article under the heading 'HC Judge should step down: HNLC'. He further stated that the contemnors have violated the Constitution of India.

Mr. S. Dey, learned Amicus Curiae submits that the contemnors had published another report in the Shillong Times dated 16.02.2019 wherein, it also appears at Para 5 of the additional affidavit. He further stated that it appears that the contemnors are carrying a sword to kill the judiciary. He contended that nowhere in the additional affidavit, it is found mentioned about apologies, infact the contemnors are challenging and even did not spare the Amicus Curiae. He also submits that the contemnors have the freedom of speech and expression, but here the freedom of responsibility is missing.

6. On perusal of the contents of the said newspaper as well as the affidavit/show cause filed by the contemnors, rejoinder affidavit/reply to the show cause filed by the learned Amicus Curiae, additional affidavit/reply against the affidavit filed by the learned Amicus Curiae and after hearing the submissions advanced by Mr. S. Thapa, learned counsel for the contemnors and the learned Amicus Curiae reflected above, we observed that the contemnors have no regrets at all and no respect for the Indian Judicial System; rather they are trying to challenge the system instead of asking an apology, which is not at all acceptable. It also appears that the Contemnor No. 1 had also passed certain remarks against the learned Amicus Curiae through social media, face book etc, which means that they are insulting the learned members of the Bar.

We would like to ask whether the contemnor, Smti. Patricia Mukhim wants to control the judiciary as per her desire and will? If it is so, she is very much wrong.

It is correct to say that the social media has a right to publish the news and is a part of the democracy, subject to duty. The sacred duty of the media is to publish correct news, so that the actual fact reaches the people. They are not at all entitled to write as they like and slur the image of an individual or institution. The contemnors here must remember that though, they have the right to publish news and sell their papers, but it is limited, subject to their duties. They are not supposed to file any report without understanding the background of the case or verifying the truth. Only true news should be published not the false report and if anybody violates, they are liable for defamation and contempt of Courts.

It was noticed that particularly the contemnor, Smti. Patricia Mukhim, Editor Shillong Times always published news against the individuals as well as the institutions and also responsible for calling of bandh in the State of Meghalaya by publishing the propaganda in the name of some organizations till the full bench of this High Court passed a strict judgment dated 27.05.2015 in WP(C) No. 127 of 2015 in the case of Registrar General, High Court of Meghalaya v. State of Meghalaya. Since then, this particular newspaper was always working against the Judges and Judicial System. The media cannot think for media trial or media investigation by publishing false news.

The backdrop of the WP(C) No. 337 of 2018 is that all of a sudden, Government of Meghalaya withdraws the protocol service to the retired Judges and their family members without consulting this High Court. When it came to the notice, Hon'ble the Chief Justice of this High Court called for a meeting where the Chief Secretary, State of Meghalaya, Shillong, Law Secretary, State of Meghalaya, Shillong and the Commissioner & Secretary, GAD, State of Meghalaya, Shillong were placed questions as to how they withdraw the facilities which was already given earlier, but they had no answer. Therefore, they were asked to rectify it immediately and to restore the protocol service to the retired Judges and their family members. Unfortunately, after a lapse of 2(two) months also when the matter was not solved, the retired Judges and their family members faced problems and a suo moto proceeding was drawn as WP(C) No. 337 of 2018 and endorsed to this Court to proceed with the case. Accordingly, notice was issued and since the Government remained silent, necessary order was passed directing to comply within a month. Thereafter, when the Government failed to do so, contempt proceeding was drawn and the Chief Secretary, State of Meghalaya, Shillong, Law Secretary, State of Meghalaya, Shillong and the Commissioner & Secretary, GAD, State of Meghalaya, Shillong were asked to appear in person. Thereafter, the Government moved an appeal before the Division Bench. Now, it is pending before the Division Bench. Therefore, the question of a particular Judge on the verge of retirement taking steps for himself or his family does not arise. Hence, the report which appeared in the Shillong Times by the contemnor No. 1 is totally false and without

any basis. The contemnor No. 1, Smti. Patricia Mukhim must understand that we are Judges and our job is to deliver justice for the people in general and we have our own disciplinary methods.

We should also remember that no case can come to any particular Judge without endorsement of Hon'ble the Chief Justice, therefore whenever a suo moto or application is filed, the case will have to be placed before Hon'ble the Chief Justice.

7. According to what the contemnor, Smti. Patricia Mukhim stated in the social media as reflected above, Justice S.R. Sen replied that if at all, any such remarks have been made to any litigants or officer by any Judge, the person concerned should have reported to Hon'ble the Chief Justice and I myself with full faith and conscience, I say that I never asked any litigants or officer or lawyer about their personal life, rather it is a known fact to every members in the bar that I speak very less and hear the matters in accordance with law. So, if it indicates to Justice S.R. Sen, it is totally false and without any basis and we Judges maintain the dignity of the Court at all costs.

Justice S.R. Sen till date never shouted and never said to any lawyer the word "Shut up".

8. Therefore, in our view, the matter comes within the purview of Section 15 of the Contempt of Courts Act, 1971, which is reproduced herein below for ready reference:

> ***"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,*
>
> *(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".

Section 2(c) of the said Act defines the meaning of criminal contempt; the same is also reproduced herein below:

***"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) 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
(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner".

9. The Hon'ble Supreme Court in the case of ***Bal Kishan Giri v. State of Uttar Pradesh: (2014) 7 SCC 280*** Para 11, 15 to 24 was pleased to observe that, ***"Such casting of bald, oblique, unsubstantiated aspersions against the judges of the High Court not only causes agony and anguish to the judges concerned but also shakes the confidence of the public in the judiciary in its function of dispensation of justice".*** The same is reproduced herein below for ready reference:

***"11.** The allegations made by the appellant against the 3 judges of the High Court are too serious, scandalous and, admittedly, sufficient to undermine the majesty of law and dignity of court and that too without any basis. The appellant is a practicing advocate. The plea taken by him that he had been misguided by other advocates is an afterthought. He must have been fully aware of the consequences of what he has written. The averment to the effect that provisions of Chapter XXXV-E of the Rules had not been strictly observed remains in insignificant as the appellant had not only admitted transcribing the complaint but also its contents. The appellant had submitted the reply to the show cause notice issued by the High Court of Allahabad on the judicial side. In*

such a fact situation, even if, for the sake of argument it is accepted that the aforesaid Rules have not been complied with strictly, we are not willing to accept the case of the appellant for the reason that Mr. J.M. Sharma, learned senior counsel for the appellant could not show as to what was that material which was not considered by the High Court that had been put up as a defence by the appellant resulting in any miscarriage of justice.

15. *The appellant has tendered an absolute and unconditional apology which has not been accepted by the High Court. The apology means a regretful acknowledgement or excuse for failure. An explanation offered to a person affected by one's action that no offence was intended, coupled with the expression of regret for any that may have been given. Apology should be unquestionable in sincerity. It should be tempered with a sense of genuine remorse and repentance, and not a calculated strategy to avoid punishment.*

16. *Sub Section (1) of Section 12 of the Act and Explanation attached thereto enables the court to remit the punishment awarded for committing the contempt of court on an apology being made to the satisfaction of the court. However, an apology should not be rejected merely on the ground that it is qualified or tendered at a belated stage if the accused makes it bona fide. A conduct which abuses and makes a mockery of the judicial process of the court is to be dealt with iron hands and no person can tinker with it to prevent, prejudice, obstructed or interfere with the administration of justice. There can be cases where the wisdom of rendering an apology dawns upon only at a later stage. Undoubtedly, an apology cannot be a defence, a justification, or an appropriate punishment for an act which tantamounts to contempt of court. An apology can be accepted in case where the conduct for which the apology is given is such that it can be "ignored without compromising the dignity of the court", or it is intended to be the evidence of real contrition. It should be sincere. Apology cannot be accepted in case it is hollow; there is no remorse; no regret; no repentance, or if it is only a device to escape the rigour of the law. Such an apology can merely be termed as "paper apology".*

17. *In L.D. Jaikwal v. State of U.P (1984) 3 SCC 405: 1984 SCC (Cri) 421, this court noted that it cannot subscribe to the "slap-say sorry- and forget" school of thought in administration of contempt*

jurisprudence. Saying "sorry" does not make the slapper poorer. (See also: T.N. Godavarman Thirumulpad (102) v. Ashok Khot (2006) 5 SCC 1: AIR 2006 SC 2007.] So an apology should not be "paper apology" and expression of sorrow should come from the heart and not from the pen; for it is one thing to "say" sorry, it is another to "feel" sorry.

18. *An apology for criminal contempt of court must be offered at the earliest since a belated apology hardly shows the "contrition which is the essence of the purging of contempt". Of course, an apology must be offered and that too clearly and at the earliest opportunity. However, even if the apology is not belated but the court finds it to be without real contrition and remorse, and finds that it was merely tendered as a weapon of defence, the Court may refuse to accept it. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment, it ceases to be an apology and becomes an act of a cringing coward. (Vide: Debabrata Bandopadhyay v. State of W B AIR 1969 SC 189: 1969 Cri LJ 401, Mulk Raj v. State of Punjab (1972) 3 SCC 839: 1973 SCC (Cri) 24, Hailakandi Bar Assn v. State of Assam (1996) 9 SCC 74: 1996 SCC (Cri) 921, C. Elumalai v. A.G.L. Irudayaraj (2009) 4 SCC 213 and Ranveer Yadav v. State of Bihar (2010) 11 SCC 493: (2011) 1 SCC (Cri) 200).*

19. *This Court has clearly laid down that an apology tendered is not to be accepted as a matter of course and the Court is not bound to accept the same. The court is competent to reject the apology and impose the punishment recording reasons for the same. The use of insulting language (sic and later on tendering an apology) does not absolve the contemnor on any count whatsoever. If the words are calculated and clearly intended to cause any insult, an apology, if tendered and lack penitence, regret or contrition, does not deserve to be accepted. (Vide: Baradakanta Mishra v. Registrar of Orissa High Court (1974) 1 SCC 374: 1974 SCC (Cri) 128, Bar Council of Maharashtra v. M.V. Dabholkar (1976) 2 SCC 291: AIR 1976 SC 242, Asharam M. Jain v. A.T. Gupta (1983) 4 SCC 125: 1983 SCC (Cri) 77, Mohd. Zahir Khan v. Vijai Singh 1992 Supp (2) SCC 72: 1992 SCC (Cri) 526, Ministry of Information & Broadcasting, In re (1995) 3 SCC 619, Patel Rajnikant Dhulabhai . v. Patel Chandrakant Dhulabhai (2008) 14 SCC 561 and Vishram Singh Raghubanshi v. State of U.P (2011) 7 SCC 776: (2011) 3 SCC (Cri) 298).*

20. *That the power to punish for contempt is a rare species of judicial power which by the very nature calls for exercise with great care and caution. Such power ought to be exercised only where "silence is no longer an option." (See: S. Mulgaokar, In re (1978) 3 SCC 339: 1978 SCC (Cri) 402, H.G. Rangangoud v. M/s State Trading Corpn. of India Ltd. (2012) 1 SCC 297: (2012) 1 SCC (Cri) 539, Maninderjit Singh Bitta v. Union of India (2012) 1 SCC 273: (2012) 1 SCC (Civ) 88: (2012) 1 SCC (Cri) 528: (2012) 1 SCC (L&S) 83, T.C. Gupta v. Hari Om Prakash (2013) 10 SCC 658: (2014) 1 SCC (Cri) 18 and Arun Kumar Yadav v. State of U.P. (2013) 14 SCC 127: (2014) 2 SCC (Civ) 412: (2014) 4 SCC (Cri) 124). Power of courts to punish for contempt is to secure public respect and confidence in judicial process. Thus, it is a necessary incident to every court of justice.*

21. *Being a member of the Bar, it was the appellant's duty not to demean and disgrace the majesty of justice dispensed by a court of law. It is a case where insinuation of bias and predetermined mind has been leveled by a practicing lawyer against three judges of the High Court. Such casting of bald, oblique, unsubstantiated aspersions against the judges of the High Court not only causes agony and anguish to the judges concerned but also shakes the confidence of the public in the judiciary in its function of dispensation of justice. The judicial process is based on probity, fairness and impartiality which is unimpeachable. Such an act especially by the members of the Bar who are another cog in the wheel of justice is highly reprehensible and deeply regretted. Absence of motivation is no excuse.*

22. *In view of the above, we are of the considered opinion that the High Court has not committed any error in not accepting the appellant's apology since the same is not bona fide. There might have been an inner impulse of outburst as the appellant alleges that his nephew had been murdered, but that is no excuse for a practicing lawyer to raise fingers against the court.*

23. *Section 12(1) of the Act provides that if the court is satisfied that contempt of court has been committed, it may punish the contemnor with simple imprisonment for a term which may extend to six months, or with fine which may extend to Rs.2,000/-, or with both. Section 12(2) further provides that:*

> ***"12.(2)"****notwithstanding anything contained in any other law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it."*
> *Thus, the power to punish for contempt of the court is subject to limitations prescribed in sub-section (2) of the Act.*
>
> ***24.*** *Hence, in view of the above, the fine of Rs.20,000/- imposed on the appellant by the High Court by way of impugned judgment and order is reduced to Rs.2,000/- and is directed to deposit the said fine forthwith".*

10. The Hon'ble Supreme Court in the case of ***In Re, Arundhati Roy: AIR 2002 SC 1375*** Para 2 was pleased to observe that ***"No citizen can take the liberty of scandalizing the authority of the institution of judiciary"***. The same is reproduced herein below for ready reference:

> ***"2.*** *No person can flout the mandate of law of respecting the Courts for establishment of rule of law under the cloak of freedoms of speech and expression guaranteed by the Constitution. Such a freedom is subject to reasonable restrictions imposed by any law. Where a provision, in the law, relating to contempt imposes reasonable restrictions, no citizen can take the liberty of scandalising the authority of the institution of judiciary. Freedom of speech and expression, so far as they do not contravene the statutory limits as contained in the Contempt of Courts Act, are to prevail without any hindrance. However, it must be remembered that the maintenance of dignity of Courts is one of the cardinal principles of rule of law in a democratic set up and any criticism of the judicial institution couched in language that apparently appears to be mere criticism but ultimately results in undermining the dignity of the Courts cannot be permitted when found having crossed the limits and has to be punished. This Court in In Re, Harijai Singh and another (1996 (6) SCC 466) has pointed out that a free and healthy Press is indispensable to the function of a true democracy but, at the same time, cautioned that the freedom of Press is not absolute, unlimited and unfettered at all times and in all circumstances.*

> *Lord Dening in his Book "Road to Justice" observed that Press is the watchdog to see that every trial is conducted fairly, openly and above board but the watchdog may sometimes break loose and has to be punished for misbehavior. Frankfurther, J. In Pennekamp v. Florida [(1946) 90 Led 1295 at p. 1313] observed:*
>
> *"If men, including Judges and journalists were angels, there would be no problems of contempt of Court. Angelic Judges would be undisturbed by extraneous influences and angelic journalists would not seek to influence them. The power to punish for contempt, as a means of safeguarding Judges in deciding on behalf of the community as impartially as is given to the lot of men to decide, is not a privilege accorded to Judges. The power to punish for contempt of Court is a safeguard not for Judges as persons but for the function which they exercise."*

11. Norms of Journalistic Conduct as per Press Council of India under the caption of Principles and Ethics at Clause of 1, 2, 3, 12 (a), 12 (b), 13, 16 and 21 are reproduced herein below for ready reference:

"PRESS COUNCIL OF INDIA
NORMS OF JOURNALISTIC CONDUCT

Principles and Ethics

The fundamental objective of journalism is to serve the people with news, views, comments and information on matters of public interest in a fair, accurate, unbiased, sober and decent manner. To this end, the Press is expected to conduct itself in keeping with certain norms of professionalism, universally recognised. The norms enunciated below and other specific guidelines appended thereafter, when applied with due discernment and adaptation to the varying circumstance of each case, will help the journalist to self-regulate his or her conduct.

1. ***Accuracy and Fairness***

(i) *The Press shall eschew publication of inaccurate, baseless, graceless, misleading or distorted material. All sides of the core issue or subject should be reported. Unjustified rumours and surmises should not be set forth as facts.*

2. Pre-Publication Verification

i) On receipt of a report or article of public interest and benefit containing imputations or comments against a citizen, the editor should check with due care and attention its factual accuracy apart from other authentic sources- with the person or the organisation concerned to elicit his/her or its version, comments or reaction and publish the same alongside with due correction in the report where necessary. In the event of lack or absence of response, a footnote to that effect may be appended to the report.

ii) Publication of news such as those pertaining to cancellation of examinations or withdrawal of candidates from election should be avoided without proper verification and cross checking.

iii) A document, which forms a basis of a news report, should be preserved at least for six months.

3. Caution against defamatory writings

(i) Newspaper should not publish anything which is manifestly defamatory or libellous against any individual/organisation unless after due care and verification, there is sufficient reason/evidence to believe that it is true and its publication will be for public good.

(ii) Truth is no defence for publishing derogatory, scurrilous and defamatory material against a private citizen where no public interest is involved.

(iii) No personal remarks which may be considered or construed to be derogatory in nature against a dead person should be published except in rare cases of public interest, as the dead person cannot possibly contradict or deny those remarks.

(iv) The Press has a duty, discretion and right to serve the public interest by drawing reader's attention to citizens of doubtful antecedents and of questionable character but as responsible journalists they should observe due restraint and caution in hazarding their own opinion or conclusion in branding these persons as 'cheats' or 'killers' etc. The cardinal principle being that the guilt of a person should be established by proof of facts alleged and not by proof of the bad character of the accused. In the zest to expose, the Press should not exceed the limits of ethical caution and fair comment.

(v) The Press shall not rely on objectionable past behaviour of a citizen to provide the background for adverse comments with reference to fresh action of that person. If public good requires such reference, the Press should make pre-publication inquiries

from the authorities concerned about the follow up action, if any, in regard to earlier adverse actions.

(vi) Where the impugned publication is manifestly injurious to the reputation of the complainant, the onus shall be on the respondent to show that it was true or to establish that it constituted fair comment made in good faith and for public good.

(vii) Newspapers cannot claim privilege or licence to malign a person or body claiming special protection or immunity on the plea of having published the item as a satire under special columns such as 'gossip', 'parody', etc.

(viii) Publication of defamatory news by one paper does not give licence to others to publish news/information reproducing or repeating the same.

(ix) Insertion of out -of -context, uncalled for and irrelevant statements likely to malign a person or an organisation must be eschewed.

(x) Freedom of Press does not give licence to a newspaper to malign a political leader or mar his future political prospects by publishing fake and defamatory writings.

(xi) <u>Locus Standi</u>

In cases involving personal allegations/criticism, only the concerned person enjoying the locus standi can move the plaint or claim right to reply. However a representative organisation of persons attached to an organisation or a sect/group has the locus standi to move complaints against a publication directly criticising the conduct of a leader.

xii) <u>Public Interest and Public Bodies</u>

As a custodian of public interest, the Press has a right to highlight cases of corruption and irregularities in public bodies but such material should be based on irrefutable evidence and published after due inquiries and verification from the concerned source and after obtaining the version of the person/authority being commented upon. Newspapers should refrain from barbed, stinging and pungent language and ironical/ satirical style of comment.

12. <u>a)Caution in criticising judicial acts</u>

i) Excepting where the court sits 'in-camera' or directs otherwise, it is open to a newspaper to report pending judicial proceedings, in a fair, accurate and reasonable manner. But it shall not publish anything :-

-which, in its direct and immediate effect, creates a substantial risk of obstructing, impeding or prejudicing seriously the due

administration of justice; or -is in the nature of a running commentary or debate, or records the paper's own findings conjectures, reflection or comments on issues, sub judice and which may amount to abrogation to the newspaper the functions of the court; or -regarding the personal character of the accused standing trial on a charge of committing a crime.

ii) Newspaper shall not as a matter of caution, publish or comment on evidence collected as a result of investigative journalism, when, after the accused is arrested and charged, the court becomes seized of the case: Nor should they reveal, comment upon or evaluate a confession allegedly made by the accused.

iii) While newspapers may, in the public interest, make reasonable criticism of a judicial act or the judgment of a court for public good; they shall not cast scurrilous aspersions on, or impute improper motives, or personal bias to the judge. Nor shall they scandalise the court or the judiciary as a whole, or make personal allegations of lack of ability or integrity against a judge.

iv) Newspaper shall, as a matter of caution, avoid unfair and unwarranted criticism which, by innuendo, attributes to a judge extraneous consideration for performing an act in due course of his/her judicial functions, even if such criticism does not strictly amount to criminal Contempt of Court.

b) Reporting News pertaining to Court Proceedings

Before publishing a news item about court proceedings, it will be appropriate for the correspondent and editor to ascertain its genuineness and, correctness and authenticity from the records so that the concerned person can be held guilty and accountable for furnishing incorrect facts or wrong information about the court proceedings.

13. Corrections

When any factual error or mistake is detected or confirmed, the newspaper should suo-moto publish the correction promptly with due prominence and with apology or expression of regrets in a case of serious lapse.

16. Editors' Discretion

i) In the matter of writing an editorial, the editor enjoys a good deal of latitude and discretion. It is for him to choose the subject and it is also for him to use such language as he considers appropriate, provided that in writing the editorial he doesn't transgress the law and violate the norms of journalism and editorial comments, views

published in the newspaper should be couched in sober and dignified language

ii) Selection of the material for publication as reports/articles/letters is within the discretion of an editor, therefore it is his duty to see that on a controversial issue of public interest, all views are given equal prominence so that the people can form their independent opinion in the matter.

iii) The editor should not publish the news report/article if his mind is in doubt about the truth of the news report/article. If the veracity of any part of the news report/article is in doubt, that portion should be omitted and rest be published provided the editor is satisfied that the remainder is substantially true and its publication will be for public benefit.

21. <u>Headings not to be sensational/provocative and must justify the matter printed under them</u>

i) In general and particularly in the context of communal disputes or clashes

a. Provocative and sensational headlines are to be avoided;

b. Headings must reflect and justify the matter printed under them;

c. Headings containing allegations made in statements should either identify the body or the source making it or at least carry quotation marks."

12. After scanning the entire records that is, the newspapers dated 06.12.2018 and 10.12.2018 of the Shillong Times edition as well as the remarks posted by the Contemnor No. 1 in social media, first of all we clarify that we don't believe in judicial activism, we go according to the law, neither had we intimidated anyone by any notice.

13. On 01.03.2019 the matter came up again for hearing before the Division Bench where learned counsel for the Contemnors, Mr. K. Paul appeared along with Mr. S. Thapa, learned counsel and admitted the fact regarding the news item and social media report and further submits that the procedure adopted by the Court is defective and in the criminal contempt proceeding, a formal charge needs to be framed and then evidence to be taken as well as the contemnors should be given a chance to reply. He also tried to put in different views on technicalities, which is

totally misleading and we believed that it is against the principle of professional ethics. Furthermore, we observed that even today, there was no regret or apology from the contemnors.

In support of his submission, Mr. K. Paul, learned counsel relied on the following judgments:

i. ***P.N. Duda v. P Shiv Shanker & Ors: (1988) 3 SCC 167.***

ii. ***Bal Thackrey v. Harish Pimpalkhute & Ors: (2005) 1 SCC 254.***

iii. ***Biman Basu v. Kallol Guha Thakurta & Anr: (2010) 8 SCC 673.***

iv. ***Bhushan Kumar & Anr. v. State (NCT of Delhi) & Anr: (2012) 5 SCC 424.***

v. ***State of West Bengal & Anr. v. Mohd. Khalid & Ors: (1995) 1 SCC 684.***

vi. ***State of Karnataka & Anr. v. Pastor P. Raju: (2006) 6 SCC 728.***

vii. ***Dr. Prodip Kumar Biswas v. Subrata Das & Ors: (2004) 4 SCC 573.***

viii. ***R.S. Sehrawat v. Rajeev Malhotra & Ors: (2018) 10 SCC 574.***

ix. ***Sahdeo Alias Sahdeo Singh v. State of Uttar Pradesh & Ors: (2010) 3 SCC 705.***

x. ***Muthu Karuppan, Commissioner of Police, Chennai v. Parithi Ilamvazhuthi & Anr: (2011) 5 SCC 496.***

xi. ***Mrityunjoy Das & Anr. v. Sayed Hasibur Rahaman & Ors: (2001) 3 SCC 739.***

xii. ***Nazir Ahmad v. King-Emperor: AIR 1936 PC 253 (2)***

xiii. ***Contempt of Court's Act, 1971.***

14. We have carefully gone through the judgments and found in our humble consideration that the judgments passed by the Hon'ble Supreme Court do not apply to the facts and circumstances of this case.

15. We further rely on the judgment passed by the Division Bench of the Gauhati High Court in the case of ***In Re Lalit Kalita & Ors: 2008 (1) GLT 800*** at Para 12, 14, 19 & 20. The same are reproduced herein below for ready reference:

> ***"12****. Judiciary is not over-sensitive to criticism; in fact, bona fide criticism is welcome, perhaps, because it opens the doors to self- introspection. Judges are not infallible; they are humans and they often err, though, inadvertently and because of their individual perceptions. In such a situation, fair criticism of the viewpoint expressed in a judicial pronouncement or even of other forms of judicial conduct, is consistent with public interest and public good that Judges are committed to serve and uphold. The system of administration of justice, therefore, would receive due impetus from a realization amongst Judges that they can or have actually erred in their judgments; another perspective, a new dimension or insight must, therefore, always be welcome. Such a realization which would really enhance the majesty of the Rule of Law, will only be possible if the doors of self-assessment, in the light of the opinions of others, are kept open by Judges.*
>
> ***14.*** *But when should silence cease to remain an option? Where is the line to be drawn? A contemptuous action is punishable on the touchstone of being a wrong to the public as distinguished from the harm caused to the individual Judge. Public confidence in the judicial system is indispensable. Its erosion is fatal. Of course, Judges by their own conduct, action and performance of duties must earn and enjoy the public confidence and not by the application of the rule of contempt. Criticism could be of the underlying principle of a judicial verdict or its rationale or reasoning and even its correctness. Criticism could be of the conduct of an individual Judge or a group of Judges. Whichever manner the criticism is made it must be dignified in language and*

content because crude expressions or manifestations are more capable of identification of the alleged wrong with the system as a whole. Motives, personal interest, bias, pre-disposition etc. cannot be permitted to be attributed as being responsible for the judicial verdict, unless, of course, the same can be established as an existing fact. It is the above category of acts or publications that would fall within the prohibited degree warranting action in contempt law.

19. *The next case which must receive our attention is Bathina Ramakrishna Reddy vs. State of Madras, reported in AIR 1952 SC 149. In the said case the publisher and managing editor of a Telegu Weekly i.e. 'Praja Rajyam' published an article under the caption "Is the Sub-Magistrate, Kovvur corrupt?" In the said article it was stated that one Surya Narayan Murthi, Sub-Magistrate of Kovvur, was a known bribe taker who was also in the habit of harassing the litigants in different ways. In the article in question it was also mentioned that there was a broker through whom negotiations were carried out. Several specific instances of cases tried by the officer were cited in which, according to the article, the judicial officer had taken bribes.*

One of the contentions advanced in support of the defence was that even assuming the views expressed to be correct, at best, a penal offence covered by the specific provisions of the Indian Penal Code was made out and therefore no action in contempt would lie.

The Apex Court in paragraph 11 of the judgment did not accept the contention advanced and took the view that:

> *"A libellous reflection upon the conduct of a Judge in respect of his judicial duties may certainly come under Section 499, Penal Code, and it may be open to the Judge to take steps against the libeler 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."*

Continuing the Apex Court took the further view that when the act of defaming a Judge has the effect of obstructing or interfering 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 attempting to undermine the authority of the Courts which exists for public good. On the facts of the case the Apex Court came to the conclusion that the article in question was an attack on the integrity and honesty of the judicial officer without there being any basis for the same and therefore the appellant cannot be said to have acted bonafide and with reasonable care and caution. The charge of contempt as well as the punishment imposed was, therefore, upheld.

20. *The next case that we consider it necessary to refer to is the decision rendered by the Apex Court in Brahmaprakash Sharma and Ors. Vs. State of Uttar Pradesh, reported in AIR 1954 SC 10. The facts of the said case must be noted in brief. On 20th April 1949 the Executive Committee of the District Bar Association at Muzaffarnagar (U.P.) adopted certain resolutions regarding the conduct of two judicial officers functioning at Muzaffarnagar at the relevant point of time. The said resolutions were to the effect that the officers in question were thoroughly incompetent in law; they do not inspire confidence in the judicial work; the judicial orders passed by them are based on wrong facts and the officers have an overbearing and discourteous attitude to the members of the Bar as well as the litigant public. By another resolution of the Executive Committee it was resolved that copies of the said resolution be sent to the Premier of the State, the Chief Secretary as well as the District Magistrate. The reasons for the eventual conclusion reached by the Apex Court to drop the contempt proceedings against the alleged wrong doers need not detain the Court. What would be significant is the view expressed with regard to the correct judicial approach in such matters. The said views being contained in paragraphs 11 and 12 of the judgment, the relevant extracts therefrom are quoted herein below:*

> *"(11) It seems, therefore, that there are two primary considerations which should weigh with the court when it is called upon to exercise the summary powers in cases of contempt committed by 'scandalising' the court itself. In the first place, the reflection on the conduct or character of a judge in reference to the discharge of his judicial duties, would not be contempt if such reflection is made in the exercise of the right of fair and reasonable criticism which every citizen possesses in respect of public acts done in the seat of justice.*

It is not by stifling criticism that confidence in courts can be created"……..

……

……

"(12) In the second place, when attacks or comments are made on a Judge or Judges, disparaging in character and derogatory to their dignity, care should be taken to distinguish between what is a libel on the Judge and what amounts really to contempt of court. The fact that a statement is defamatory so far as the Judge is concerned does not necessarily make it a contempt."

……

……

"The position therefore is that a defamatory attack on a Judge may be a libel so far as the Judge is concerned and it would be open to him to proceed against the libellor in a proper action if he so chooses. If, however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such court, it can be punished summarily as contempt. One is a wrong done to the Judge personally while the other is a wrong done to the public. It will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge or to deter actual and prospective litigants from placing complete reliance upon the Court's administration of justice, or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties. It is well-established that it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice by reason of such defamatory statement; it is enough if it is likely, or tends in any way, to, interfere with the proper administration of law."

16. We also rely on the judgment passed by the Hon'ble Supreme Court in the case of ***Daroga Singh v. B.K. Pandey: AIR 2004 SC 2579*** at Para 31. The same is reproduced herein below for ready reference:

> ***"31.*** *The contempt proceedings have to be decided in a summary manner. The Judge has to remain in full control of the hearing of the case and immediate action is required to be taken to make it effective and deterrent. Immediate steps are required to be taken to restore order as early and quickly as possible. Dragging the proceedings unnecessarily would impede the speed and efficiency with which justice has to be administered. This Court while considering all these aspects held in In Re: Vinay Chandra Mishra (the alleged contemner), 1995 (2) SCC 584, that the criminal contempt no doubt amounts to an offence but it is an offence sui generis and hence for such offence, the procedure adopted both under the common law and the statute law in the country has always been summary. It was observed that the need was for taking speedy action and to put the Judge in full control of the hearing. It was emphasised that immediate steps were required to be taken to restore order in the court proceedings as quickly as possible. To quote from the above-referred to case.*
>
> *"However, the fact that the process is summary does not mean that the procedural requirement, viz., that an opportunity of meeting the charge, is denied to the contemner. The degree of precision with which the charge may be stated depends upon the circumstances. So long as the gist of the specific allegations is made clear or otherwise the contemner is aware of the specific allegation, it is not always necessary to formulate the charge in a specific allegation. The consensus of opinion among the judiciary and the jurists alike is that despite the objection that the Judge deals with the contempt himself and the contemner has little opportunity to defend himself, there is a residue of cases where not only it is justifiable to*

punish on the spot but it is the only realistic way of dealing with certain offenders. This procedure does not offend against the principle of natural justice, viz., nemo judex in sua causa since the prosecution is not aimed at protecting the Judge personally but protecting the administration of justice. The threat of immediate punishment is the most effective deterrent against misconduct. The Judge has to remain in full control of the hearing of the case and he must be able to take steps to restore order as early and quickly as possible. The time factor is crucial. Dragging out the contempt proceedings means a lengthy interruption to the main proceedings which paralyses the court for a time and indirectly impedes the speed and efficiency with which justice is administered. Instant justice can never be completely satisfactory yet it does provide the simplest, most effective and least unsatisfactory method of dealing with disruptive conduct in court. So long as the contemner's interests are adequately safeguarded by giving him an opportunity of being heard in his defence, even summary procedure in the case of contempt in the face of the court is commended and not faulted."

17. Lastly, we rely on the latest judgment on contempt passed by the Hon'ble Supreme Court in ***SLP (C) 24978/2018*** in the case of ***Nivedita Jha v. State of Bihar & Ors***. The same is reproduced herein below:

"SLP(C) 24978/2018

UPON hearing the counsel the Court made the following

O R D E R

Notice of contempt of this Court was issued vide order dated 7.2.2019 to Mr. M. Nageshwar Rao, Additional Director, Central Bureau of Investigation (C.B.I.) and Mr. Bhasuran S., Additional Legal Advisor and In-Charge Director of Prosecution, C.B.I. The charge against the alleged contemnors is that notwithstanding the orders of this Court, dated 31.10.2018 and 28.11.2018, restraining any change in the team investigating the Muzaffarpur shelter home case and despite explicit directions of this Court that Mr. A.K. Sharma, Joint Director, C.B.I. (In-Charge of investigation) will

continue to remain the head of the investigating team, the aforesaid person – Mr. A.K. Sharma had been transferred out of the C.B.I. and posted as the Additional Director General, Central Reserve Police Force (C.R.P.F.). In addition to the aforesaid two orders of this Court, there is an earlier order dated 18.9.2018, to the same effect, when this Court was considering the order dated 29.8.2018 passed by the High Court of Patna, requiring a fresh team of investigators to be constituted by the then Special Director of C.B.I.

By our order dated 7.2.2019, we had required the Director, C.B.I. to give us details leading to the order relieving Mr. A.K. Sharma from the C.B.I. and the order posting him in the C.R.P.F. and also to inform the Court the names of all the persons who were involved in the said decision making process and in the implementation thereof. By the said order, we had also required Mr. M. Nageshwar Rao, the then In-Charge Director, C.B.I. (now Additional Director, C.B.I.) and Mr. Bhasuran S., Additional Legal Advisor and In-Charge Director of Prosecution, C.B.I. to be personally present and offer their explanations.

In response, the present Director, C.B.I., Mr. M. Nageshwar Rao, and Mr. Bhasuran S. have submitted their reports/affidavits, which have been duly perused.

While Mr. M. Nageshwar Rao and Mr. Bhasuran S., in their respective affidavits, have apologized and admitted the commission of a mistake, in the same breath, they have denied willful disobedience of the orders of this Court. Notwithstanding the apology tendered as some kind of defence has been put up, this Court has no option but to consider the merits of the defence put up, namely, that there has been no willful disobedience of the directions of this Court.

This will require us to consider the information furnished to the Court by the Director, C.B.I. pursuant to the order dated 7.2.2019. Alongwith the written explanation/note of the Director, C.B.I., relevant file notes have been enclosed, which would go to show that on 18.1.2019, O.S./Pers.I, Department of Personnel and Training (DoPT) had conveyed that the Appointments Committee of the Cabinet had approved the curtailment of tenure of Mr. A.K. Sharma, Joint Director, C.B.I. with immediate effect, and that the Ministry of Home Affairs had conveyed its approval for appointment of Mr. A.K. Sharma to the post of Additional Director General, C.R.P.F. Accordingly, a draft relieving order of Mr. A.K. Sharma, Joint Director, C.B.I. with effect from the afternoon of 18.1.2019 was submitted for approval of the Director, C.B.I. Mr. M. Nageshwar Rao, the then In-Charge Director, C.B.I. (now Additional Director, C.B.I.) considered the aforesaid note and observed as follows:-

> *"Please examine and opine, regarding transfer on promotion of Shri A.K. Sharma, JD, CBI as ADG, CRPF, with reference to the order of Hon'ble SC in the cases where he was ordered to supervise/head the investigation."*

The aforesaid note signed by Mr. M. Nageshwar Rao, dated 18.1.2019, would fully show that he was aware of the orders of this Court with regard to the continuance of Mr. A.K. Sharma, Joint Director, C.B.I. as the head of the investigating team.

On the basis of the aforesaid note of Mr. M. Nageshwar Rao, Mr. Bhasuran S., Additional Legal Advisor and In-Charge Director of Prosecution, C.B.I. gave his opinion in the file, which is as follows:-

> *"A perusal of the order dated 17.1.2019 of MHA it is seen that Sh. Arun Kumar Sharma IPS has been appointed as ADGP in CRPF in the level 15 of the Pay Matrix which it appears that one level higher than the present post. The Hon'ble Supreme Court in the Shelter Home Case has ordered Sh. Arun Kumar Sharma IPS shall supervise the case. In view of the fact that the above order is a beneficial order to Sh. A.K. Sharma IPS, there may not be any legal impediment to relieve the officer. We may bring this fact to the notice of the Hon'ble Supreme Court by way of an affidavit in the concerned cases, the facts and circumstances under which the officer was relieved and get an approval from the Hon'ble Supreme Court." (emphasis supplied)*

Mr. Bhasuran S., Additional Legal Advisor and In-Charge Director of Prosecution, C.B.I. in the underlined portion had expressed an opinion that as the posting of Mr. A.K. Sharma was to a higher post and, therefore, a promotion, there may not be any legal impediment to relieve the officer. We do not agree, as the orders of this Court regarding the continuance of Mr. A.K. Sharma were clear and categorical. That apart, Mr. Bhasuran S., in his note (underlined portion) had suggested that the process of relieving the officer i.e. Mr. A.K. Sharma, Joint Director, C.B.I. may be brought to the notice of the Supreme Court by way of an affidavit indicating the facts and circumstances under which the officer 'was' relieved and seek an approval from the Supreme Court. We do not understand how when the file was pending at the stage of approval of the relieving order by Mr. M. Nageshwar Rao, the then In-Charge Director, C.B.I. (now Additional Director, C.B.I.), Mr. Bhasuran S. could have bona fide given the opinion that the officer 'was' relieved, namely, how Mr. Bhasuran S. could have used the past-tense to a pending action under consideration.

Be that as it may, on the said note of Mr. Bhasuran S., Mr. M. Nageshwar Rao, the then In- Charge Director, C.B.I. (now Additional Director, C.B.I.) expressed his approval and asked the concerned branches to submit an affidavit to the Supreme Court after consulting the counsels suitably. This was again on 18.1.2019. It appears that the file went back to the DoPT and once again a draft order for relieving Mr. A.K. Sharma, Joint Director, C.B.I. and giving charge of the said office to one Mr. G.K. Goswami, JD/HoZ, C.B.I., ACHQ-I, New Delhi was put up for approval of Mr. M. Nageshwar Rao, the then In-Charge Director,

C.B.I. (now Additional Director, C.B.I.). Mr. M. Nageshwar Rao approved the said proposal on 18.1.2019 itself. We do not understand nor can we appreciate and comprehend how Mr. M. Nageshwar Rao being aware of this Court's orders, as the first note signed by him would indicate, and when he had sought an affidavit to be filed before this Court by his second note dated 18.1.2019, could, without satisfying himself that this Court had been taken into confidence, approve of the draft order relieving Mr. A.K. Sharma from the C.B.I. and giving additional charge to Mr. G.K. Goswami, JD/HoZ, C.B.I., ACHQ-I, New Delhi.

The argument advanced by Mr. K.K. Venugopal, learned Attorney General for India, apart from calling upon the Court to administer justice by tempering the same with mercy, centers around the legal advice of Mr. Bhasuran S., Additional Legal Advisor and In-Charge Director of Prosecution, C.B.I., which the learned Attorney General terms to be an error of judgment. It is the contention of learned Attorney General that as the action of Mr. M. Nageshwar Rao, the then In-Charge Director, C.B.I. (now Additional Director, C.B.I.) was on the basis of a legal opinion, there has not been any willful disobedience of the orders of this Court.

For the reasons elucidated earlier in detail, we cannot agree with what the learned Attorney General has suggested. In our considered view, the present is a case where contempt has been committed, both by Mr. M. Nageshwar Rao, the then In-Charge Director, C.B.I. (now Additional Director, C.B.I.) and Mr. Bhasuran S., Additional Legal Advisor and In-Charge Director of Prosecution, C.B.I. The apology tendered, though stated to be unconditional, is not so. There is a submission/contention that the actions were not willful, with which contention, we are in total disagreement.

We have heard the learned Attorney General on the question of sentence. We have also heard Mr. M. Nageshwar Rao, the then In-Charge Director, C.B.I. (now Additional Director, C.B.I.) and Mr. Bhasuran S., Additional Legal Advisor and In-Charge Director of Prosecution, C.B.I. In exercise of power under Article 129 of the Constitution, for commission of contempt of Court, we sentence them till the rising of the Court and impose a fine of Rs.1,00,000/- (Rupees one lakh) each on Mr. M. Nageshwar Rao, the then In-Charge Director, C.B.I. (now Additional Director, C.B.I.) and Mr. Bhasuran S., Additional Legal Advisor and In-Charge Director of Prosecution, C.B.I. to be deposited within a week.

Notice of contempt stands disposed of."

On perusal of the said judgment referred above, in our humble understanding, we do not find any formal charge which was required to be framed in criminal contempt under Section 15 of the Contempt of

Courts Act, 1971; rather we are to dispose of the matter in summarily manner.

18. Now, the issue which arises is that, even if the learned counsel for the contemnors says that there was no charge, we do not agree as charge has been framed while issuing notice of contempt dated 10.12.2018. The same is reproduced herein below for ready reference:

> *"It has come to my notice that Shillong Times in its news paper dated 10th December, 2018 has published under the caption "When judges judge for themselves". The same is reproduced herein below:*
>
> *"**When judges judge for themselves**"*
>
> *By Our Reporter*
>
> *SHILLONG: The recent order of Justice SR Sen to provide facilities for retired judges and their families is reminiscent of the order passed by former chief justice of the High Court of Meghalaya Uma Nath Singh and former justice TNK Singh.*
>
> *Prior to their retirement, the chief justice had ordered on January 7, 2016, to provide Z category security to him and Y category for the former judge Singh.*
>
> *However, after state resident Sanjay Laloo challenged this in the Supreme Court, only normal security arrangement was allowed for them.*
>
> *In a suo moto proceeding, the former chief justice wanted the state government to provide permanent security for him and other retired judges.*
>
> *In the recent order, Justice SR Sen, who is set to retire in March, wanted several facilities for the retired chief justice and judges, their spouse and children.*
>
> *Besides providing medical facilities for the spouses and children, the order stressed the need for providing protocol, guest houses, domestic help, mobile/internet charge at the rate of Rs. 10,000 and mobile for Rs. 80,000 for judges."*
>
> *On perusal of the said news item, it is really shocking that the publisher and editor of the said newspaper without knowing the law or background of the case is making comments which is definitely derogatory to a Judge who is handling the case as well as the entire Judges fraternity, and*

that too I cannot understand what was so important that it is highlighted in pink colour. When the matter is pending before the Court, media has no business to comment on it and media is also not a party to this case.

Secondly, media is not to dictate the Court: what the Court should do and should not do. Therefore, I find that it is purely contemptuous. Both the publisher and editor of Shillong Times are directed to be present in person on 13-12-2018 before this Court and to show cause why contempt should not be drawn against them or any other person who is responsible for publishing such news.

Registry to register a Misc. case and to serve the copy of this order to both the publisher and editor, Shillong Times for compliance.

Fix on 13-12-2018 alongwith the main case.

The case arises out of WP(C). No. 337 of 2018".

19. Before we part with the case record, we also mentioned here that the Hon'ble Supreme Court never stayed the High Court's order on starting flights from Umroi (Shillong) Airport, but the said newspaper dated 14.12.2018 i.e. Shillong Times has published "***SC stays HC order on starting flights from Umroi Airport",*** which is incorrect and not based on truth. The same is reproduced herein below:

"SC stays HC order on starting flights from Umroi Airport

From CK Nayak

NEW DELHI: *The Supreme Court on Thursday stayed a suo motu order of the Meghalaya High Court directing commercial airlines to begin flight operations from the Umroi Airport to metro cities since big planes cannot operate from there as the airport is not safe, not ready, has altitude problem and even lacks some basic requirements.*

Senior advocate Mukul Rohatgi, representing the airlines, had moved the Supreme Court and said the airport at Umroi lacked infrastructure and hence flight operations by the commercial airlines cannot be commenced immediately. "It is not a taxi service, that you run it from here to there," the renowned advocate and former Attorney said.

The High Court had passed the order without hearing the airlines. After the hearing, the apex court stayed the Meghalaya HC order which had ordered all commercial airlines including Indigo to commence commercial flights from the state airport at Umroi to Delhi and other metros.

The Supreme Court also stayed the personal appearance of the Civil Aviation Secretary, Airports Authority of India (AAI) Chairman and CEOs of IndiGo and SpiceJet airlines before the

Meghalaya High Court in the event of their failure to decide on the date of commencement of flights. Rohatgi informed the court that a meeting between the representatives of the airlines and Aviation Secretary was to take place at 11 am.

The High Court in its December 7 order had said the Aviation Secretary "shall convene a meeting" of all the concerned officials of the Civil Aviation Ministry, AAI and that of the private airlines to take a "final decision as to the date from which flights will start operating from Umroi Airport

The High Court had said: "The exercise shall be undertaken and completed positively without any fail within a period of seven days."

"In case of default in taking such decision, the Secretary, Ministry of Civil Aviation, Chairman AAI and CEOs/CMDs of the respective airlines shall have to remain personally present before this court," it had said. They have to explain why the decision for operating flights for Umroi Airport has not been taken, the Court had directed.

Rohatgi said that the Indigo Airlines was operating as many as 421 flights for the Northeast. It does not have a slot for flight to and from Umroi Airport, he pointed out.

Rohatgi also told the Supreme Court bench headed by Chief Justice Ranjan Gogoi that it was an "extraordinary case". "It relates to a suo motu order passed by the Meghalaya High Court that the airlines and the civil aviation authorities must give a date to start the commercial services," he said.

"There is no petition. There are no papers. The airport is not ready. The aircraft cannot land, no slot, no fire fighting equipments, "Rohatgi added.

The Umroi airport was constructed way back in the mid-1960s and became operational in the mid-1970s with the new terminal building inaugurated in 2011. The Airports Authority of India (AAI) has been allotted land for the further expansion of the airport.

The present 6,000 ft runaway can support only ATR-42 aircraft and it will be extended by about 8,000ft to facilitate operation of narrow body jet aircraft like Boeing 737 and Airbus A320. The apron for parking of 2 such jet aircrafts and a refueling station are also in the scheme for the expanded airport".

20. From the rejoinder affidavit filed by the learned Amicus Curiae, it also appears that the Contemnor No. 1 salutes the CPI (M) on the basis of the statement published in the said newspaper. The source of such news is also not known to us that Justice S.R. Sen should be impeached as he has passed the judgment dated 10.12.2018 in WP(C) No. 448 of 2018 in the case of Shri. Amon Rana v. State of Meghalaya & Ors. The same publication is annexed with the affidavit filed by the learned Amicus

Curiae. We also observed that when the matter came up for hearing before the learned Single Judge, the counsel who appeared on behalf of the contemnors was Mr. S. Thapa who is the junior of Mr. K. Paul, learned counsel. Mr. S. Thapa, learned counsel submitted that he has no submission as the matter is between the contemnors and the Court, wherein the same has already been quoted above vide order dated 25.02.2019. Only the Amicus Curiae made their submissions, thereafter the contemnors were inquired if they want to say anything, but they had no reply, except the point that the Contemnor No. 1 had taken the photograph of the Court, however she replied that she has just taken the photo of Mahatma Gandhi hanging in the wall of the Court room, which is beyond our imagination and this was best known to her and she has no regret.

21. Considering the facts and circumstances of this case, we are of the considered view that the contemnor No. 1 has made a derogatory comment which also appears from the affidavit filed by the Amicus Curiae that she has posted in social media dated 17.12.2018 under the statement ***"Will God reserve the choicest abuses for us journalist? That's what the earthly Gods to believe".*** When she was confronted on 25.02.2019 for these remarks, she had no answer.

22. After conclusion of the argument on 01.03.2019 the contemnors in the second half of the day appears to have filed two affidavits in the registry without any permission, they have now tendered unconditional apology, which appears to be a calculated strategy so as to avoid punishment.

23. The contemnors all along have contested the matter and finally realizing that the contest is not in their better interest have tendered unconditional apology at the last moment. The contemnors being responsible persons should not have indulged in the acts falling within the purview of derogation to the administration of justice.

24. In exercise of the power vested on us by Article 215 of the Constitution of India, we sentence both the contemnors to sit in the corner of the Court room till the rising of the Court and impose a fine of

Rs. 2,00,000/- (Rupees two lakhs) each which is to be deposited with the Registry within a week and then to be deposited in the welfare fund of this High Court. We also further direct that in default of payment, both the contemnors will have to undergo 6(six) months simple imprisonment and the paper so called "Shillong Times" will automatically come to an end (banned).

25. With this observation and direction, the notice of contempt stands disposed of.

(S.R. Sen)
Judge

(Mohammad Yaqoob Mir)
Chief Justice

Meghalaya
08.03.2019
"D. Nary, PS"