

regarding grant or refusal of interlocutory injunction. There was no reason for the Appellate Bench to interfere and set aside that order.

33. This appeal is, therefore, allowed. The order passed by the Division Bench is set aside and that of the learned Single Judge is restored. We make it clear that we have not made any observations on the merits of the rival claims of the appellants as well as the respondents. We have confined ourselves only with respect to the question as to what should be the interlocutory arrangement in the facts and circumstances of the present case. In our view, the order passed by the learned Single Judge was well reasoned and justified in that context.

34. In the facts of the case, the parties will bear their own costs.

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(BEFORE P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.)

O.P. SHARMA AND OTHERS

Appellants;

Versus

HIGH COURT OF PUNJAB AND HARYANA

Respondent.

Criminal Appeals Nos. 1108-15 of 2004[†] with No. 1206 of 2004,
decided on May 9, 2011

A. Advocates — Generally — Advocates' role, professional conduct and ethical standards — Duty to court, examined — Held, advocates have an obligation to uphold rule of law and ensure that public justice system functions at its full potential — Violation of principles of professional ethics by an advocate is unacceptable — An advocate should be dignified in his dealings with court, to his fellow lawyers and to litigants — Necessity of advocates to faithfully abide by prescribed standards of professional conduct and etiquette, emphasised — Members of legal profession have a social duty to show people a beacon of light by their conduct and actions — Bar Council of India Rules — Pt. VI Ch. II S. I — Advocates Act, 1961 — S. 7(1)(b) — Courts, Tribunals and Judiciary — Judicial Process — Role of the Bar

Held :

The role and status of lawyers at the beginning of sovereign and democratic India is accounted as extremely vital in deciding that the nation's administration was to be governed by the rule of law. They were considered intellectuals amongst the elites of the country and social activists amongst the downtrodden. The role of lawyers in the framing of the Constitution needs no special mention. In a profession with such a vivid history it is regretful, to say the least, to witness instances of the nature of the present kind. Lawyers are the officers of the court in the administration of justice. The Bench as well as the Bar has to avoid unwarranted situations or trivial issues that hamper the cause of justice and are in no one's interest. A lawyer cannot be a mere mouthpiece of his client and cannot

[†] From the Judgment and Order dated 25-8-2004 of the High Court of Punjab and Haryana at Chandigarh at Crl. OCPs Nos. 18 & 25 of 1999 and 3-5 & 18-20 of 2001

associate himself with his client in maligning the reputation of a judicial officer merely because his client failed to secure the desired order from the said officer. A deliberate attempt to scandalise the court which would shake the confidence of the litigating public in the system and would cause a very serious damage to the name of the judiciary. (Paras 17, 20 and 32)

Daroga Singh v. B.K. Pandey, (2004) 5 SCC 26 : 2004 SCC (Cri) 1521; *R.D. Saxena v. Balram Prasad Sharma*, (2000) 7 SCC 264; *Mahabir Prasad Singh v. Jacks Aviation (P) Ltd.*, (1999) 1 SCC 37; *Ajay Kumar Pandey, Advocate, In re*, (1998) 7 SCC 248; *Chetak Construction Ltd. v. Om Prakash*, (1998) 4 SCC 577; *Radha Mohan Lal v. Rajasthan High Court*, (2003) 3 SCC 427 : 2003 SCC (Cri) 863; *D.C. Saxena (Dr.) v. Chief Justice of India*, (1996) 5 SCC 216; *Vinay Chandra Mishra, In re*, (1995) 2 SCC 584; *Supreme Court Bar Assn. v. Union of India*, (1998) 4 SCC 409; *M.B. Sanghi v. High Court of Punjab & Haryana*, (1991) 3 SCC 600 : 1991 SCC (Cri) 897; *L.D. Jaikwal v. State of U.P.*, (1984) 3 SCC 405 : 1984 SCC (Cri) 421; *R.K. Garg v. State of H.P.*, (1981) 3 SCC 166 : 1981 SCC (Cri) 663; *Lalit Mohan Das v. State of Orissa*, AIR 1957 SC 250; *M.Y. Shareef v. Judges of Nagpur High Court*, AIR 1955 SC 19 : 1955 Cri LJ 133 : (1955) 1 SCR 757; *Shamsher Singh Bedi v. High Court of Punjab & Haryana*, (1996) 7 SCC 99 : 1996 SCC (Cri) 181, *relied on*

An advocate's duty is as important as that of a Judge. Advocates have a large responsibility towards the society. A client's relationship with his/her advocate is underlined by utmost trust. An advocate is expected to act with utmost sincerity and respect. In all professional functions, an advocate should be diligent and his conduct should also be diligent and should conform to the requirements of the law by which an advocate plays a vital role in the preservation of society and justice system. An advocate is under an obligation to uphold the rule of law and ensure that the public justice system is enabled to function at its full potential. Any violation of the principles of professional ethics by an advocate is unfortunate and unacceptable. Ignoring even a minor violation/misconduct militates against the fundamental foundation of the public justice system. An advocate should be dignified in his dealings to the court, to his fellow lawyers and to the litigants. He should have integrity in abundance and should never do anything that erodes his credibility. An advocate has a duty to enlighten and encourage the juniors in the profession. An ideal advocate should believe that the legal profession has an element of service also and associates with legal service activities. Most importantly, he should faithfully abide by the standards of professional conduct and etiquette prescribed by the Bar Council of India in Chapter II, Part VI of the Bar Council of India Rules. As a rule, an advocate being a member of the legal profession has a social duty to show the people a beacon of light by his conduct and actions rather than being adamant on an unwarranted and uncalled for issue. (Paras 38 to 40 and 42)

B. Courts, Tribunals and Judiciary — Generally — Court — Status of — Held, a court, whether of a Magistrate or the Supreme Court is sacrosanct — Necessity to maintain integrity and sanctity of an institution upon which responsibility of dispensing justice is bestowed, emphasised — All court functionaries whether advocates, Judges or staff ought to act in accordance with morals and ethics — Judicial Process — Role of the Bar — Rule of Law — Constitutional Law — Judicial power — Constitution of India, Art. 50 (Para 37)

C. Contempt of Court — Nature and Scope — Contempt by advocates — Derogatory and abusive language used by advocates against Judicial Magistrate on failure to obtain desired order — Suo motu action against — Sentence by High Court — Tendering of unconditional apology on affidavits — Acceptance of — Held, acceptance of an apology from a contemnor should only be a matter of exception and not the rule — However, having regard to unconditional apology tendered in form of affidavits by contemnors before High Court, Magistrate before whom unwanted incident had occurred and now before Supreme Court and in view of language used in proviso and Explanation appended to S. 12(1), as an exception to general rule, apology accepted and contempt proceedings discharged — Further held, SK, owner, publisher, printer and editor of *Majdoor Morcha* newspaper has also filed a similar affidavit and considering fact that newspaper merely published what had happened in court, it would be just and fair to apply same relief to him also — Contempt of Courts Act, 1971, Ss. 2(c), 12 and 15 (Paras 29, 34 to 36 and 42)

D. Contempt of Court — Defences — Apology — When to be accepted — Held, acceptance of an apology from a contemnor should only be a matter of exception and not the rule — Contempt of Courts Act, 1971, S. 12 (Para 29)

L.D. Jaikwal v. State of U.P., (1984) 3 SCC 405 : 1984 SCC (Cri) 421, *relied on*

B-D/A/48098/CRVL

Advocates who appeared in this case :

V. Giri and Ram Jethmalani, Senior Advocates (Sapam Biswajit Meitei, Mohammed Sadique T.A., Ashok Kr. Singh, Anil K. Sharma, Dr. Ramesh K. Haritash, Anil Karnwal, Balraj Malik, R.C. Kaushik, Dayan Krishnan Sharma and S. Chandra Shekhar, Advocates) for the appearing parties.

Chronological list of cases cited

	<i>on page(s)</i>
1. (2004) 5 SCC 26 : 2004 SCC (Cri) 1521, <i>Daroga Singh v. B.K. Pandey</i>	93d-e
2. (2003) 3 SCC 427 : 2003 SCC (Cri) 863, <i>Radha Mohan Lal v. Rajasthan High Court</i>	95a
3. (2000) 7 SCC 264, <i>R.D. Saxena v. Balram Prasad Sharma</i>	93g
4. (1999) 1 SCC 37, <i>Mahabir Prasad Singh v. Jacks Aviation (P) Ltd.</i>	94a-b
5. (1998) 7 SCC 248, <i>Ajay Kumar Pandey, Advocate, In re</i>	94b-c
6. (1998) 4 SCC 577, <i>Chetak Construction Ltd. v. Om Prakash</i>	94e-f
7. (1998) 4 SCC 409, <i>Supreme Court Bar Assn. v. Union of India</i>	95g, 96b-c, 96g-h
8. (1996) 7 SCC 99 : 1996 SCC (Cri) 181, <i>Shamsher Singh Bedi v. High Court of Punjab & Haryana</i>	99g
9. (1996) 5 SCC 216, <i>D.C. Saxena (Dr.) v. Chief Justice of India</i>	95d
10. (1995) 2 SCC 584, <i>Vinay Chandra Mishra, In re</i>	95d, 95g
11. (1991) 3 SCC 600 : 1991 SCC (Cri) 897, <i>M.B. Sanghi v. High Court of Punjab & Haryana</i>	97b, 99g
12. (1984) 3 SCC 405 : 1984 SCC (Cri) 421, <i>L.D. Jaikwal v. State of U.P.</i>	97f-g
13. (1981) 3 SCC 166 : 1981 SCC (Cri) 663, <i>R.K. Garg v. State of H.P.</i>	98g-h
14. AIR 1957 SC 250, <i>Lalit Mohan Das v. State of Orissa</i>	99b-c
15. AIR 1955 SC 19 : 1955 Cri LJ 133 : (1955) 1 SCR 757, <i>M.Y. Shareef v. Judges of Nagpur High Court</i>	99f-g

The Judgment of the Court was delivered by

P. SATHASIVAM, J.— Criminal Appeals Nos. 1108-15 of 2004 are directed against the common judgment and final order dated 25-8-2004 passed by the Division Bench of the High Court of Punjab and Haryana at Chandigarh in Crl. OCPs Nos. 18 and 25 of 1999 and Crl. OCPs Nos. 3, 4, 5, 18, 19 and 20 of 2001 whereby the Division Bench after rejecting the claim of the appellants herein found all of them guilty of criminal contempt and convicted them under Section 12 read with Sections 15 and 2(c) of the Contempt of Courts Act, 1971 (hereinafter referred to as “the Act”) and sentenced them to various terms of simple imprisonment and fine. Feeling aggrieved by the order of conviction and sentence, one Surinder Sharma has filed Criminal Appeal No. 1206 of 2004. Since the issue in all these appeals is common and relate to one incident, they are being disposed of by the following judgment.

Brief facts

2. The District and Sessions Judge, Faridabad, by his letter dated 16-9-1999, addressed to the Registrar, High Court of Punjab and Haryana, forwarded Letter No. 376 dated 14-9-1999 written by Shri Rakesh Singh, Civil Judge (Junior Division-cum-Judicial Magistrate, First Class) Faridabad which was addressed to him. In the said letter, the Judicial Magistrate has stated that on 11-9-1999 at about 3 p.m., when he was dealing with the remand of accused Soran in FIR No. 136 dated 13-6-1999, under Sections 393/452/506/34 of the Penal Code, 1860 (hereinafter referred to as “IPC”) pertaining to Police Station Chhainsa, the Assistant Public Prosecutor requested him for remanding the accused to police custody. By that time, Mr L.N. Prashar, Advocate, one of the contemnors/appellants herein, who represented the accused, opposed the request of police remand. After hearing the arguments, the Magistrate remanded the accused to police custody. When the order of police remand was not found favourable, Mr L.N. Prashar, Advocate became enraged and started hurling abuses and derogatory remarks against him. Upon hearing the remarks, he tried to pacify him and requested him to behave properly but he did not relent and again uttered unparliamentary words and also threatened him with dire consequences.

3. It was further stated that the accused Soran was being produced in four criminal cases on that very day and was being represented by Mr Prashar in all the matters. When he took another remand paper of the same accused, Mr Prashar became furious and again uttered unparliamentary words and also threatened him. When he kept on sitting on the dais, Mr Prashar called his fellow colleagues including Mr O.P. Sharma, Rajinder Sharma, Surinder Sharma, Advocates, in total about 15-20 advocates, who all belonged to the same group. Then, he requested Mr O.P. Sharma, who is a senior member of the Bar, to request Mr Prashar to behave properly in the court. However, Mr O.P. Sharma sided with Mr Prashar and along with other advocates shouted slogans and abused in filthy language and also threatened him.

4. It was further stated that the advocates were very aggressive and wanted to assault him physically. To avoid any further deterioration in the

situation, he retired to his chamber. One of his staff members, namely, Shri Raj Kumar, Ahlmad, had informed the Chief Judicial Magistrate, Faridabad and the Judicial Magistrate, First Class, Faridabad about the incident and they came to his chamber and they also overheard Mr Prashar shouting in the court. After some time, Mr O.P. Goyal, Additional District and Sessions Judge, Faridabad came there and pacified the advocates. a

5. In continuation of his letter dated 14-9-1999, the Magistrate addressed another letter dated 24-9-1999 to the District Judge, Faridabad. In the said letter, it was stated that Mr Prashar and Mr O.P. Sharma, Advocates had criminal record and these persons have indulged in pressure tactics since long and highlighted all the details about them. b

6. The entire incident was published in a local newspaper *Mazdoor Morcha* which necessitated action under the Act against Shri Satish Kumar, owner, publisher, printer and editor of the said newspaper.

7. Based on the letter of the District and Sessions Judge as well as the letter of the Judicial Magistrate, Faridabad, the High Court took the matter by suo motu and initiated contempt proceedings against the contemnors under Section 2(c) of the Act relating to the incident which took place on 11-9-1999 in the Court of Shri Rakesh Singh, Civil Judge, Faridabad for taking appropriate action. c

8. Before the High Court, the respective contemnors/advocates filed affidavits highlighting the circumstances under which the unfortunate incident occurred and by filing separate affidavits they tendered unconditional apology and also regretted for the same. On direction by the High Court, all of them appeared before the Magistrate concerned and expressed their regret and also tendered unconditional apology. The Division Bench, taking note of seriousness of the issue and finding that the reference made by the Magistrate is based upon correct facts and overall conduct of the contemnors found all of them guilty of criminal contempt within the meaning of Section 2(c) of the Act and imposed simple imprisonment of six months/three months with a fine of ₹1000-2000 each. As stated earlier, challenging the said conviction and sentence, the above appeals have been filed. d e

9. Heard Mr Ram Jethmalani and Mr V. Giri, learned Senior Counsel for the appellants and Mr S. Chandra Shekhar, learned counsel for the respondent. f

Submissions of Mr Ram Jethmalani

10. At the outset, Mr Ram Jethmalani, learned Senior Counsel for the appellants submitted that in view of the fact that the appellants herein, after realising their mistake immediately, offered unconditional apology by filing affidavits before the High Court and also appeared before the Magistrate before whom the unfortunate incident had occurred, tendered apology and regret for their action, prayed for leniency and setting aside the order of the High Court sentencing the contemnors to jail. He also submitted that inasmuch as the alleged incident had occurred in September 1999, considering the passage of time and by realising the mistake tendered g h

a unconditional apology before the High Court as well as before the Magistrate concerned, their sentence of imprisonment may be set aside. He further submitted that all the appellants/contemnors were prepared to file fresh affidavits conveying their unconditional apology and regret for the incident and also assured that they would not indulge in such activities in future.

Controversial behaviour of the contemnors

b 11. Before considering the acceptability of the affidavits filed by the appellants, in order to visualise seriousness of the matter, it is useful to refer the exchange of words and behaviour of the appellants (in English version) while the Magistrate remanded the accused Soran to police custody. They are:

“You have taken bribe. You do all works only after taking bribe. You are indulging in gangism (*sic*).”

c “What can you do to me. You may make contempt against me. I will suck your blood. I will not leave you till High Court. Bahanchod, you are considering this court as inn. Come out, we will just now teach you a taste of judgeship. My name is L.N. Prashar. You will come to know today as to how you pass orders against me. Even earlier, criminal cases are pending against me. If one more case proceeds against me, it would make no difference. It would cause you very clearly to have an enmity with me and now I will see to it that I suck your blood. If you have any courage, you come out.”

12. When the Magistrate took up another remand paper of the same accused, Mr Prashar, again became furious and uttered that:

e “You dismiss this bail application. I have no faith in your court. I am not going to furnish any bail bonds. There is no need for us to have any bail from your court.”

13. At that stage, the Magistrate asked his Reader to call the Chief Judicial Magistrate, Faridabad so that the situation could be brought under control. On this, Mr Prashar remarked:

f “What can your CJM do. You may call him as well. We will see your CJM also. You are indulging in big gangism.”

14. Thereafter, the Magistrate requested Mr O.P. Sharma, Advocate, who is a senior member of the Bar, to request Mr Prashar to behave properly in the court. However, Mr O.P. Sharma, Advocate, sided with Mr Prashar and shouted:

g “We will do like this only. Lock his court and raise slogans against him.... On the asking of Shri O.P. Sharma, Advocate, other advocates accompanying him raised slogans, ‘Rakesh Singh Murdabad, Rakesh Singh Murdabad...’.

... He was also threatened by saying you come out. We will see your gangism.”

h 15. When all the officers were sitting in the chamber of the Magistrate, they overheard Mr Prashar shouting in the court in loud voice saying,

“You are indulging in gangism. You are passing orders of your choice. The contempt cannot harm me. I will see to it as to how you remain in service.”

Professional conduct and etiquette—rules and decisions of this Court

16. In the light of the above scenario, before considering the fresh affidavits filed before this Court by the appellant advocates, let us recapitulate various earlier orders of this Court as to the duties of a lawyer towards the court and the society being a member of the legal profession.

17. The role and status of lawyers at the beginning of sovereign and democratic India is accounted as extremely vital in deciding that the nation's administration was to be governed by the rule of law. They were considered intellectuals amongst the elites of the country and social activists amongst the downtrodden. These include the names of a galaxy of lawyers like Mahatma Gandhi, Motilal Nehru, Jawaharlal Nehru, Bhulabhai Desai, C. Rajagopalachari, Dr. Rajendra Prasad and Dr. B.R. Ambedkar, to name a few. The role of lawyers in the framing of the Constitution needs no special mention. In a profession with such a vivid history it is regretful, to say the least, to witness instances of the nature of the present kind. Lawyers are the officers of the court in the administration of justice.

18. Section I of Chapter II, Part VI titled “Standards of Professional Conduct and Etiquette” of the Bar Council of India Rules specifies the duties of an advocate towards the court which reads as under:

“I. *Duty to the court.*—1. An advocate shall, during the presentation of his case and while otherwise acting before a court, conduct himself with dignity and self-respect. He shall not be servile and whenever there is proper ground for serious complaint against a judicial officer, it shall be his right and duty to submit his grievance to proper authorities.

2. An advocate shall maintain towards the courts a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community.

3. An advocate shall not influence the decision of a court by any illegal or improper means. Private communications with a judge relating to a pending case are forbidden.

4. An advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the court, opposing counsel or parties which the advocate himself ought not to do. An advocate shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouthpiece of the client, and shall exercise his own judgment in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in court.

5. An advocate shall appear in court at all times only in the prescribed dress, and his appearance shall always be presentable.

6. An advocate shall not enter, appear, act, plead or practise in any way before a court, tribunal or authority mentioned in Section 30 of the Act, if the sole or any member thereof is related to the advocate as father, grandfather, son, grandson, uncle, brother, nephew, first cousin, husband, wife, mother, daughter, sister, aunt, niece, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law or sister-in-law.

For the purposes of this rule, court shall mean a court, Bench or Tribunal in which abovementioned relation of the advocate is a Judge, member or the Presiding Officer.

a 7. An advocate shall not wear bands or gown in public places other than in courts except on such ceremonial occasions, and at such places as the Bar Council of India or the court may prescribe.

b 8. An advocate shall not appear in or before any court or tribunal or any other authority for or against an organisation or an institution, society or corporation, if he is a member of the Executive Committee of such organisation or institution or society or corporation. 'Executive Committee', by whatever name it may be called, shall include any committee or body of persons which, for the time being, is vested with the general management of the affairs of the organisation or institution, society or corporation:

Provided that this rule shall not apply to such a member appearing as 'amicus curiae' or without a fee on behalf of a Bar Council, Incorporated Law Society or a Bar Association.

9. An advocate should not act or plead in any matter in which he is himself peculiarly interested.

Illustration

I. He should not act in a bankruptcy petition when he himself is also a creditor of the bankrupt.

II. He should not accept a brief from a company of which he is a Director.

10. An advocate shall not stand as a surety, or certify the soundness of a surety, for his client required for the purpose of any legal proceedings."

e 19. In *Daroga Singh v. B.K. Pandey*¹ one Additional District and Sessions Judge was attacked in a preplanned and calculated manner in his courtroom and chamber by police officials for not passing an order they sought. This Court held that: (SCC p. 41, para 27)

f "27. ... The courts cannot be compelled to give 'command orders'. The act committed amounts to deliberate interference with the discharge of duty of a judicial officer by intimidation apart from scandalising and lowering the dignity of the court and interference with the administration of justice. The effect of such an act is not confined to a particular court or a district, or the State, it has the tendency to affect the entire judiciary in the country. It is a dangerous trend. Such a trend has to be curbed. If for passing judicial orders to the annoyance of the police the Presiding Officers of the courts are to be assaulted and humiliated the judicial system in the country would collapse."

g 20. In *R.D. Saxena v. Balram Prasad Sharma*² this Court held as under: (SCC p. 281, para 42)

h "42. In our country, admittedly, a social duty is cast upon the legal profession to show the people beckon (sic beacon) light by their conduct and actions. The poor, uneducated and exploited mass of the people need a helping hand from the legal profession, admittedly, acknowledged as a

1 (2004) 5 SCC 26 : 2004 SCC (Cri) 1521

2 (2000) 7 SCC 264

most respectable profession. No effort should be made or allowed to be made by which a litigant could be deprived of his rights, statutory as well as constitutional, by an advocate only on account of the exalted position conferred upon him under the judicial system prevalent in the country.” a

21. In *Mahabir Prasad Singh v. Jacks Aviation (P) Ltd.*³ this Court held that it is the solemn duty of every court to proceed with judicial function during court hours and no court should yield to pressure tactics or boycott calls or any kind of browbeating. The Bench as well as the Bar has to avoid unwarranted situations or trivial issues that hamper the cause of justice and are in the interest of none. b

22. In *Ajay Kumar Pandey, Advocate, In re*⁴ the advocate was charged of criminal contempt of court for the use of intemperate language and casting unwarranted aspersions on various judicial officers and attributing motives to them while discharging their judicial functions. This Court held as under: (SCC p. 259, para 17) c

“17. The subordinate judiciary forms the very backbone of the administration of justice. This Court would come down with a heavy hand for preventing the judges of the subordinate judiciary or the High Court from being subjected to scurrilous and indecent attacks, which scandalise or have the tendency to scandalise, or lower or have the tendency to lower the authority of any court as also all such actions which interfere or tend to interfere with the due course of any judicial proceedings or obstruct or tend to obstruct the administration of justice in any other manner. No affront to the majesty of law can be permitted. The fountain of justice cannot be allowed to be polluted by disgruntled litigants. The protection is necessary for the courts to enable them to discharge their judicial functions without fear.” d e

23. In *Chetak Construction Ltd. v. Om Prakash*⁵ this Court deprecated the practice of making allegations against the Judges and observed as under: (SCC pp. 585-86, para 16)

“16. Indeed, no lawyer or litigant can be permitted to browbeat the court or malign the presiding officer with a view to get a favourable order. Judges shall not be able to perform their duties freely and fairly if such activities were permitted and in the result administration of justice would become a casualty and the rule of law would receive a setback. The Judges are obliged to decide cases impartially and without any fear or favour. Lawyers and litigants cannot be allowed to ‘terrorise’ or ‘intimidate’ Judges with a view to ‘secure’ orders which they want. This is basic and fundamental and no civilised system of administration of justice can permit it.” f g

3 (1999) 1 SCC 37

4 (1998) 7 SCC 248

5 (1998) 4 SCC 577

A similar view has been reiterated in *Radha Mohan Lal v. Rajasthan High Court*⁶.

a 24. Advocacy touches and asserts the primary value of freedom of
 expression. It is a practical manifestation of the principle of freedom of
 speech. Freedom of expression in arguments encourages the development of
 judicial dignity, forensic skills of advocacy and enables protection of
 fraternity, equality and justice. It plays its part in helping to secure the
 protection of other fundamental human rights, freedom of expression,
 b therefore, is one of the basic conditions for the progress of advocacy and for
 the development of every man including legal fraternity practising the
 profession of law. Freedom of expression, therefore, is vital to the
 maintenance of free society. It is essential to the rule of law and liberty of the
 citizens. The advocate or the party appearing in person, therefore, is given
 liberty of expression. But they equally owe countervailing duty to maintain
 dignity, decorum and order in the court proceedings or judicial processes.
 Any adverse opinion about the judiciary should only be expressed in a
 detached manner and respectful language. The liberty of free expression is
 not to be confounded or confused with licence to make unfounded allegations
 against any institution, much less the judiciary [vide *D.C. Saxena (Dr.) v.*
*Chief Justice of India*⁷].

c 25. In *Vinay Chandra Mishra, In re*⁸ the contemnor who was a Senior
 Advocate, President of the Bar and Chairman of the Bar Council of India, on
 being questioned by the Judge started to shout and said that no question
 could have been put to him and that he will get the High Court Judge
 transferred or see that impeachment motion is brought against him in
 Parliament. This Court while sentencing him to simple imprisonment for six
 weeks suspended him from practising as an advocate for a period of three
 e years and laid down as follows: (SCC p. 618, para 43)

f “43. The contemnor has obviously misunderstood his function both
 as a lawyer representing the interests of his client and as an officer of the
 court. Indeed, he has not tried to defend the said acts in either of his
 capacities. On the other hand, he has tried to deny them. Hence, much
 need not be said on this subject to remind him of his duties in both the
 capacities. It is, however, necessary to observe that by indulging in the
 said acts, he has positively abused his position both as a lawyer and as an
 officer of the court, and has done distinct disservice to the litigants in
 general and to the profession of law and the administration of justice in
 particular.”

g 26. In *Supreme Court Bar Assn. v. Union of India*⁹ a Constitution Bench
 of this Court overruled *Vinay Chandra Mishra, In re*⁸ and held as under:
 (SCC p. 430, para 43)

h 6 (2003) 3 SCC 427 : 2003 SCC (Cri) 863

7 (1996) 5 SCC 216

8 (1995) 2 SCC 584

9 (1998) 4 SCC 409

“43. The power of the Supreme Court to punish for contempt of court, though quite wide, is yet limited and cannot be expanded to include the power to determine whether an advocate is also guilty of ‘professional misconduct’ in a summary manner, [which can only be done under the procedure prescribed in] the Advocates Act. The power to do complete justice under Article 142 is in a way, corrective power, which gives preference to equity over law but *it cannot be used to deprive a professional lawyer of the due process contained in the Advocates Act, 1961 by suspending his licence to practice in a summary manner while dealing with a case of contempt of court.*”

(emphasis supplied)

27. It also opined that: (*Supreme Court Bar Assn. case*⁹, SCC pp. 444-45, para 79)

“79. An advocate who is found guilty of contempt of court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case. The learned Solicitor General informed us that there have been cases where the Bar Council of India taking note of the contumacious and objectionable conduct of an advocate, had initiated disciplinary proceedings against him and even punished him for ‘professional misconduct’, on the basis of his having been found guilty of committing contempt of court. We do not entertain any doubt that the Bar Council of the State or Bar Council of India, as the case may be, when apprised of the established contumacious conduct of an advocate by the High Court or by this Court, would rise to the occasion, and take appropriate action against such an advocate. Under Article 144 of the Constitution ‘all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court’. The Bar Council which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette is also obliged to act ‘in aid of the Supreme Court’. It must, whenever facts warrant, rise to the occasion and discharge its duties uninfluenced by the position of the contemnor advocate. It must act in accordance with the prescribed procedure, whenever its attention is drawn by this Court to the contumacious and unbecoming conduct of an advocate which has the tendency to interfere with due administration of justice.”

The Bench went on to say: (*Supreme Court Bar Assn. case*⁹, SCC p. 445, para 79)

“79. ... There is no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the courts and the majesty of law and prevent any

⁹ *Supreme Court Bar Assn. v. Union of India*, (1998) 4 SCC 409

a interference in the administration of justice. The learned counsel for the parties present before us do not dispute and rightly so that whenever a court of record records its findings about the conduct of an advocate while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the Bar Council concerned, appropriate action should be initiated by the Bar Council concerned in accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette.”

b 28. In *M.B. Sanghi v. High Court of Punjab & Haryana*¹⁰ this Court took notice of the growing tendency amongst some of the advocates of adopting a defiant attitude and casting aspersions having failed to persuade the court to grant an order in the terms they expect. Holding the advocates guilty of contempt, this Court observed as under: (SCC p. 602, para 2)

c “2. ... The tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure the desired order is ever on the increase and it is high time it is nipped in the bud. And, when a member of the profession resorts to such cheap gimmicks with a view to browbeating the Judge into submission, it is all the more painful. When there is a deliberate attempt to scandalise which would shake the confidence of the litigating public in the system, the damage caused is not only to the reputation of the Judge concerned but also to the fair name of the judiciary. Veiled threats, abrasive behaviour, use of disrespectful language and at times blatant condemnatory attacks like the present one are often designedly employed with a view to taming a Judge into submission to secure a desired order. Such cases raise larger issues touching the independence of not only the Judge concerned but the entire institution. The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the presiding judicial officers with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system.”

e 29. In *L.D. Jaikwal v. State of U.P.*¹¹ it was held by this Court that acceptance of an apology from a contemnor should only be a matter of exception and not that of a rule and expressed its opinion as under: (SCC pp. 408-09, paras 6-7)

f “6. We do not think that merely because the appellant has tendered his apology we should set aside the sentence and allow him to go unpunished. Otherwise, all that a person wanting to intimidate a Judge by making the grossest imputations against him to do, is to go ahead and scandalise him, and later on tender a formal empty apology which costs

h 10 (1991) 3 SCC 600 : 1991 SCC (Cri) 897

11 (1984) 3 SCC 405 : 1984 SCC (Cri) 421

him practically nothing. If such an apology were to be accepted, as a rule, and not as an exception, we would in fact be virtually issuing a 'licence' to scandalise courts and commit contempt of court with impunity. It will be rather difficult to persuade members of the Bar, who care for their self-respect, to join the judiciary if they are expected to pay such a price for it. And no sitting Judge will feel free to decide any matter as per the dictates of his conscience on account of the fear of being scandalised and persecuted by an advocate who does not mind making reckless allegations if the Judge goes against his wishes. If this situation were to be countenanced, advocates who can cow down the Judges, and make them fall in line with their wishes, by threats of character assassination and persecution, will be preferred by the litigants to the advocates who are mindful of professional ethics and believe in maintaining the decorum of courts.

7. We have yet to come across a Judge who can take a decision which does not displease one side or the other. By the very nature of his work he has to decide matters against one or the other of the parties. If the fact that he renders a decision which is resented to by a litigant or his lawyer were to expose him to such risk, it will sound the death knell of the institution. A line has therefore to be drawn somewhere, some day, by someone. That is why the Court is impelled to act (rather than merely sermonise), much as the Court dislikes imposing punishment whilst exercising the contempt jurisdiction, which no doubt has to be exercised very sparingly and with circumspection. We do not think that we can adopt an attitude of unmerited leniency at the cost of principle and at the expense of the Judge who has been scandalised. We are fully aware that it is not very difficult to show magnanimity when someone else is the victim rather than when oneself is the victim. To pursue a populist line of showing indulgence is not very difficult—in fact it is more difficult to resist the temptation to do so rather than to adhere to the nail-studded path of duty. Institutional perspective demands that considerations of populism are not allowed to obstruct the path of duty. We, therefore, cannot take a lenient or indulgent view of this matter. We dread the day when a Judge cannot work with independence by reason of the fear that a disgruntled member of the Bar can publicly humiliate him and heap disgrace on him with impunity, if any of his orders, or the decision rendered by him, displeases any of the advocates, appearing in the matter."

30. In *R.K. Garg v. State of H.P.*¹² where a lawyer hurled a shoe on the judicial officer which hit him on the shoulder, this Court opined that there is no doubt that: (SCC p. 170, para 9)

"9. ... The Bar and the Bench are an integral part of the same mechanism which administers justice to the people. Many members of

¹² (1981) 3 SCC 166 : 1981 SCC (Cri) 663

a the Bench are drawn from the Bar and their past association is a source of inspiration and pride to them. It ought to be a matter of equal pride to the Bar. It is unquestionably true that courtesy breeds courtesy and just as charity has to begin at home, courtesy must begin with the Judge. A discourteous Judge is like an ill-tuned instrument in the setting of a courtroom. But members of the Bar will do well to remember that such flagrant violations of professional ethics and cultured conduct will only result in the ultimate destruction of a system without which no democracy can survive.”

b **31.** In *Lalit Mohan Das v. State of Orissa*¹³ this Court observed as under: (AIR p. 254, para 11)

“11. ... A member of the Bar undoubtedly owes a duty to his client and must place before the court all that can fairly and reasonably be submitted on behalf of his client. He may even submit that a particular order is not correct and may ask for a review of that order. At the same time, a member of the Bar is an officer of the court and owes a duty to the court in which he is appearing. He must uphold the dignity and decorum of the court and must not do anything to bring the court itself into disrepute. The appellant before us grossly overstepped the limits of propriety when he made imputations of partiality and unfairness against the Munsif in open court. In suggesting that the Munsif followed no principle in his orders, the appellant was adding insult to injury; because the Munsif had merely upheld an order of his predecessor on the preliminary point of jurisdiction and court fees, which order had been upheld by the High Court in revision. Scandalising the court in such manner is really polluting the very fount of justice; such conduct as the appellant indulged in was not a matter between an individual member of the Bar and a member of the judicial service; it brought into disrepute the whole administration of justice.”

e **32.** A lawyer cannot be a mere mouthpiece of his client and cannot associate himself with his client in maligning the reputation of a judicial officer merely because his client failed to secure the desired order from the said officer. A deliberate attempt to scandalise the court which would shake the confidence of the litigating public in the system and would cause a very serious damage to the name of the judiciary. (Vide *M.Y. Shareef v. Judges of Nagpur High Court*¹⁴, *Shamsher Singh Bedi v. High Court of Punjab & Haryana*¹⁵ and *M.B. Sanghi v. High Court of Punjab & Haryana*¹⁰.)

f **33.** Mr Ram Jethmalani, learned Senior Counsel, strenuously pleaded to accept the solemn statements made by all the appellant advocates in the form

g ¹³ AIR 1957 SC 250

h ¹⁴ AIR 1955 SC 19 : 1955 Cri LJ 133 : (1955) 1 SCR 757

¹⁵ (1996) 7 SCC 99 : 1996 SCC (Cri) 181

¹⁰ (1991) 3 SCC 600 : 1991 SCC (Cri) 897

of affidavits dated 28-4-2011. Now, we are reproducing the affidavit filed before us by Mr O.P. Sharma (Appellant 1 herein):

“IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

IN

Criminal Appeals Nos. 1108-15 of 2004

In the matter of

O.P. Sharma & Ors.

.. Petitioners a

Versus

High Court of Punjab & Haryana

.. Respondent b

Affidavit

I, O.P. Sharma s/o late Shri M.R. Sharma aged about 61 years r/o 252, Sector 9, Faridabad, Haryana presently at New Delhi do hereby solemnly affirm and state as under: c

1. That the deponent is one of the appellants in the abovementioned appeals.

2. That the deponent has the highest and abiding faith in the institution of judiciary and cannot imagine saying or doing anything which would undermine the dignity and prestige of the institution. d

3. That the deponent hereby tenders unconditional apology before this Hon'ble Court for the incident which took place in the court at Faridabad out of which this contempt proceedings arise and further undertake to maintain a good behaviour in future.

4. That at the first available opportunity the unconditional apology and undertaking for maintaining good behaviour was filed before the learned Magistrate. e

sd/-

Deponent

Verification

I the abovenamed deponent do hereby verify that the contents of the above affidavit are true to the best of my knowledge. f

Verified at New Delhi on this 28th day of April, 2011.

sd/-

Deponent”

34. Similar affidavits have been filed by other appellants reiterating what they had stated before the High Court and the Magistrate concerned tendering unconditional apology for the incident which took place in the Court at Faridabad. They also assured this Court that they would maintain good behaviour in future. Though sub-section (1) of Section 12 of the Act enables the court to award simple imprisonment for a term which may extend to six months, the proviso empowers the court that the accused may be discharged or punishment awarded may be remitted on apology being made to the satisfaction of the court. In fact, Explanation to this section makes it g
h

clear that an apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

a 35. Considering the plea made by Mr Ram Jethmalani, learned Senior Counsel and President of the Supreme Court Bar Association, in tendering unconditional apology, recorded even at the initial stage before the High Court and before the Magistrate, Faridabad before whom the unwanted incident had occurred and the present affidavits filed before us once again expressing unconditional apology and regret with an undertaking that they b would maintain good behaviour in future and in view of the language used in the "proviso" and "Explanation" appended to Section 12(1) of the Act, we accept the affidavits filed by all the appellants.

36. Shri Satish Kumar, owner, publisher, printer and editor of *Majdoor Morcha* newspaper has also filed an affidavit before this Court similar to one by the other appellants. Considering the fact that the newspaper has merely published what had happened in the court, we are of the view that it would be just and fair to apply the same relief to him also. We reiterate that acceptance of an apology from a contemnor should only be a matter of exception and not that of a rule.

37. A court, be that of a Magistrate or the Supreme Court is sacrosanct. The integrity and sanctity of an institution which has bestowed upon itself the responsibility of dispensing justice is ought to be maintained. All the functionaries, be it advocates, Judges and the rest of the staff ought to act in accordance with morals and ethics.

Advocate's role and ethical standards

e 38. An advocate's duty is as important as that of a Judge. Advocates have a large responsibility towards the society. A client's relationship with his/her advocate is underlined by utmost trust. An advocate is expected to act with utmost sincerity and respect. In all professional functions, an advocate should be diligent and his conduct should also be diligent and should conform to the requirements of the law by which an advocate plays a vital role in the preservation of society and justice system. An advocate is under an obligation f to uphold the rule of law and ensure that the public justice system is enabled to function at its full potential. Any violation of the principles of professional ethics by an advocate is unfortunate and unacceptable. Ignoring even a minor violation/misconduct militates against the fundamental foundation of the public justice system.

g 39. An advocate should be dignified in his dealings to the court, to his fellow lawyers and to the litigants. He should have integrity in abundance and should never do anything that erodes his credibility. An advocate has a duty to enlighten and encourage the juniors in the profession. An ideal advocate should believe that the legal profession has an element of service also and associates with legal service activities. Most importantly, he should faithfully abide by the standards of professional conduct and etiquette prescribed by the h Bar Council of India in Chapter II, Part VI of the Bar Council of India Rules.

40. As a rule, an advocate being a member of the legal profession has a social duty to show the people a beacon of light by his conduct and actions rather than being adamant on an unwarranted and uncalled for issue. a

41. We hope and trust that the entire legal fraternity would set an example for other professionals by adhering to all the abovementioned principles. b

42. In the light of the above discussion and reasons which we have noted in the earlier paras and as an exception to the general rule, we accept the unconditional apology tendered in the form of affidavits in terms of the proviso to Section 12(1) of the Act and discharge all the appellants. b

43. All the appeals are disposed of on the above terms.

(2011) 6 Supreme Court Cases 102

(BEFORE R.V. RAVEENDRAN AND A.K. PATNAIK, JJ.) c

DHARMATMA SINGH .. Appellant;

Versus

HARMINDER SINGH AND OTHERS .. Respondents.

Criminal Appeal No. 1126 of 2011[†], decided on May 10, 2011

A. Criminal Procedure Code, 1973 — Ss. 482, 173 and 190 — Inherent powers of High Court under S. 482 — Exercise of — Scope — Matters specifically covered by other provisions of CrPC — Held, S. 482 saves inherent powers of High Court to make such orders as may be necessary to give effect to any order under CrPC or to prevent abuse of process of any court or otherwise to secure ends of justice — However, reiterated, such inherent power cannot be exercised in regard to matters specifically covered by other provisions of CrPC and, therefore, where Magistrate has not yet applied his mind under S. 190 to merits of reports under S. 173 and passed an order, High Court ought not to consider a request for quashing the proceedings (Paras 22 and 23) d e

R.P. Kapur v. State of Punjab, AIR 1960 SC 866 : 1960 Cri LJ 1239, *relied on*

B. Criminal Procedure Code, 1973 — Ss. 482, 173 and 190 — Interpretation of Ss. 173 and 190 — Exercise of power by High Court under S. 482, to quash criminal proceedings at interlocutory stage — Impropriety of — Dispute related to erecting walls on plot of land, led to appellant and respondent parties allegedly attacking each other, resulting in injuries to both — Case registered by them against each other and criminal proceedings initiated against both — But further investigation recommended dropping of criminal proceedings against respondents — However, before Judicial Magistrate could apply his mind and take a decision on original challan under S. 173(2) against respondents and on report of further investigation under S. 173(8) recommending dropping of criminal proceedings against them, respondents filed petition under S. 482, and High Court, after considering such further report, quashed criminal f g h

[†] Arising out of SLP (Crl.) No. 3391 of 2008. From the Judgment and Order dated 25-3-2008 of the High Court of Punjab and Haryana at Chandigarh in Crl. Misc. No. 10664 of 2007