LEX/BDAD/0015/2010

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IN THE SUPREME COURT OF BANGLADESH
(APPELLATE DIVISION)

Contempt Petition No. 5 of 2010

Decided On: 19.08.2010

Md. Riaz Uddin Khan, Advocate and another **Vs.** Mahmudur Rahman and others

Hon'ble Judges/Coram:
Mohammad Fazlul Karim, C.J., Md. Abdul Matin, Shah Abu Nayeem Mominur Rahman, A.B.M. Khairul Haque, Md. Muzammel Hossain and Surendra Kumar Sinha, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: MK Rahman, Senior Advocate, instructed by Mrs. Sufia Khatun, Advocate-on-Record and Mahbubey Alam, Attorney General

For Respondents/Defendant: Mahmudur Rahman, in person - For Respondent No. 1, Rafique-ul-Huq, Senior Advocate with Abdur Razzak, Senior Advocate, instructed by Syed Mahbubur Rahman, Advocate-on-Record - For Respondent Nos. 2, 3 & 5 and Moudud Ahmed, Senior Advocate, instructed by Taufique Hossain, Advocate-on-Record - For Respondent No. 4

JUDGMENT

Mohammad Fazlul Karim, C.J.

1. I agree with the judgment of my learned brother Justice Surendra Kumar Sinha.

Md. Abdul Matin, J: I agree with the judgment of my learned brother Justice Surendra Kumar Sinha.

Shah Abu Nayeem Mominur Rahman, J: I have gone through the main judgment of my learned brother Justice Surendra Kumar Sinha.

The facts and the issues involved in the contempt proceeding have been discussed in detail in the main judgment. The discussion on the point of contempt has been elaborately discussed with which I am in respectful agreement. Some observations have been made on 'investigation' with which also I am in respectful agreement. However, the related orders involved in those cases were in fact the orders passed in granting 'remand'. The issues related to 'remand' orders have been decided by the High Court Division in disposing of the Writ Petition No. 3806 of 1998 (Bangladesh Legal Aid and Services Trust (BLAST) and others Versus Bangladesh and others), making specific recommendations for compliance in passing order for 'investigation and remand' and the said decision (reported in LEX/BDHC/0070/2003 : 55 DLR 363) is now under challenge before the Hon'ble Appellate Division. The said judgment and order passed by the High Court Division, is in force, since not stayed by the Appellate Division. In the premises the recommendations of the High Court Division are binding and have to be followed strictly and is subject to decision on the issue of 'remand' by the Appellate Division and thus non compliance of the said recommendations, at the present, liable to be proceeded with in accordance with law.

2. In the instant case, the respondent-contemnor nos. 1, 4 and 5 have been found to be guilty of contempt as has been detailed in the main judgment.

3. It appears that the respondent nos. 4 and 5 ultimately submitted themselves to the mercy of the Court unconditionally though not at their first appearance and it appeared that they were not properly advised by their learned advocates as to the contempt proceeding procedure. The respondent nos. 4 and 5 have realised that they have committed contempt inasmuch as the presentation of the report-in-issue in the "Daily Newspaper" was made in a manner which tend to misled and confuse the people in general about the impartiality and independence of the highest Court of the country and the message given by such "presentation of the report-in-issue" was that the highest Court of the country passed the "orders in reference" at the dictation of the learned Attorney General or his officers and thereby questioned the impartiality and independence of the highest Court of the Country, which is dangerous for the stability of the society and in such circumstances, the Court is to shield itself from such acts and omissions with strictness. Such strictness has been approved and followed although by the Courts of law whenever the integrity, impartiality and independence of judiciary is tried to be questioned by any person or any quarter, directly or indirectly.

4. Considering the facts, circumstances and graveness of the case and the fact of unconditional surrenders of the contemnor-respondent nos. 4 and 5 as made, as well as the offence committed by them appeared to be for the first time. I am inclined for leniency in awarding sentence. Accordingly, I agreed to the sentence awarded to the contemnor-respondent no. 5, Alhaj Md. Hashmat Ali in the form of paying fine of Tk. 10,000 (Taka ten thousand) only, in default thereto to suffer simple imprisonment for 7(seven) days, and proposed for similar sentence for the contemnor-respondent No. 4, Waliullah Noman, the author of the report-in-issue.

5. So far relates to the contemnor-respondent No. 1, Mahmudur Rahman, I proposed for simple imprisonment for 7 (seven) days and fine of Tk. 10,000 (Taka ten thousand), in default to suffer further simple imprisonment for 3(three) days having regard to the fact that he committed the offence of contempt for the first time, so far the record shows. I am inclined for token punishment.

6. It has been held in the main judgment that the disclosure of true facts cannot be taken as a defence against the act of contempt. If presentation of facts is made in such a manner, so as to lead or provoke someone to disrespect or shake confidence on any Court of law, not to speak of the highest Court of the Country, such presentation is an act of contempt and the same has been approved not only by all Superior Courts of the sub-continent but all Courts of law of the civilized world. This is the case in the instant proceeding.

7. In the instant case the contempt has been made, apart from disclosing the stories in a twisted manner, by presenting the same in a "National Daily Newspaper" in a manner with disrespectful and indecent language, scandalizing the highest Court of the country, which apparently tended to confuse the mind of the public in general to shake their faith, confidence and respect upon the judiciary at large. The contemnor-respondent No. 1 made his submissions before the Court in person and it appeared that he failed to appreciate the graveness of the indecent language used, the way and manner in which, the report-in-issue has been published and presented to the public through his newspaper and has failed in his duty, responsibility and obligation to preserve the impartiality and independence of the highest Court of the Country. His submissions before the Court was also appeared to be not proper on the point, inasmuch as, no

positive submission was made as to the way and manner as well as the language used in the report-in-issue as has been presented and published.

8. In such circumstances, apart from the reasons given in the main judgment, I found the contemnor respondent no. 1, Mahmudur Rahman to be guilty of contempt, having regard to his demeanour and attitude shown before the Court.

9. However, I could not agree with the quantum of punishment proposed by my learned brothers and in the circumstances, I proposed the contemnor No. 1, Mahmudur Rahman, who defended himself in person, reiterating that the true and genuine facts have been stated in the report and that disclosure of such facts cannot be treated as offence, for token punishment. The said contemner also failed to appreciate that the author of the report, the respondent no. 4, Waliullah Noman, admitted his ignorance and mistake in preparing the said report-in-issue and thereby committed the offence of the contempt and accordingly, surrendered himself unconditionally with prayer for mercy of the Court by swearing an affidavit. The publication of such contemptuous report is also an act of contempt and as Editor-in-Charge of the "Daily Newspaper" the contemner-respondent no. 1 is liable for the act of contempt.

ABM Khairul Haque, J: I agree with the judgment of my learned brother Justice Surendra Kumar Sinha.

Md. Muzammel Hossain, J: I agree with the judgment of my learned brother Justice Surendra Kumar Sinha.

SK Sinha, J: Contempt, in the legal acceptability of the term, primarily signifies disrespect to that which is entitled to legal regard; but as a wrong purely moral, or affecting an object not possessing a legal status, it has in the eye of the law no existence (Oswald, law of contempt of court 3rd Ed, page-1). In its origin, all legal contempt will be found to consist in an offence more or less direct against the Sovereign himself as the fountainhead of law and justice, or against the palace, where injustice was administered. "The power which the Courts in West minister Hall have of vindicating their own authority, is coeval with their first foundation and institution; it is a necessary incident to every Court of justice, whether of record or not, to fine and imprison for a contempt to the Court, acted in the face of it. And the issuing of attachments by the Supreme Court of Justice in Westminister Hall, for contempts out of Court, stands upon the same immemorial usage, as supports the whole fabric of the Common Law; it is much the 'Lex terrae' and within the exception of Magna Carta, as the issuing of any other legal process whatsoever"(Wilmot, J. in sparks vs. Martyn (1669), 1 vent. 1). These observations are followed by Cockburn, CJ "In the case of superior Courts at Westminister, which represent the one Supreme Court of the land, this power was coeval with their original constitution, and has always been exercised by them. These Courts were originally carved out of the one Supreme Court, and are all divisions of the aula regis, where it is said the king in person dispensed justice, and their power of committing for contempt was an emanation of the royal authority, for any contempt of the Court would be a contempt of the sovereign"(RV Lefroy, (1873) L.R. 8 QB 134). Wilmot's, judgment has been received with approval in so many subsequent cases that it must now be taken to have been practically determined that summary process of committal for contempt, whether in or out of Court, existed from the earliest times.

10. The power to punish for contempt has been vested in the Judges not for their personal protection only, but for that of the public, whose interest it is that decency and

decorum should be preserved in Courts of Justice. Peacock, CJ in Re. Abdool, 8 WR Cr 31 observed: "there can be no doubt that every Court of Record has the power of summarily punishing the contempt". It is argued that it is a special jurisdiction which is inherent in all Courts of Record. The Charter of 1774 which established the Supreme Court of Bengal, while providing in clause 4 that its Judges should have the same jurisdiction as the Court of Kings Bench in England, also expressly stated in clause 21 that the Court is empowered to punish for contempt. When the Supreme Court of Bengal was abolished, the High Courts Act, 1861 continued those powers to the chartered High Courts by sections 9 and 11 and clause 2 of the Letters Patent of the year 1865 and continued them as Courts of Record. Despite this, in 1883 the Privy Council did not trace this particular jurisdiction of the Calcutta (Kolkata) High Court to clause 15 of its Charter but to the Common Law of England-it is simply this that "the jurisdiction to punish for contempt is something inherent in every Court of Record".

11. In Sukhdev Singh (Sukhdev Singh vs. Teja Singh,MANU/SC/0134/1953 : AIR 1954 SC 186) while approving the views of Peacock, CJ, and Bose, J speaking for the Court argued:

> We have omitted references to the Bombay and Madras decisions after 1883 because the Judicial Committee settled the powers of the three Chartered High Courts. What we are at pains to show is that, apart from the Chartered High Courts, practically every other High Court in India has exercised the jurisdiction and where its authority has been challenged each has held that it is a jurisdiction inherent in a Court of Record from the very nature of the Court itself. This is important when we come to construe the later legislation because by this time it was judicially accepted throughout India that the jurisdiction was a special one inherent in the very nature of the Court.
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> The only discordant note that we know of was struck in- 'Emperor vs. BG Horniman', : MANU/UP/0060/1943 : AIR 1945 All 1 p. 4 (M), where a Division Bench of the Allahabad High Court held that after the Act of 1926 the offence of contempt was punishable under an Indian Penal statute and so the Code of Criminal procedure applied because of the words "any other law" in S. 5. In our opinion, this: is wrong because the Act of 1926 does not confer any jurisdiction and does not create the offence. It merely limits the amount of the punishment which can be given and removes a certain doubt. Accordingly, the jurisdiction to initiate the proceedings and take seisin of the matter is as before.

12. Of contempts committed in the face of the Court the most gross are those which involve actual or threatened violence to the person of the presiding Judge, or the officers of the Court in attendance. No one is above the law notwithstanding of his power, and for achieving the establishment of the rule of law, the Constitution has assigned the task to the judiciary in the country. In this connection it will be profitable if we reproduce Articles 104 and 108 of our Constitution.

> **104.**-The Appellate Division shall have power to issue such directions, orders, decrees or writs as may be necessary for doing complete justice in any cause or matter pending before it, including orders for the purpose of securing the attendance of any person or the discovery or production of any document.
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> **108.**-The Supreme Court shall be a Court of record and shall have all the powers of such a Court including the power subject to law to make an order for the investigation of or punishment for any contempt of itself.

Article 108 refers the expression 'Court of Record'. Our Constitution has not defined what is meant by 'Court of Record'. In Halsbury's Laws of England, 3rd Edition at page 346, it has been described as:

> Courts of record. Another manner of division is into Courts of record and Courts not of record. Certain Courts are expressly declared by statute to be Courts of record. In the case of Courts not expressly declared to be Courts of record, the answer to the question whether a Court is a Court of record seems to depend in general upon whether it has power to fine or imprison, by statute or otherwise, for contempt of itself or other substantive offences if it has such power, it seems that it is a Court of record. In the case of criminal Courts, this seems to be the only test. In the case of civil Courts, it has been said that Courts of record at common law are such Courts as have power to hear and determine, according to the course of common law, actions in which the debt, damages or value of the property claimed is 40s. or above. In the case of civil Courts, the further distinction formerly existed between Courts of record and Courts not of record that in the case of the former, where a judgment was alleged to be wrong a writ of error lay whereas in the case of the latter the remedy was by way of a writ of false judgment.
>
> All Courts of record, with the exception of the Courts of the countries palatine, are Courts of the Queen, even though a subject or corporation has the benefit of the Court, as in the case of borough and city Courts of record. The proceedings of a Court of record preserved in its archives are called records, and are conclusive evidence of that which is recorded therein.

13. Corpus Juris explains the expression as follows:

> A Court of Record has been defined as a Court where the acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony, and which has power to fine and imprison for contempt of its authority; a Court which is bound to keep a record of its proceedings that may fine or imprison; a Court whose proceedings are enrolled for a perpetual memorial or testimony, which rolls are called records of the Court, and are of such high and super imminent authority that their truth is not to be called in question; a judicial organised tribunal having attributes and exercising functions independently of the person of the Magistrate designated generally to hold it, and proceeding according to the course of common law; and a Court having a seal. Courts may be designated by statute as Courts of Record. Courts not of Record are those of inferior dignity which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded; and all Courts which do not come within the definition of a Court of Record are Courts of Record.

14. Wharton's Law Lexicon explains a Court of Record means:

> Record, Courts of, those whose judicial acts and proceedings are enrolled on parchment, for a perpetual memorial and testimony; which rolls are called the Records of the Court; and are of such high and supereminent authority that their truth is not to be called in question. Courts of Record are of two classes- Superior and Inferior. Superior Courts of Record include the House of Lords, the Judicial Committee, the Court of Appeal, the High Court, and a few others. The Mayor's Court of London, the Country Courts, Coroner's Courts, and other are Inferior Courts of Record, of which the Country Courts are the most

important. Every superior Court of record has authority to fine and imprison for contempt of its authority; an inferior Court of record can only commit for contempts committed in open Court, in facie curice.

15. According to Jowitt, Dictionary of English Law, a Court of Record means;

A Court whereof the acts and judicial proceedings are enrolled for a perpetual memory and testimony, and which has power to fine and imprison for contempt of its authority.

16. While dealing with the jurisdiction and powers of a Court of Record in their treatise on the Law of Contempt, Nigel Lowe and Brenda Sufrin explains;

The contempt jurisdiction of Courts of record forms part of their inherent jurisdiction.

The power that Courts of record enjoy to punish contempts is part of their inherent jurisdiction. The juridical basis of the inherent jurisdiction has been well described by Master Jacob as being:

> the authority of the judiciary to uphold, to protect and to fulfill the judicial function of administering justice according to law in a regular, orderly and effective manner.

Such a power is not derived from statute nor truly from the common law but instead flows from the very concept of a Court of law.'

.....

All Courts of record have an inherent jurisdiction to punish contempts committed in their-face but the inherent power to punish contempts committed outside the Court resides exclusively in superior Courts of record.

.....

Superior Courts of record have an inherent superintendent jurisdiction to punish contempts committed in connection with proceedings before inferior Courts.'

17. Lord Atkin in Andre Paul and Terence Ambard (Andre Paul and Terence Ambard vs. The Attorney General of Trinidal and Tobago, AIR 1936 PC 141) approved the views of Lord Cranworth in (1852)8 Moo PC 47 as under:

We are of opinion that it is a Court of Record, and that the law must be considered the same there as in this country; and therefore that the orders made by the Court in the exercise of its discretion, imposing these fines for contempts, are conclusive, and cannot be questioned by another Court; and we do not consider that there is any remedy by petition to the Judicial Committee to review the propriety of such orders.

18. The laws laid down by the great English Judges will doubtless continue to mould and influence the decisions of this Court. This is inevitable, because the roots of our statute law and legal forms lie deeply enmeshed in the jurisprudence of England, and the decisions of the English Judges.

19. In Pritam Pal (Pritom Pal vs. High Court of Madya Pradesh,: MANU/SC/0169/1992 :

AIR 1992 SC 904) the Supreme Court spoke:

> As rightly pointed out by the High Court, these contentions in our opinion do not merit any consideration since very High Court which is a Court of Record is vested with 'all powers' 36 Advocate, Riaz Uddin Khan vs. Mahmudur Rahman (SK Sinha J) 63 DLR (AD) (2011) of such Court including the power to punish for contempt of itself and has inherent jurisdiction and inalienable right to uphold its dignity and authority.
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> The View expressed in Sukhdev Singh Sodhi, (MANU/SC/0134/1953 : AIR 1954 SC 186) and followed in RL Kapur, (AIR 1972 SC 858), has been referred with approval in a recent decision in Delhi Judicial Service Association vs. State of Gujarat, : MANU/SC/0478/1991 : (1991) 4 SCC 406: (1991 AIR SCW 2419), holding that the view of this Court in Sukhdev Singh Sodhi is "that even after the codification of the law of contempt in India, the High Court's jurisdiction as a Court of Record to initiate proceedings and take seisin of the matter remained unaffected by the Contempt of Courts Act, 1926.

20. The expressions used in Articles 129 and 215 of the Constitution of India and those in Article 108 of our Constitution are in verbatim. In the context of Indian provisions the Supreme Court of India in S.K. Sarkar (SK Sarkar vs. Vinay Chandra Misra,: MANU/SC/0506/1980 : AIR 1981 SC 723) observed:

> Articles 129 and 215 preserve all the powers of the Supreme Court and the High Court, respectively, as a Court of Record which include the power to punish the contempt of itself. As pointed out by this Court in Mohd. Ikram Hussain vs. The State of UP : MANU/SC/0241/1963 : AIR 1964 SC 1625, there are no curbs on the power of the High Court to punish for contempt of itself except those contained in the Contempt of Courts Act. Articles 129 and 215 do not define as to what constitutes contempt of Court. Parliament has, by virtue of the aforesaid Entries in List I and List III of the Seventh Schedule, power to define and limit the powers of the Courts in punishing contempt of Court and to regulate their procedure in relation thereto. Indeed, this is what is stated in the Preamble of the Act of 1971.

21. On a combined reading of Articles 129 and 142 of the Constitution of India in Supreme Court Bar Association Case (Supreme Court Bar Association vs. Union of India, : MANU/SC/0291/1998 : AIR 1998 SC 1895), the Supreme Court of India argued that the power to punish for contempt is inherent in a Court of Record and no act of Parliament can take away that inherent jurisdiction to punish for contempt and the Parliament's Power of legislation on the subject cannot, be exercised so as to stultify the status and dignity of the Superior Courts, though such legislation may serve as a guide for the determination of the nature of punishment. It is, thus, as argued by Dr. Anand, J that:

> the power of the Court in respect of investigation or Punishment of any contempt including contempt of itself, is expressly made "subject to the provisions of any law made in this behalf by the Parliament" by Article 142(2). However, the power to punish for contempt being inherent in a Court of Record it follows that no act of Parliament can take away that inherent jurisdiction of the Court of Record to punish for contempt and the Parliament's power of legislation on the subject cannot, therefore, be so exercised as to stultify the status and dignity of the Supreme Court and/or the High Courts, though such a

> legislation may serve as a guide for the determination of the nature of punishment which this Court may impose in the case of established contempt. Parliament has not enacted any law dealing with the powers of the Supreme Court with regard to investigation and punishment of contempt of itself, (we shall refer to section 15 of the Contempt of Courts Act, 1971, later on) and this Court, therefore, exercises the power to investigate and punish for contempt of itself by virtue of the powers vested in it under Articles 129 and 142(2) of the Constitution of India.

22. It may be mentioned here that the pith and substance of what provided in Article 142 of the Indian Constitution is the combination of the provisions contained in Articles 104, 108 and 111 of our Constitution. It was observed "Whether or not there was an intention to interfere with the administration of justice is relevant to penalty, not to guilt" in Reg vs. Odham's Press ltd, ex parte AG (1957)1 QB 73. This means that an intention to interfere with the proper administration of justice is an essential ingredient of the offence of contempt.

23. In Morris J (Morris vs. The Crown office (1970) 1 All ER 1079), Lord Justice Salmor Spoke:

> The sole purpose of proceedings for contempt is to give our Courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented.

Chinappa Reddy, J speaking for the Court in Advocate General's case (Advocate-General, Behar vs. MP Khair Industries: MANU/SC/0504/1980 : AIR 1980 SC 946), citing the cases of Offut vs. US, (1954)348 US 11 and Jennison vs. Baker, (1972)1 ALL ER 997 stated thus:

> .....it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, because, unless justice is so administered, there is the peril of all rights and liberties perishing. The Court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with the power to commit for Contempt of Court, not in order to protect the dignity of the Court against insult or injury as the expression "Contempt of Court" may seem to suggest, but to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, observed or interfered with.

24. Krishan Iyer, J in his separate Judgment in re S Mulgaokar (In re: S. Mulgao Kar, : MANU/SC/0067/1977 : AIR 1978 SC 727), while giving the broad guidelines in taking punitive action in the matter of Contempt of Court has stated:

> .... if the Court considers the attack on the judge or judges scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must, in the name of public interest and public justice, strike a blow on him who challenges the supremacy of the rule of law by fouling its source and stream.

25. These arguments have been approved in a latter case in Pritom Pal (Supra). In

Asharam (Asharam M. Jain vs. AT Gupta,: MANU/SC/0076/1983 : AIR 1983 SC 1151), Chinnappa Reddy, J speaking for the Court said:

> The strains and mortification of litigation cannot be allowed to lead litigants to tarnish, terrorise and destroy the system of administration of justice by vilification of Judges. It is not that judges need be protected; judges may well take care of themselves. It is the right and interest of the public in the due administration of justice that has to be protected.

26. Reference may be made to another decision of the Supreme Court in MB Sanghi (MB Sanghi vs. High Court of Punjab and Haryana, AIR 1991 SC), in which AM Ahmadi J while agreeing with the views with SC Agrawal, J added that 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 concerned judge 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 of taming a Judge into submission to secure a desired order. Such cases raise larger issues toughing the independence of not only the concerned Judge 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. Learned Judge concluded his speech with the following words:

> It is high time it is realised 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.

27. To speak generally, contempt of Court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties litigant or their witnesses during the litigation. Thus, there is no doubt that the superior Court enjoyed the jurisdiction before coming into operation of any law under the common law of England. It was an inherent jurisdiction authorising the Courts of Record to deal with effectively with all that had a tendency to hinder the normal course of justice or affect the dignity of the Court. The reason for the existence of this jurisdiction was that unless Courts were armed with such a jurisdiction they could not function properly. Proceedings for contempt of Court are an exception to the general rule that a Judge should not hear any matter in which he has interest in the decision on it. There are large number of precedents where the same Judge whose contempt was committed heard and decided the matter. The very argument that a Judge cannot hear a case about his own contempt is without any substance and, as such, the next corollary which is deduced from it that the concerned Judge could not give instructions to the Attorney General must equally fall to the ground.

28. It is now settled that the Superior Court has power to commit for contempt. The usual criminal process to punish contempt was found to be cumbrous and slow, and the Courts at an uncertain date assumed jurisdiction themselves to punish the offence summarily so that cases may be fairly heard, and administration of justice not interfered with. A Court of justice without power to vindicate its own dignity, to enforce obedience

to its mandates, to protect its officers, or to shield those who are entrusted to its care, would be an anomaly which could not be permitted to exist in any civilized community. Without such protection Courts of justice would soon lose their hold upon the public respect, and the maintenance of law and order would be rendered impossible. The summary power of punishing contempt has been given to Courts; "to keep a blaze of glory around them, and to deter people from attempting to render them contemptible in the eyes of the public" as argued in R vs. Almon (R. vs Almon (1765), Wilm at page-270).

29. The powers are given to the Judges to keep the course of justice free; powers of great importance to society, for by the exercise of them law and order prevail; those who are interested in wrong are shown that the law is irresistible. It is this obstruction which is called in law of contempt, and it has nothing to do with personal feelings to have any weight in the matter.

30. In re: Johnson (In re: Johnson, (1887) 20 QB 68), it has been argued:

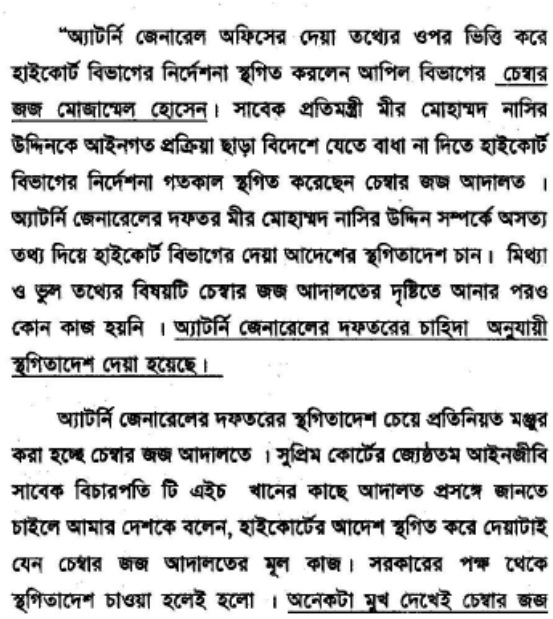
> The law has armed the High Court of Justices with the power and imposed on it the duty to preventing brevi manu and by summary proceedings any attempt to interfere with the administration of justice. It is on that ground, and not on any exaggerated notion of the dignity of individuals, that insults to Judges are not allowed. It is on the same ground that insults to witnesses or to jurymen are not allowed. The principle is that those who have duties to discharge in a Court of justice are protected by the law, and shielded on their way to the discharge of such duties, while discharging them, and on their return there from, in order that such persons may safely have resort to Courts of justice.

31. Cornlius, CJ in Edward Snelson (Edward Snelson vs. Judges HC Lahore, 16 DLR (SC) 535) extensively dealt with the difference between a charge of criminal offence against a person and libel. It is said that the matter which is in the nature of defamatory is presumed to be false until contrary is shown to be the truth. Slander is defamation by words-it is actionable where the matter is calculated to disparage a person in regard to his office but in case of a person charged with a criminal offence the burden to prove the charge is upon the accuser to prove the accusation. The case is thus somewhat different from that of an accused person under the criminal law which presumes his innocence, and places the entire burden upon the accuser to establish his accusation. Here, the words by themselves place the onus upon the person charged, provided that they are prima facie defamatory, or special circumstances are shown, which give them a disparaging character. It can be easily seen that where the disparagement is of a High Court, this principle would require to be applied with even greater strictness than in the case of a private individual. That is because of the paramount importance which must be given by every organ of a civilized Government, in which the administration of justice is retained as an integral part of the machinery, to secure the Courts, and in particular the superior Courts of Record from all attempts to interfere with the administration of justice. Cornelieus, CJ concluded his argument as under:

> The power of committal for contempt is given to such superior Courts in order that they may swiftly and summarily perform one of their most important duties which is to protect themselves against wilful disregard or disobedience of their authority, by visiting with prompt punishment any conduct which tends to bring their authority and the administration of justice into scorn or disregard. It is evident that a Court of justice which has no power to vindicate its dignity or which having the power fails to perform the duty of vindicating its dignity

would swiftly lose all hold upon the public respect and in consequence the maintenance of law and order through the agency of the Courts of justice would be rendered impossible. The dignity and authority of the Courts has a link with the supremacy and majesty of the law. Any conduct which is calculated to diminish that dignity or authority is a criminal contempt which a Court is under duty to punish. The Courts of justice are a creation of the sovereign authority, but their mainstay rests in the public confidence, and anything which is calculated to withdraw the public confidence from them has the character of a libel to be visited by action in contempt.

32. Now turning to the case in hand, pursuant to a petition for drawing up contempt of this Court filed by two learned members of the Supreme Court Bar Association against the respondents who are respectively the Editor-in-Charge, Deputy Editor, News Editor, Staff Correspondent and Publisher of the daily "Amar Desh' for publishing a news under the caption 'চেম্বার মানেই সরকার পক্ষে স্টে' in the issue of 21st April, 2010, this Court issued notices upon them to show cause as to why they should not be prosecuted and punished for contempt for committing gross contempt of this Court by interfering in the course of administration of justice by scandalizing the learned Judge in Chamber. It is stated that the said news is highly contumacious and objectionable, that after going through the news, a man of ordinary prudence will get an impression that this Court are not passing order(s) of stay independently and judiciously but as per wish of the Attorney General's Office. It will be appropriate if we reproduce the news in extenso:



"অ্যাটর্নি জেনারেল অফিসের দেয়া তথ্যের ওপর ভিত্তি করে হাইকোর্ট বিভাগের নির্দেশনা স্থগিত করলেন আপিল বিভাগের চেম্বার জজ মোজাম্মেল হোসেন। সাবেক প্রতিমন্ত্রী মীর মোহাম্মদ নাসির উদ্দিনকে আইনগত প্রক্রিয়া ছাড়া বিদেশে যেতে বাধা না দিতে হাইকোর্ট বিভাগের নির্দেশনা গতকাল স্থগিত করেছেন চেম্বার জজ আদালত। অ্যাটর্নি জেনারেলের দফতর মীর মোহাম্মদ নাসির উদ্দিন সম্পর্কে অসত্য তথ্য দিয়ে হাইকোর্ট বিভাগের দেয়া আদেশের স্থগিতাদেশ চান। মিথ্যা ও ভুল তথ্যের বিষয়টি চেম্বার জজ আদালতের দৃষ্টিতে আনার পরও কোন কাজ হয়নি। অ্যাটর্নি জেনারেলের দফতরের চাহিদা অনুযায়ী স্থগিতাদেশ দেয়া হয়েছে।

অ্যাটর্নি জেনারেলের দফতরের স্থগিতাদেশ চেয়ে প্রতিনিয়ত মঞ্জুর করা হচ্ছে চেম্বার জজ আদালতে। সুপ্রিম কোর্টের জ্যেষ্ঠতম আইনজীবি সাবেক বিচারপতি টি এইচ খানের কাছে আদালত প্রসঙ্গে জানতে চাইলে আমার দেশকে বলেন, হাইকোর্টের আদেশ স্থগিত করে দেয়াটাই যেন চেম্বার জজ আদালতের মূল কাজ। সরকারের পক্ষ থেকে স্থগিতাদেশ চাওয়া হলেই হলো। অনেকটা মুখ দেখেই চেম্বার জজ

আদালতে ইদানিং স্থগিতাদেশ দেয়া হচ্ছে বলে মন্তব্য করেন প্রবীণতম এই আইনজীবি । আদালতে ভুল বা মিথ্যা তথ্য দিয়ে স্থগিতাদেশ প্রসঙ্গে জানতে চাইলে সুপ্রিমকোর্ট বার অ্যাসোসিয়েশনের সভাপতি খন্দকার মাহবুব হোসেন আমার দেশকে বলেন, কেউ আদালতকে মিথ্যা বা ভুল তথ্য দিলে বাংলাদেশ বার কাউন্সিল সনদ বাতিল করে দিতে পারে। এ বিষয়ে বার কাউন্সিল ট্রাইবুনালের এখতিয়ার রয়েছে সনদ বাতিল করে দেয়ার। তিনি বলেন আদালতে ভুল বা মিথ্যা তথ্যের ভিত্তিতে কোনো কিছু হতে পারে না । সত্য উদঘাটন করে বিচার করাই হচ্ছে আদালতের দায়িত্ব । সুতরাং মিথ্যা বা ভুল তথ্যের ওপর ভিত্তি করে কোনো আদেশ হতে পারে না।

এদিকে খোঁজ নিয়ে দেখা গেছে, হাইকোর্টের নির্দেশনা স্থগিতাদেশ পেয়ে অ্যাটর্নি জেনারেলের দফতর থেকে দায়ের করা আবেদনে বলা হয় মীর মোহাম্মদ নাসির উদ্দিন চারদলীয় জোট সরকারের আমলে ছয় বছর সৌদি আরবে রাষ্ট্রদূত হিসেবে দায়িত্ব পালন করেন । এতে সৌদি আরবসহ মধ্যপ্রাচ্যের দেশগুলোর সংগে তার কূটনৈতিক সম্পর্ক রয়েছে । আবেদনে আরও বলা হয়, মীর মোহাম্মদ নাসির উদ্দিনকে সৌদি আরব যেতে দেয়া হলে তিনি যুদ্ধাপরাধ ট্রাইব্যুনালের বিরুদ্ধে প্রচারণা চালাবেন । জবাবে মীর মোহাম্মদ নাসির উদ্দিন বলেন, আদালতকে জানানো হয়েছে চারদলীয় জোট সরকারের সময় তিনি কখনও কোনো দেশের রাষ্ট্রদূত ছিলেন না । তখন তিনি বাংলাদেশ সরকারের মন্ত্রী ছিলেন। চারদলীয় জোট সরকারের আমলে তিনি সৌদি আরবে রাষ্ট্রদূত ছিলেন বলে অ্যটর্নি জেনারেলের দফতর থেকে দেয়া তথ্য সম্পূর্ণ অসত্য বলে উল্লেখ করেন তিনি । মীর নাসির বলেন, চেম্বার জজ আদালতকে জানানো হয়েছে, তিনি ১৯৯৫ সালের ২৩ ফেব্রুয়ারী থেকে ১৯৯৬ সালের ২৩ জুন পর্যন্ত সৌদি আরবে রাষ্ট্রদুত ছিলেন । তখন জামায়াতে ইসলামী ও আওয়ামী লীগ একসংগে তৎকালীন বি এন পি সরকারের বিরুদ্ধে আন্দোলন করেছিল। তিনি বলেন, মাত্র সোয়া বছর তিনি সৌদি আরবে রাষ্ট্রদূত ছিলেন ১৯৯৫ থেকে ১৯৯৬ সালের উল্লেখিত তারিখ পর্যন্ত। ১৯৯৬ সালের ২৩ শে জুন আওয়ামী লীগ সরকার ক্ষমতা আরোহণের দিনই তাকে সেখান থেকে প্রত্যাহার করা হয় । সুতরাং এসব বিষয়ে সরকারের ভালো জানা থাকার কথা। চারদলীয় জোট সরকারের আমলে কখনও তিনি রাষ্ট্রদূত ছিলেনা না এবং কখনও তিনি ৬ বছর সৌদি আরবে ছিলেন না । তার বক্তব্য আমলে না নিয়ে অ্যাটর্নি জেনারেল এর দফতরের অসত্য তথ্যকে আমলে নিয়ে চেম্বার জজ আদালত হাইকোর্ট বিভাগের আদেশ স্থগিত করে বলে জানান মীর মোহাম্মদ নাসির উদ্দিন। তিনি জানান, অ্যাটর্নি জেনারেলের দফতরের আবেদনে হাইকোর্ট বিভাগের নির্দেশনার কিছু বিষয়কেও গোপন করা হয়েছে। হাইকোর্ট বিভাগের নির্দেশনায় বলা হয়েছিল, আইনগত প্রক্রিয়া ছাড়া বিদেশে যেতে বাধা না দেয়ার জন্য। অথচ অ্যাটর্নি জেনারেলের দফতর থেকে চেম্বার জজের কাছে দায়ের

করা আবেদনে আইনগত প্রক্রিয়ার বিষয়টি উল্লেখ না করে গোপন করা হয়েছে। এসব ভুল বা মিথ্যা তথ্য চেম্বার জজের দৃষ্টিতে আনার পরও কোনো কাজ হয়নি বলে জানান তিনি। গত ১৫ এপ্রিল তিনি সৌদি আরব যাওয়ার জন্য বিমানবন্দরে যান । সেখানে তাকে সাড়ে ৩ ঘন্টা বসিয়ে রাখে ইমিগ্রেশন পুলিশ । তাকে জানানো হয় ওপরের ক্লিয়ারেন্স না থাকায় তাকে যেতে দেয়া যাচ্ছে না । সৌদি আরবে তার স্ত্রী কন্যা ও বোনের কবর রয়েছে। ওমরা হজ পালন, রাসুল (সাঃ) এর রওজা জিয়ারত ও তার স্ত্রী , কন্যা ও বোনের কবর জিয়ারত করার কথা ছিল । এজন্য তাকে এক মাসের ভিসা দিয়েছিল সৌদি দূতাবাস। এতে সংক্ষুব্ধ হয়ে তিনি রিট আবেদন করেন।

বিদেশে যেতে বাধা দেয়ার বৈধত্য চ্যালেঞ্জ করে দায়ের করা এক রিট আবেদনের প্রেক্ষিতে গত ১৮ এপ্রিল হাইকোর্ট বিভাগের একটি বেঞ্চ আইনগত প্রক্রিয়া ছাড়া মীর মোহাম্মদ নাসির উদ্দিনকে সৌদি আরব যেতে বাধা না দেয়ার নির্দেশ দেয় । এই নির্দেশের স্থগিতাদেশ চেয়ে অ্যাটর্নি জেনারেলের দফতর থেকে আবেদন করা হয় চেম্বার জজ আদালতে । গতকাল চেম্বার জজ বিচারপতি মোজাম্মেল হোসেনের আদালতে শুনানি শেষে হাইকোর্ট বিভাগের নির্দেশনা ২৫ এপ্রিল পর্যন্ত স্থগিত রাখার নির্দেশ দেয়া হয়। একই সংগে অ্যাটর্নি জেনারেলের দফতরকে ২৫ এপ্রিলের মধ্যে নিয়মিত লিভ টু আপিল দায়েরের নির্দেশ দিয়েছে আদালত।

অনুসন্ধানে দেখা যায় এস এস সি পরীক্ষায় অংশ নেয়ার জন্য দুই ছাত্রকে গত ৯ ফেব্রুয়ারী জামিন দিয়েছিলেন হাইকোর্ট বিভাগের একটি বেঞ্চ। জামিনের আদেশে বলা হয়েছিল পরীক্ষা শেষ হলে তারা সংশ্লিষ্ট ম্যাজিষ্টেট আদালতে আবার আত্মসর্ম্পণ করবেন। জামিন আদেশের সার্টিফাইড কপি পৌঁছার পরও অ্যাটর্নি জেনারেলের দফতর থেকে ফোন করা হয়েছে মর্মে জানিয়ে কারা কর্তৃপক্ষ তাদের মুক্তি দেয়নি । ৬ দিন পর ১৫ ফেব্রুয়ারী চেম্বার জজ দুই পরীক্ষার্থীর জামিন স্থগিত করে দেয়। এতে চট্টগ্রাম বায়তুশ শরফ আদর্শ মাদ্রাসার দাখিল পরীক্ষার্থী মাসুম ও আলজাবের ইনষ্টিটিউটের ছাত্র লুৎফুল কবির মুক্ত অবস্থায় এস এস সি পরীক্ষা দিতে পারেনি।

গত বছরের ২৮ অক্টোবর সাবেক স্বরাষ্ট্র মন্ত্রী লুৎফুজ্জামান বাবরকে রিমান্ডে পুলিশ হেফাজতে না নিয়ে জেলগেটে জিজ্ঞসাবাদের জন্য নির্দেশ দেয় হাইকোর্ট বিভাগের একটি বেঞ্চ। পরের দিনই হাইকোর্ট বিভাগের এই নির্দেশনা স্থগিত করে রিমান্ডে পুলিশ হেফাজতে নিয়ে জিজ্ঞাসাবাদ করতে ম্যাজিষ্ট্রেট কোর্টের আদেশ বহাল করেন চেম্বার জজ বিচারপতি মোজাম্মেল হোসেন। অ্যাটর্নি জেনারেলের দফতরের একটি আবেদনের প্রেক্ষিতে চেম্বার জজ আদালতে শুনানি কালে আইনজীবিরা জানিয়েছিলেন বাবর অসুস্থ। জবাবে অ্যাটর্নি জেনারেল চেম্বার জজ বিচারপতি মোজাম্মোল হোসেনের সামনেই বলেন,

বাবর মারা গেলে হত্যা মামলা কইরেন। তারপরও হাইকোর্ট বিভাগের আদেশটি স্থগিত করে পুলিশ হেফাজতে রিমান্ডে দিয়েছেন চেম্বার জজ। অনুরূপভাবে সাবেক প্রতিমন্ত্রী আবদুস সালাম পিন্টুকে নারায়াণগঞ্জের একটি বোমা হামলা মামলায় জিজ্ঞাসাবাদের জন্য ম্যাজিস্ট্রেট আদালত রিমান্ডের মঞ্জুর করে । পুলিশ হেফাজতে রিমান্ডে বৈধতা নিয়ে একটি রিভিশন আবেদন করেছিলেন তিনি। হাইকোর্ট বিভাগের একটি বেঞ্চ শুনানি শেষে তাকেও রিমান্ডে পুলিশ কাস্টডিতে না নিয়ে জেলগেটে জিজ্ঞাসাবাদের নির্দেশ দেয় । এটিও চেম্বার জজ আদালতের কাছে গেলে হাইকোর্ট বিভাগের আদেশ স্থগিত করে দেয়া হয়।

ঢাকা সিটি কর্পোরেশনের ওয়ার্ড কমিশনার আরিফকে রিমান্ডে পুলিশ হেফাজতে না নিয়ে জেলগেটে জিজ্ঞাসাবাদের নির্দেশ দিয়েছিল হাইকোর্ট বিভাগ । তাকে পুলিশ কাস্টডি থেকে ২৪ ঘন্টার মধ্যে কারাগারে নিয়ে আসার জন্য হাইকোর্ট নির্দেশ দিয়েছিল । সেই নির্দেশনা উপেক্ষা করায় আদালত অ্যাটর্নি জেনারেলের দফতরের আইনজীবীকে তিরস্কারও করেছিল। সেই আদেশটিও স্থগিত করে পুলিশ কাস্টডিতেই জিজ্ঞাসাবাদে ম্যাজিস্ট্রেট আদালতের আদেশ বহাল করেন চেম্বার জজ।

গত সপ্তাহে বি এন পির স্থায়ী কমিটির সদস্য সালাহ উদ্দিন কাদের চৌধুরীকে চিকিৎসার জন্য বিদেশে যেতে হাইকোর্টের আদেশ স্থগিত করেছেন চেম্বার জজ আদালত।

এছাড়া সম্প্রতি বিভিন্ন মামলায় জামিন পাওয়া আসামিদের না ছাড়ার জন্য কারা কর্তৃপক্ষকে জানিয়ে দিয়ে অ্যাটনি জেনারেল চেম্বার জজ আদালতে স্থগিতাদেশ চায় । এতে ৩ শতাধিক মামলার আসামীদের জামিন চেম্বার জজ আদালত স্থগিত করে দেয়। জরুরী অবস্থার সরকারের সময়ও হাইকোর্ট বিভাগের আদেশ স্থগিত করে দিত আপিল বিভাগ। এ নিয়ে আইনজীবীও সাধারণ মানুষের মধ্যে আদালতের ভূমিকা নিয়ে নানা প্রশ্ন উঠে।

উল্লেখ, সুপ্রীম কোর্ট রুলস অনুযায়ী কোন মামলা আপিল বিভাগে যাওয়ার প্রক্রিয়া হিসেবে প্রথমে চেম্বার জজ আদালতে উপস্থাপন করা হয়। হাইকোর্ট বিভাগের আদেশ বা নির্দেশনার বিরুদ্ধে প্রথমে চেম্বার জজ আদালতে আবেদন করা হয়। চেম্বার জজ সেই আবেদনের বিষয়ে যে কোন রকমের আদেশ দেয়ার এখতিয়ার রাখেন। এছাড়া আপিল বিভাগের কোনো মামলা শুনানির তালিকাভুক্ত করতে বা শুনানির জন্য দিন ধার্য করতে প্রথমে চেম্বার জজ আদালতে আবেদন করতে হয়। প্রধান বিচারপতি আপিল বিভাগের একজন বিচারপতিকে চেম্বার জজ হিসেবে দায়িত্ব দেন। *(emphasis added)*

33. The question arises whether this article can be held to amount to Contempt of Court. To answer this question, we have to see whether it is in any way calculated to interfere with the due administration of justice of the highest Court of the country or in other words, whether such news is likely to give rise to an apprehension in the minds of litigants as to the ability of the learned Judge in chamber to deal properly with cases coming before him. The caption of the news itself is indecent. The reporter expressed the name of the learned Judge in a disparaging manner. He stated that the learned Judge passed interim orders as per wish and desire of the office of the Attorney General and the learned Judge gave precedence to the demand of the learned Attorney General over the merit of the cases. He was making orders of stay as routine work on the basis of identity of the litigants and their lawyers without application of judicial mind. The reporter has practically questioned the impartiality of the learned Judge and also

challenged the authority of almost each and every interlocutory orders of stay. It was mentioned that the learned Judge passed orders as per desire of the office of the Attorney General which meant that the learned Judge was adjudicating judicial works as per dictation of the learned Attorney General or any other law officer of the office of the Attorney General. On a close reading of the said article will reveal, it is calculated with a view to undermine the authority of the Court to the estimation of the public in general.

34. In the article/news item the reporter used disrespectful language and made blatant condemnatory attacks, the one are often designedly used with a view of taming a Judge into submission to secure a desired order. He abused and made a mockery of a judicial process. This article not only tarnished the image of the highest Court of country but also terrorised the administration of justice by vilification of the learned Judge. More so, this article has been published in a deliberate attempt to scandalise with a view to shake the confidence of the litigating public in the system, the damage caused is not only to the reputation of the learned Judge but also to the highest Court of the country. The reporter, publisher, editors of the news failed to comprehend that the foundation of our judicial system is based on the independence and impartiality of those who manned it, will be shaken if disparaging remarks are made against the Judges of the highest Court of the county.

35. Therefore, there is no gainsaying that the reporter was actuated by improper motives - the object was to interfere with the administration of justice. The language used in the news item was not removed from personal abuse. The act of publication calculated to lower down the authority and dignity of the learned Judge in chamber and is amount to contempt of Court. The allegations were of such a character and were made in such circumstances as would tend to obstruct and interfere with the course of justice, and the due administration of the law. An imputation affecting the conduct of the learned judge would necessarily amount to a contempt. The publication was made for the purpose of exposing before the public the alleged orders of the learned Judge.

36. Let us now see whether there is truth or justification of the impugned article. Regarding the case of Nasir Uddin Ahmed Pintu, on perusal of the record we noticed that the learned Judge in Chamber by order dated 14th May, 2010 stayed the operation of the impugned order of the High Court Division for 10 days with a direction upon the petitioner to file regular leave petition in the meantime. The Full Bench upon hearing maintained the order and disposed of the leave petition by order dated 4th October, 2010. In respect of the case of Salahuddin Quader Chowdhury, Md. Abdul Matin, J by order dated 28th January, 2008 stayed operation of the impugned judgment of the High Court Division for 1(one) month. The connected leave petition was finally disposed of by order dated 20th August, 2008 and the order of stay granted earlier by the learned Judge in Chamber was maintained and extended till hearing of the writ petition. In respect of the case of Md. Lutfuzzaman Babar though the Anti-corruption Commission filed a provisional leave petition but the learned Judge in Chamber did not make any interim order and ultimately this Court by order dated 17th August, 2009 dismissed the leave petition as being infructuous. In respect of Md. Ariful Islam alias Arif, the learned Judge in Chamber initially stayed the order of the High Court Division for a period of 6(six) weeks. However, the Full Bench upon hearing of the leave petition by order dated 12th October, 2010 dismissed the leave petition as being time barred.

37. In respect of the case of Mir Mohammad Nasiruddin, the learned Judge in Chamber stayed the operation of the impugned order of the High Court Division for a limited period with a direction to file leave petition with default order. The Full Bench upon

hearing the parties disposed of the leave petition and extended the order of stay for one week more, and directed the parties to take step for disposal of the writ petition in the High Court Division. In respect of the case of Abdus Salam Pintu, the learned Judge in Chamber stayed the operation of the order of the High Court Division for four weeks with a direction to file regular leave petition. The Full Bench thereupon heard the leave petition and by judgment dated 3rd January, 2010 set aside the order of the High Court Division summarily on the reasonings that the High Court Division gave the accused full relief without issuing any rule and also without affording opportunity to the Government which order was absolutely without jurisdiction. There is thus no justification of the comments made in the news and it was apparently calculated to undermine the authority of this Court to the estimation of the public.

38. As regards the allegation of staying the operation of some orders of the High Court Division directing the investigating officers to interrogate some accused persons at the jail gate, we would like to observe that recently we have been noticing that the High Court Division has been making this type of orders frequently, most of them cannot be countenanced at all for, such orders would impede the administration of criminal justice. Section 156 of the Code of Criminal Procedure (the Code) has given the police a statutory right to investigate the circumstances of an alleged cognizable offence without requiring any authority, and neither the Magistrates nor even the High Court Division can interfere with the statutory rights by an exercise of inherent jurisdiction of the Court. An investigation of a case under the Code consists of the following steps, such as (a) proceeding to the spot; (b) ascertainment of the facts and circumstances of the case; (c) discovery and arrest of the offender; (d) collection of evidence relating to the commission of the offence; (e) examination of witnesses and the accused; (f) the search of places of seizure of things considered necessary for the investigation; and (g) formation of the opinion as to whether on the materials collected there is a case to place the offender before a competent Court for trial. If the suspected offender is not interrogated independently, and in case of necessity taking the offender to the spot of the offence committed at or about the time of occurrence or shortly thereafter, it will be difficult for the police to collect material evidence in respect of the commission of the offence with the result of causing disappearance of material evidence due to delay.

39. The functions of the judiciary and the police under Chapter XIV of the Code are complementary, not overlapping, and combination of individual liberty with due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to mandates of law. In case of cognizable offence, the Courts function begin when a police report is submitted after completion of investigation and not until then, and, therefore, the High Court Division should not interfere with the investigation of any case in exercise of powers either under section 439 or under section 561A. In Nazir Ahmed (King Emperor vs. Khwaja Nazir Ahmed AIR 1945 PC) the Privy Council observed:

> In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under section 491 of the Criminal

Procedure Code to give directions in the nature of habeas corpus.

40. Though their Lordships of the Privy Council were concerned in Nazir Ahmed's Case as to whether the High Court Division had power under section 561A to quash proceedings being taken by the police in pursuance of first information report made to the police, this interpretation of section 156 read with section 167, to some extent, supports the view that the scheme of the Code is that the police to investigate cognizable offence is not to be interfered with by the judiciary for the interest of elicitating the truth or falsehood to the allegation made to the police against the offender. It should be remembered that the duty of the investigating agency is not merely to bolster up a prosecution case with such evidence as may be enable the Court to record a conviction but to bring out the real unvarnished truth. Section 167 of the Code authorises police to investigate and to keep an offender in custody for the purpose of investigation in respect of a case. The Courts duty is to see whether such power of the police is not abused and not otherwise.

41. The news reporter mentioned the name of the learned Judge by using disrespectful language stating 'Chamber Judge Muzammel Hossain' He did not mention the correct name of the learned Judge which spoke volumes about his capability of undertaking the adventurous task of criticising the administration of justice by the apex Court of the country. In course of hearing the Court pointed out to the respondent No. 1 to explain as to whether the reporter correctly written the name of the learned Judge. The respondent No. 1 without comprehending the query replied that it is not an offence if someone did not address a Judge as 'honourable'. He failed to comprehend that the reporter did not know the correct name of a sitting Judge of the Appellate Division, and by the same time, it is the established practice that he should use the learned Judge's designation 'justice' before his name 'Md. Muzammel Hossain' and it is not expected that a learned Judge should not be addressed like "Tom, Dick and Harry.

42. Respondent No. 1 Mahmudur Rahman contested the matter in person by filing an affidavit-in-reply stating inter alia that:

> The contemnor-respondent No. 1 has at all times upheld the dignity and independence of the Judiciary. As the Acting Editor of a major newspaper he is extremely aware of the importance of an independent judiciary and the requirement of non-interference in the administration of justice. As such he is aware of not making any comments that may scandalize the judiciary or lower it in the estimation of the public. The report published in the Daily Amar Desh on 21-4-2010 (which is the subject matter of the present contempt proceedings) was published in the light of the high regard he has for the judiciary. The words used by the present contemnor were not calculated to lower the dignity of the judiciary and moreover cannot in their ordinary sense be construed as lowering the dignity of the judiciary or interfering with the administration of justice, the details of which have been stated hereinafter.
>
> That in his capacity as the Acting Editor of the Daily Amar Desh, it was the contemnor respondent No. 1's duty to ensure that the reports are well researched and factually correct. The contemnor respondent No. 1 has dedicated himself to the accurate and responsible publication of news items. In fact due to the well researched and accurate publication of news reports, the Daily Amar Desh has become the second most widely read vernacular newspaper on the internet.

That the contemnor-respondent No. 1 appreciates that the Courts of Bangladesh operate in a cult environment insofar as the independent of the judiciary is concerned. The contemnor-respondent No. 1 had intended through the publication of the news item on 21-4-2010 to highlight the difficult circumstances within which the Courts of Bangladesh operate. The news item dated 21-4-2010 was published in the interests of the independence of the judiciary.

That the news report entitled "চেম্বার জজ মানে সরকার পক্ষে স্টে" was published after numerous weeks of research and fact finding. The reporting and editorial staff of the Daily Amar Desh did not take the publication of such news lightly. Members of the Supreme Court Bar had expressed their sentiment and opinion with regard to the fact that many ad interim orders of the High Court Division were being stayed by the Hon'ble Chamber Judge of the Appellate Division on the misrepresentations made by the Attorney General's Office. In the light of such widespread sentiment the reporters of the Daily Amar Desh conducted interviews, made necessary investigations and research and thereafter published the news item which has been described by the petitioners as contumacious. The title and contents of the news item were not calculated to scandalize the judiciary. The news item was intended to be factual and informative.

That the petitioners have completely misinterpreted and misconstrued the heading and contents of news report dated 21-4-2010. The title of the report was not an contumacious attack on the judiciary (as alleged by the petitioners) but an attack on the role of the Attorney General's Office in misleading the Hon'ble Chamber Judge to stay orders of the High Court Division. The heading of the news report is to be read together with the sub-heading which states as follows:-

"মিথ্যা তথ্যের বিভত্তিতে স্থগিত করা হলো
হাইকোর্টের রায়"

As such when the heading and sub heading are read together it is clear that the object of the news paper report is to highlight the conduct of the Attorney General's Office in preferring applications for stay before the Hon'ble Chamber Judge by presenting false information.

That the meaning of the heading and the object of the news item is further made clear by the first sentence of the news report which states as follows.

43. As observed above, if we closely read the article there is no doubt that it was published not only to undermine the authority of the highest Court of the country, but also an attempt was made to damage the image and impartiality of this Court. The attack was made against a learned Judge of the highest Court questioning his impartiality. The caption was focused in indecent language. We could have ignored this disparaging remarks if the respondent No. 1 did not assume the responsibility of the article, rather grandiloquently he claimed that he "had an outstanding academic life. In the year 1977 he obtained a BSc. Engineering degree from Bangladesh University of Engineering and Technology (BUET). In 1986, he completed a diploma course in Ceramic Engineering from the GIFU Prefractural Ceramic Institute of Nagoya, Japan. Thereafter in 1989, he obtained a Masters degree in Business Administration from the Institute of Business Administration of Dhaka University. The contemnor respondent No. 1 is also the Managing Director of Artisan Ceramics Limited, which is one of the leading exporters of ceramic products from Bangladesh. Further the contemnor respondent No.

1 has held important positions in Government. From December 2001 to October 2006 he was the Chairman of the Board of Investment ("Bol"). He was one of the most successful Chairman in the history of the Board of Investment. During his tenure he attracted huge foreign investment. He also made significant changes to the Board of Investment's policy for attracting foreign investors. Moreover, from June 2005 to October 2006, the contemnor respondent No. 1 was the Energy Advisor to the Government of Bangladesh."

44. There are three types of contempt, such as (1) scandalizing the Court itself, (2) in abusing parties who are concerned in cases, and (3) in prejudicing mankind against persons before the cause is heard. The contemnor-respondent No. 1 instead of arguing the case to the issues, started arguing on irrelevant points and orchestrated a drama only to attract the media which led us to believe that he was not at all concerned to the issues involved in the matter. He had brought matters which were not at all pertinent to the issues and made statements about this Court which did not appear to be protected by fair criticism. He argued that he stood by the statements made in the impugned article even if the same are contumacious. This proved that he wanted to become a 'hero' to the cause of the writer by asserting that he would not hesitate to say anything if he desired to speak for the independence of judiciary. He had not shown any repentance or remorse and persistently argued that he was contesting the matter for the independence of judiciary and that there is truth to the news items. The demeanor and the body language of the contemnor showed that he was trying to justify his action and prima facie. His action was found to be contumacious.

45. Whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions, the Court will not hesitate to interfere in exercise of its inherent jurisdiction against such person. In Supreme Court Bar Association case (ibid), it was argued that:

> This jurisdiction may also be exercised when the act complained of adversely affects the Majesty of Law or dignity of the Courts, The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law. It is an unusual type of jurisdiction combining "the jury, the judge and the hangman" and it is so because the Court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of Court should not be imperiled and there should be no unjustifiable interference in the administration of justice. It is the matter between the Court and the contemner and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the Courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice.

46. In DC Saxena Case (DC Saxena case,: MANU/SC/0627/1996 : (1996) 5 SCC 216) while dealing with the meaning of expression "scandalizing" the Supreme Court of India held that it is an expression of scurrilous attack on the majesty of justice which is calculated to undermine the authority of the Courts and public confidence in the administration of justice. The malicious or slanderous publication inculcates in the mind of the people a general disaffection and dissatisfaction on the judicial determination and indisposes their mind to obey them. If the people's allegiance to the law is so fundamentally shaken it is the most vital and most dangerous obstruction of justice

calling for urgent action. Scandalizing the Court, therefore, would mean hostile criticism of Judges or judiciary. Any personal attack upon a Judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the Judge as a Judge brings the Court or Judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. Any caricature of a Judge calculated to lower the dignity of the Court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice.

47. The rule of law and the independence of the judiciary depend primarily upon public confidence. Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair and uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence. Sometimes the public are not getting a completely balanced view of the principle of judicial independence from the media which may portray it incorrectly as protecting Judges from review of and public debate concerning their actions.

48. It would, therefore, by scandalizing the Judge as a Judge, in other words, imputing partiality, corruption, bias, improper motives to a Judge is scandalisation of the Court and would be Contempt of the Court. Even imputation of lack of impartiality or fairness to a Judge in the discharge of his official duties amounts to contempt. The gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. When the contemnor challenges the authority of the Court, he interferes with the performance of duties of Judge's office or judicial process or administration of justice or generation or production of tendency bringing the Judge or Judiciary into contempt.

49. The Court Concluded with the following words:

> Therefore, a tendency to scandalize the Court or tendency to lower the authority of the Court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt. The offending act apart, any tendency if it may lead to or tends to lower the authority of the Court is a criminal contempt. Any conduct of the contemnor which has the tendency or produces a tendency to bring the Judge or Court into contempt or tends to lower the authority of the Court would also be contempt of the Court.

50. In Bathina Ramkrishan Reddy (Bathina Ramkrishna Reddy vs. State of Madras,: MANU/SC/0074/1952 : AIR 1952 SC 149), BK Mukherjea, J speaking for the Cour stated:

> When the act of defaming a Judge is calculated to obstruct or interfere with the due course of justice or proper administration of law, it would certainly amount to contempt. The offence of contempt is really a wrong done to the public by weakening the authority and influence of Courts of law which exist for their good.

51. The arguments made above have been approved in almost all subsequent decisions by the Supreme Court of India including Arundhati Roy (Arundhati Roy,: MANU/SC/0160/2002 : (2002) 3 SCC 343).

52. In PN Duda vs. P Shiv Shankar (PN Duda vs. Shiv Shankar,: MANU/SC/0362/1988 : (1988) 3 SCC 167), the Supreme Court of India observed:

> Motives to the Judges need not be attributed. It brings the administration of justice into disrepute. Faith in the administration of justice is one of the pillars on which democratic institution functions and sustains. In the free market place of ideas criticism about the judicial system or Judges should be welcome so long as such criticism does not impair or hamper the administration of justice. This is how the Courts should exercise the powers vested in them and Judges to punish a person for an alleged contempt by taking notice of the contempt suo motu or at the behest of the litigant or a lawyer.....In a democracy Judges and Courts alike are, therefore, subject to criticism and if reasonable argument or criticism in respectful language and tempered with moderation is offered against any judicial act as contrary to law or public good, no Court would treat criticism as a contempt of Court.

53. In Arundhati Roy the contemnor, an internationally reputed writer published an article entitled "The Greater Common Good" in "Outlook Magazine" and on reading the Article two Judges of the Supreme Court of India felt that the comments made by her were, prima facie, a misrepresentation of the proceedings of the Court. It was observed that judicial process and institution could not be permitted to be scandalized or subjected to contumacious violation in such a blatant manner, as it had been done by her. The action of the contemnor had caused the Court much anguish and when the Court expressed its displeasure on the action in making distorted issue upon the contemnor, the contemnor in her affidavit made the following averments:

> On the grounds that Judges of the Supreme Court were too busy, the Chief Justice of India refused to allow a sitting Judge to head the judicial enquiry into the Tehelka scandal, even though it involves matters of national security and corruption in the highest places.
>
> Yet, when it comes to an absurd, despicable, entirely unsubstantiated petition in which all the three respondents happen to be people, who have publicly-though in markedly different ways-questioned the policies of the Government and severely citicized a recent judgment of the Supreme Court, the Court displays a disturbing willingness to issue notice.
>
> It indicates a disquieting inclination on the part of the Court to silence criticism and muzzle dissent, to harass and intimidate those who disagree with it. By entertaining a petition based on an FIR that even a local police station does not see fit to act upon, the Supreme Court is doing its own reputation and credibility considerable harm.

54. It was stated that "the law of contempt has been enacted to secure public respect and confidence in the judicial process. If such confidence is shaken or broken, the confidence of the common man in the institution of judiciary and democratic set-up is likely eroded which, if not checked, is sure to be disastrous for the society itself. In that case reliance was given to the observations made in the case of Baradakanta Mishra in which case, Court found that the terminology 'criminal contempt' used in the definition is borrowed from the English law of contempt and embodies certain concepts which are familiar to that law which, by and large, was applied in India. The expressions "scandalize", "lowering the authority of the Court", "interference", "obstruction" and "administration of justice" it is argued, have all gone into the legal currency of our sub-continent and have to be understood in the sense in which they have been so far understood by the Courts with the aid of English law, where necessary. "Action of scandalizing the authority of the Court has been regarded as an "obstruction" of public

justice whereby the authority of the Court is.....the Court will act with seriousness and severity where justice is jeopardized by a gross and/or unfounded attack on the Judges, where the attack is calculated to obstruct or destroy the judicial process".

55. The question is not whether the comments in the article in fact obstructed or interfered with the due administration of justice but whether it is 'calculated' to obstruct and interfere with the due course of justice. In Tarit Kanti Biswas on 18th and 22nd May, 1917 two articles appeared in the Amrita Bazar Patrika. The writer circulated what he called "mischievous", "rumors" and "unsavory impressions" and made statements which suggested that a litigant before the Court had been successfully intriguing to get a Bench of its choice to hear an appeal from the decision of a Single Judge. It was alleged that the articles are calculated to interfere with the administration of justice, for the writer sought to do, though in his own way, what he complained of in the case of the litigant's trust, namely to influence the Chief Justice to form a Bench to hear the appeal in question. The Court seemed that prima facie contempt had been committed, a rule was issued upon the persons mentioned in the show cause. It was observed that such an allegation is a calculated to obstruct and interfere with the Courts of justice "in such cases does not seems to vindicating any personal interests of the judges but the general administration of justice, which is a public concerned". Mukharji, J argued "It is sufficient to state that scandalize attacks upon judges, calculated to cause an obstruction to public justice, though constitute such contempts". It was concluded that by the said article constituting a great Contempt of Court and accordingly the publisher was found guilty and fined rupees 300.00.

56. Cornelieus CJ in Edward Snelson (ibid) further stated, when the attack is laid at the very foundation upon which the structure of justice rests, there the superior Courts have in certain cases been allowed, not by statute but by assumption of jurisdiction which has been acquiesced in by all individuals and institutions in the civilized countries of the world, the right to be themselves the injured party, themselves the prosecutors and themselves the Judges. It was now established that a publication which is calculated to interfere with the due course of justice or proper administration of law is amounted to contempt. The question then is the meaning of the expression "calculated". In this regard H. Rahman, J in Edward Snelson explains:

> I would also take this opportunity of pointing out that in dealing with such offensive words or writing we are not concerned with the actual effect produced by them but we are only concerned with seeing as to whether the words are "calculated" to produce the deleterious effects to which I have adverted earlier. As to what the word "calculated" means I would refer to the decision of this Court in the case of Abdus Salam, Editor, Pakistan Observer and another vs. the State (39), which laid down that "calculated" in this context means that the offending words should be of a nature or character proper or likely to obstruct or interfere in that manner. If that is what we are concerned with, then it seems to me unnecessary to launch into any elaborate examination of the patent or latent meaning of the offending words. If we are concerned with the nature and character of the words used, then in my mind they should not be torn out of the context but should read as a whole fairly and reasonably in order to discover whether in their plain and ordinary sense they are capable of producing such a harmful tendency as would bring them within this category of contempt.

57. In Devi Prasad (Devi Prasad vs. Emperor, AIR 1943 PC 203) the Privy Council observed that the test to be applied in such cases is whether the words complained of

were in the circumstances "calculated to obstruct or interfere with the course of justice and the due administration of the law". In a later decision the Privy Council in Parashuram Detaram observed:

> For words or action used in face of the Court, or in the course of proceedings, for they may be used outside the Court, to be a contempt, they must be such as would interfere or tend to interfere with the course of justice. No further definition can be attempted.

58. A fair criticism of the conduct of a Judge may not amount to contempt if it is made in good faith and in public interest. The Courts are required to see the surrounding circumstances to ascertain a good faith and the public interest including the person who is responsible for the comments, has knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved. If one having sufficient knowledge on the subject, such as a lawyer, a retired Judge, a teacher of law and an academician may make fair criticism and the Court in such case will be able to ascertain a good faith with the comments, but if a scurrilous comment is made by one who is totally foreign on the subject like the respondents whose normal duties are not the one written in the impugned article, arm of the law must strike a blow on him who challenges the supremacy of the rule of law in the general interest of the litigant public. The respondents had made comments touching to the administration of justice of the Apex Court of the country, who do not possess elementary knowledge in the filed of law. The reporter and the editor had no elementary knowledge of law will be evident from the language in the publication. They did not claim that they studied law and well versed in the jurisprudence of the law of contempt, and the procedure and rules being followed by the learned Judge in Chamber. It is not desirable that one to write anything about judiciary who is not well versed in law. Because of his shortcomings, the writer had focused something which would certainly shake the confidence of the people at large in the institution of judiciary and if not checked, it would be disastrous for the society. The respondents had in fact attacked the substratum of the judiciary and not the learned Judge in Chamber alone.

59. Order XI Rule 3 of the Supreme Court of Bangladesh (Appellate Division) Rules, 1988 states that the Chief Justice may from time to time appoint a Judge to hear and dispose of all applications which may be heard by a Judge in Chamber under these Rules, and Order V Rule 2 of the rules Provides:

> (1) "The powers of the Court in relation to the following matters may be exercised by a single Judge sitting in Chamber....."

60. These provisions go without saying that the learned Judge in chamber is exercising the powers of the Court and thus the reporter in fact used disrespectful language not against the learned Judge but he had challenged the authority of the Court, and thereby respondents undermined the authority of the Court by making comments questioning about the justification of making interlocutory orders, which are serious type of contempt.

61. In Arundhati (ibid) the Supreme Court of India argued that all citizens cannot be permitted to comment upon the conduct of the Courts in the name of fair criticism which, if not checked would destroy the institution itself. "Litigant losing in the Court would be the first to impute motives to the Judges and the institution in the name of fair criticism, which cannot be allowed for preserving the public faith in an important pillar of democratic setup i.e. judiciary". Any expression of opinion would not be

immune from liability for exceeding the-limits under the law of contempt of Court or the constitutional limitations either under the law of defamation or Contempt of Court or the other constitutional limitations under Article 39(2). If a citizen, therefore, in the garb of exercising right of free expression under Article 39(2) (a) and (b), tries to scandalise the Court or undermines the dignity of the Court or makes abusive words, then the Court is under duty to exercise its jurisdiction under Article 108. No person has any right to flout the mandate of law or the authority of the Court for alleged establishment of law under the cloak of freedom of thought and conscience or freedom of speech and expression or the freedom of the press guaranteed by Article 39. Such freedom is subject to reasonable restrictions imposed by the law.

62. The expression 'law' is to be understood from the definition given in Article 152 read with Article 111 of the Constitution. One should know that the law of the land has also been regarded to be that which is declared by the Appellate Division to be the law. Thus, where a provision, in the law, relating to contempt imposes reasonable restrictions, no person can take the liberty of scandalising the authority of the Court of law. Freedom of expression does not mean that the journalists are free from not only scandalising the authority of the highest Court of the country but also challenging its authority. Freedom of expression, so far as they do not contravene the limits sanctioned by law, are to prevail without any hindrance or restriction. The arrogance showed by the respondent No. 1, which itself is a prima facie case. He failed to comprehend that this Court earlier ordered the lifting of the Government's ban on the publication of his newspaper.

63. In Sir Edward Snelson (ibid), the Director of Training in the President's Secretariat, Pakistan forwarded a letter to the West Pakistan Government, 25 copies of pamphlet, adding that it comprised "the text of a talk given, under the auspices of this Institute, by Sir Edward Snelson, KBE, Secretary, Ministry of Law, to Section Officers at Rawalpindi". The High Court Division of West Pakistan at Lahore summarized the substance of the text of talk as under:

> (a) "The respondent wanted to tell his audience that the High Courts in Pakistan were manned by incompetent people who did not understand a branch of law while they had been administering for about five year."
>
> (b) "Any one reading the pamphlet would think that the meaning of the Talk, patent at some places and latent at some, was that the Judges of the High Courts were either half-witted persons who did not understand the law or persons who deliberately misinterpreted it."
>
> (c)"I am clearly of the view that the tone of both the paragraphs of the Talk which are under consideration was offensive."

64. The Supreme Court affirmed the finding of guilty of the Law Secretary on the reasoning that the law of the land has always been regarded to be that which is declared by the Superior Courts in the country to be the law, and it is of the essence of that orderliness to which the law secretary himself referred in his talk that until the law so declared is reversed by another higher Court or is altered by a competent Legislature it is the duty of everyone to respect that law and to give effect to it. The judiciary after all is as much as a limb of a Government as the executive itself and the harmonious working of each demands that each should treat the other with the respect and dignity due to it. The same statement is applicable to the respondents as well. H Rahman, J concluded his argument as under:

> In assessing the tendency of the words used I have not said anything with regard to the accuracy of the statements made by the speaker in his speech but it must be remembered that it is of the essence of fair criticism that the criticism must be based on accurate facts. As the High Court has pointed out, several of the assertions contained in paragraphs 9 and 10 were not borne out by facts. It is unnecessary to repeat these inaccuracies here again, for, it would suffice to say that at least one of them was a clear misstatement which could not but have had the effect of creating a misleading impression..... In the face of these clear inaccuracies the talk could, by no stretch of imagination, be held not to have transgressed the limits of fair criticism.

65. The respondent No. 1 though claimed that he obtained BSc. Engineering Degree and a Diploma Course in Ceramic Engineering from Japan and a Master Decree in Business of Administration but did not say anything about his knowledge in the filed of law and judiciary. On our query he stated that he became an acting editor just one and half years ago. Therefore, neither he had knowledge in the field of law nor experience in the field of news paper journalism. The comments made in news item in the issue of 21st April, 2010 of Daily Amar Desh was a worst type of scandalizing the authority of this Court, and also scurrilously attacking the authority of the highest Court of the country and such act is contemptuous is evident from his statements as under:

> The contemnor-respondent No. 1 had intended through the publication of the news item on 21-4-2010 to highlight the difficult circumstances within which the Courts of Bangladesh operate..... the newspaper report had focused on the abuse of the process of the Courts by the Attorney General's Office and how the same had violated the independence of the judiciary.

66. The respondent had asserted in no uncertain fashion that the Judges were persistently issuing illegal orders with the result that their action had led to public confusion. He held very poor opinion about the capacity of the Judiciary as a whole in its administration of justice. The language used above are offensive, abusive and libelous. The contemnor stated in unequivocal language that the learned Courts in Bangladesh including the Supreme Court are being used as tool by the office of the Attorney General to secure interim orders and that the comments were intended to be factual and informative.

67. Next question is whether any criticism made or published which is based on factual and informative or in the alternative, truth can be set up as a defence in a proceeding for Contempt of Court. This is certainly not. There are consistent views of the superior Courts of this region that truth should not be set up as a defence. In this connection we would like to quote the speech of Muhammad Munir, CJ in S. Israr (S. Israr Hussain vs. Crown, 7 DLR (FC) 19) as under:

> The contention that the allegations were justified and the complaint that the appellant was not given an opportunity to substantiate them assume that in summary proceedings for contempt where such contempt consists in scandalising a Judge truth is a valid answer. But neither before the Chief Court nor before us was cited any authority or opinion that where proceedings in contempt are initiated against a person who has scandalised a Judge of a Superior Court, truth can be successfully set up as a defence. The whole principle of the Law of Contempt is against any such defence, and if the law were as contended for, the whole administration of justice would be brought into disrepute because in that case the honour of the judges would be at the

> mercy of disgruntled litigants who might with impunity attack the judges and when proceedings in contempt were taken against them, bring them into further contempt by pleading truth and offering to prove it. Judges would thus be constantly engaged in defending their own personal honour against the onslaughts of persons who are parties to causes pending in their own Courts. And where a judge has thus been dragged into a forensic arena, public confidence in the administration of justice by him would be completely gone and a few such instances would be sufficient to expose the whole system to public ridicule.

68. In Abdul Hamid Sheikh (Attorney General of Pakistan vs. Hamid Sheikh, 15 DLR (SC) 96) after reviewing all previous authorities, Hamoodur Rahman, J expressed his opinion as under:

> From a review of these decisions it appears to us that the real test in such cases is whether the publication complained of tended or was calculated to interfere with the course of justice in any substantial or real manner, either by prejudicing a fair trial or by prejudicing the minds of the public against persons concerned as parties in causes before the cause is finally heard. In determining this effect neither the intention of the printers or authors nor the truth or falsity of the allegations contained in the publication complained of is of any consequence, for, what we are concerned with is that we should not permit anyone, to poison the fountain of justice before it begins to flow.

69. The High Court Division also on consideration of different cases of this sub-continent in Md. Faiz (Md Faiz vs. Ekramul Haque Bulbul, 57 DLR 670) held:

> The use of the mark of exclamation after the headline or good intention or motive or truth of the publication is of no consequence.

70. Similar views have been expressed by Cornelius, CJ in Sir Edward Snelson (ibid):

> As I have observed earlier, in an ordinary case of libel, it is a complete defence that the defamatory imputation is true, but it is otherwise in a case of contempt by scandalizing a Judge or a Court. Any attempt to justify the libel upon a Judge or a Court is in itself a fresh contempt. It will be evident from the above discussion of the two offending paragraph that, competency apart, the defence of justification by truth could not have been raised on the facts in the present case with any hope of success. Equally, the defence of fair comment is not available. For fair comment it is necessary that facts should be truly stated; it is not enough that there should be absence of malice, or that the expression of opinion should be honest.

71. In JC Shah (JC Shah vs. Ramaswqami,: MANU/SC/0302/1968 : AIR 1971 SC 221), in a weekly periodical "Main Stream" Perspective Publications Limited wrote an article under the heading "Story of a Loan and Blitz Thackersey Libel Case". The article has been ingeniously and cleverly worded. The writer said that according to the report in "Prajatantra" a Gujarati Paper, architects Khare-Tarkunde Private Limited of Nagpur, got a loan facility of Rs. 10 lacs from the Bank of India. The partners of Khare-Tarkunde included the father, two brothers and some other relations of Justice Tarkunde who awarded a decree for Rs. 3 lacs as damages against 'Blitz' and in favour of Thackersey. It is said, for Rs. 10 lacs loan facility was granted to Khare-Tarkunde, the New India Assurance Co. stood guarantee and that the two Directors of the Bank of India who voted in favour of the credit of Rs. 10 lacs being granted to Khare-Tarkunde were

Thackersey and Jaisinh Vithaldas a relative of Thackersey. It is alleged, Khare-Tarkunde to be lucky to get against all this a handsome loan of Rs. 10 lacs from the Bank of India. This article contained scandalous allegations and was calculated to obstruct the administration of justice. The article stated "transaction between Khare-Tarkunde and the Bank which were false and there were several misstatements". Regarding the unimpeachable integrity and reputation of Judges of the Bombay High Court, the writer proceeded to say "there must not be allowed to be raised even the faintest whisper of any misgiving on that score". The High Court analysed the implications of the facts stated in each paragraph of the impugned article and observed that the article is malicious and not in good faith, and found no basis for the insinuation that there was any connection between the loan and the judgment in Blitz of Thackersey case or that Justice Tarkunde knew or might have known about any loan having been granted to his brother's firm. The Supreme Court of India was of the view that the writer of the article could exercise his right of fair and reasonable criticism and the matters which have been mentioned in some of the paragraphs in the article may not justify in proceedings being taken from contempt but the article read as a whole leaves no doubt that the conclusions of the High Court were unexceptionable. The articles create a strong prejudicial impact on the mind of the reader about the lack of honesty, integrity and impartiality on the part of Justice Tarkunde in deciding the case. The contemnor took the plea that certain major facts have been verified by him and found to be truth. Grover, J speaking for the Court answered the point as under:

> As regards the third contention no attempt was made before the High Court to substantiate that the facts stated in the article were true or were founded on correct data. It may be that truthfulness or factual correctness is a good defence in an action for libel, but in the law of contempt there are hardly any English or Indian cases in which such defence has been recognized. It is true that in the case of Bathina Ramakrishna Reddy, : MANU/SC/0074/1952 : 1952 SCR 425 = (: MANU/SC/0074/1952 : AIR 1952 SC 149) there was some discussion about the bonafides of the person responsible for the publication but that was apparently done to dispose of the contention which had been raised on the point. It is quite clear that the submission made was considered on the assumption that good faith can be held to be a defence in a proceeding for contempt. The words "even if good faith can be held to be a defence at all in a proceeding for contempt" show that this Court did not lay down affirmatively that good faith can be set up as a defence in contempt proceedings. At any rate, this point is merely of academic interest because no attempt was made before the High Court to establish the truthfulness of the facts stated in the article. On the other hand, it was established that some of the material allegations were altogether wrong and incorrect.

72. There are numerous decisions of the Apex Courts of India, Pakistan and Bangladesh that truthfulness or factual correctness is not recognized as defence in the law of contempt. There is hardly any decision of English or of this sub-continent on the jurisprudence of contempt that such defence to be recognized.

73. As regards criticism of judiciary, it is to be looked into whether an attack is malicious or ill intention which is always difficult to determine. But the language in which it is made, the fairness, the factual accuracy, the logical soundness of it, the care taken in justly and properly analyzing the materials before the maker of it are important consideration. The Court is not concerned more which reasonable and probable effects of what is said or written than with the motives lying behind what is done. V.R. Krishna Iyer, J in S. Mulgaokr (ibid) formulated some rules. It is opined, the first rule in this

branch of contempt power is a wise economy of use by the Court of this branch of its jurisdiction. The Court will act with seriousness and severity where justice is jeopardized by a gross and/or unfounded attack on the Judges, where the attack is calculated to obstruct or destroy the judicial process. The Court is willing to ignore, by a majestic liberalism, trifling and venial offenses - the dogs may bark, the caravan will pass. The Court will not be prompted to act as a result of an easy irritability. Much rather, it shall take a noetic look at the conspectus of features and be guided by a constellation of constitutional and other considerations when it chooses to use, or desist from using, its power of contempt.

74. Krishna Iyer, J concluded his speech with the following words:

> I have launched on this long, inconclusive essay in contempt jurisprudence bearing on scandalizing the Judges qua and Judges, aware that not high falutin rhetoric but hard-headed realism, illumined by constitutional values, must set the limit and interpret the statute. It is a disturbing development in our country that the media and some men in the trade of traducement are escalatingly scandalizing Judges with flippant or motivated write-ups wearing a pro bono publico veil and mood of provocative mock-challenge. The Court shall not meditate nor hesitate but shall do stern justice to such professional Contemnors, not shrink because they are scurrilous, influential or incorrigible. Even so, to be gentle is to be just and the quality of mercy is not strained. So, it is that a benign neglect, not judicial genuflexion, is often the prescription and to inhibit haphazardness or injustice it is necessary that the Bar and the Press evolve a dignified consensus on the canons of ethics in this area, with due regard to the Constitution and the laws, so that the Bench may give it a close look and draw the objective line of action. The process of arriving at these norms by those mighty forces who influence public opinion, cannot be delayed and until then the law laid down in precedents of this Court will go into action when judge-baiting is indulged in by masked men or media might. Freedom is what Freedom does and Justice fails when Judges quail. For sure my plea is not for judicial pachydermy, but for dignified detachment which ignores ill-informed criticism in its tolerent stride, but strikes when offensive excesses are established.

75. If the dignity of the law is not sustained, its sun is set, never to be lighted up again. So much I thought it necessary to say, feeling strongly for the dignity of the law; and have only to add that I fully endorse the opinion expressed by Krishna Lyer, J.

76. There is no dispute that print media is indispensable and essential organ for a welfare state. The liberty of the press is indeed essential to the nature of a free state but if someone publishes what is improper, blemish, mischievous and illegal, he must take the consequences of his own temerity. To publish any dangerous or offensive writings, shall on a fair trial be adjudged of a pernicious tendency, is necessary for good order. This media while publishing any article over sensitive organ of the state, such as, the judiciary, should guard that the correct informative news are published without scandalizing the judiciary as a whole or attacking a Judge because the Judges by the nature of their works cannot express their views or defend any allegation by making statement to the media which is being enjoyed by any person or citizen of the country. The media should look that by their acts or deeds public confidence in the administration of justice is not shattered. If the peoples faith in the judiciary is lost then there will be no organ left in the state to rescue the people at large.

77. Day, J in Cheshire (In Cheshire vs. Strauss In re Thomas Power O, Connor, 1986 12 TLR 291) stated:

> It was shocking that newspapers should publish such matters as this which had not been before any Court of Justice. There was no excuse for that. It was interfering with the course of justice to make public the statement of claim in this way, which was the ex parte statement of one side. The publication of a newspaper article calling upon authorities to take action against particular person who, according to the newspaper, was "engaged in the business of purveying vice and managing street women" amounted to contempt, because on the day the article was published he was actually awaiting trial (Lord Hardwicke).

78. In A Hamid (ibid) after following some cases of the sub-continent H Rahman, J argued "whilst we have no desire to curb in any way the legitimate freedom of the press or to restrict the dissemination of news, they must remember that when they undertake the publication either of pleadings in a cause or of comments upon them whilst that cause has not yet been heard in a Court of law, they undertake a perilous venture at their own risk and they would be well-advised to take due note of what has already been said by this Court in the case of Saadat Khialy vs. The State and another".

79. In this regard it will be profitable if we refer an argument of Justice Holmes as under:

> there is no constitutional right to publish a fact merely because it is true. This law is not for protection of the persons attack. It is for the protection for the public welfare.

80. The US Supreme Court in another case in Near (Near vs. Minnersota Ex Rel Olson, 283 US 696, 697) stated:

> But it is recognised that punishment for the abuse of the liberty accorded to the press is essential to the protection of the public, and that the common law rules that subject the libeler to responsibility for the public offence, as well as for the private injury, are not abolished by the protection extended in our constitutions. The law of criminal libel rests upon that secure foundation. There is also the conceded authority of Courts to punish for contempt when publications directly trend to prevent the proper discharge of judicial functions.

81. Respondent Nos. 2, 3, 4 and 5 by filing affidavits tendered unqualified apology and admitted their liability of the publication of the article on the issue of daily "Amar Desh", they did not realize at the time of publication that it would be regarded as contumacious, but now they realized that the statements are contumacious, and the severity of their actions. They stated that their actions of publishing the news were liable to affect the administration of justice and also lower down the dignity of the judiciary, that there is no justification of the actions of the contemnors and that they are not offering any justification either. They undertook that they would never publish any news item which would scandalize the judiciary or interfere with administration of justice and assured that they would observe great care and responsibility in reporting news in relation to the judiciary.

82. Now the question to be considered is whether or not the apology tendered by the respondent nos. 2-5 should be accepted. Notices upon the respondents were issued from this Court by order dated 2nd June, 2010 with a direction to appear in Court in

person on 6th July, 2010. The respondents appeared on the date fixed and prayed 4(four) weeks time to submit reply to the show cause notices. Their prayers were allowed. The respondent No. 4 by a separate affidavit prayed for dispensing with further appearance in Court when the matter was awaiting decision. Thereafter the respondent nos. 2-5 filed affidavit on 11th August, 2010 praying for accepting unqualified and unconditional apology and to exonerate them from punishment for contempt. The respondents other than the respondent No. 4, are the Deputy Editor, News Editor and Publisher of the Daily Amar Desh. They stated that they were repentant for the publication of the news item and realized that their actions in publishing the news item were liable to affect the judiciary in the administration of justice. Since the respondent nos. 2 and 3 are not directly involved in the publication of the news, we accept their prayer for tendering unconditional apology.

83. The respondent No. 4, is the author of the report. In his affidavit though he tendered unqualified apology but by the same time he stated in paragraph 2 that he is a senior reporter of Daily Amar Desh and "They are responsible journalists. He is known for his investigative and research fells and in the field of journalism". This statement sufficiently indicated that while he was tendering unconditional apology, he was by the same time, defending his action by saying that he was a skilled reporter and that he was known for his investigative and research skills. A cursory glance of the article would revel that he has prepared the report after making queries to 2/3 lawyers of the Bar but it has been found that the allegations made therein are based on distorted facts. He did not make any endeavour to ascertain those allegations by making queries from the office of the Registrar or from independent senior lawyers of the Bar other than those mentioned in the report. Therefore, this article cannot be treated as an independent one based on true facts, rather it is one sided calculated report, the motive of which is to malign the judiciary as a whole. The purpose for publishing is deprecated and we are of the view that this publication has been made with a view of taming the learned Judge into submission to secure designed order. He did not tender unconditional apology at the first instance and initially he opted to contest the matter but after lapse of more than 1(one) month from the date of his appearance, he surrendered to the jurisdiction of the Court for mercy. Apology or repentance in the facts of the given case came from the pen and not from his heart. Apology must have been tendered at the earliest opportunity. The Apex Courts of this subcontinent held that the delay in tendering unqualified apology is not an apology in the eye of law. In Abdul Karim Sarker (Abul Karim Sarkar vs. The State, 38 DLR (AD) 188) this Court upon analyzing all previous decisions on the point summed up as under:

> (i) As to whether the appellant appreciated that his act was within the mischief of contempt; (ii) Whether he regretted it; (iii) Whether his regret was sincere; (iv) Whether it was accompanied with expression of the resolution never to repeat again and (v) Whether he made humble submission to the authority of the Court.

84. Fazle Munim, CJ approved the dictum in the case of LD Jaikwal (LD Jaikwal vs. State of UP, : MANU/SC/0077/1984 : AIR 1984 SC 1374) as under:

> Saying 'sorry' does not make the slaper poorer. Nor does the cheek which has taken the slap smart less upon the said hypocritical word being uttered through the very lips which not long ago slandered a judicial officer without the slightest compunction.

85. In that reported case also Abdul Karim did not throw himself at the mercy of the

Court as soon as the rule of contempt was served upon him. Accordingly, this Division maintained his conviction for Contempt awarded by the High Court Division. For the reasons stated above we are of the view that it is not a fit case to accept his apology; however, in view of his expressing repentance and offering no justification of the actions, we are inclined to take lenient view in awarding the sentence.

86. We have reproduced the article published in the issue of Daily Amar Desh which is self explanatory. The contemnor-respondent No. 1 did not show any sort of repentance in his acts, deeds and performance in Court. Instead of arguing his case on the issue, he started arguing in the manner as if he were delivering a speech on a political gathering. He did not show minimum respect and regard to the Court. He was a businessman turned politician turned Chairman of the Amardesh Publications Ltd. which publishes the daily Amar Desh and editor in charge of the newspaper. He cannot be allowed to attack and undermine the honour, dignity, majesty and independence of the highest judiciary of the country. The manner of his demonstration if allowed any further then in no time the remaining civilized fabric of our society will collapse. We cannot approve and stand as a statue to his blemish attack assault on the dignity of the Court and gluten interference with the administration of justice. He exhibited and behaved in most reprehensible manner which we have never imagined of from a person like him who is claimed to have obtained a decree in Engineering from BUET and a Diploma Course from Japan and Master Degree in Business Administration from Dhaka University. We found neither remorse nor regret in his demeanor. He chose to defend his actions. His conduct can only despair and dismay.

87. This Court has a duty of protecting the interest of public in due administration of justice and to protect the dignity of the Court against insult and injury. This Court did not hesitate to use its arm of Contempt of Court when the use of such arm is necessary in order to protect and vindicate the right of the public. It has been argued that "It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage. The law should not be seen to sit by limply; while those who defy it go free, and those who seek its protection lose hope". So we approach the question not from the point of view of the Judge whose honour and dignity was vindicated, but from the point of view of the public who have entrusted us the task of due administration of justice. We think that a contumacious disregard of all decencies that exhibited by the contemnor in this case can only lead to a serious disturbance of the system of administration of justice, unless duly repaired at once by inflicting an appropriate punishment on the contemnor which must be to send him to jail alone for his misconduct.

88. It should be remembered that the arms of law are long enough to reach a contemnor who acts in severe contumacious disregard of the dignity of the highest Court of the country. For the judiciary to perform its duties effectively and true to the sprit with which it is sacredly entrusted, the dignity and authority of the Courts have to be respected, we find this is a fit case in which exemplary punishment should be awarded to the contemnor.

89. In the attainment of the noble end this Court was created, we hope and trust that this Court will play a great and singular role and establish itself in the consciousness of the people. Like all human institutions, this Court, we hope, will earn reverence through truth. In endowing this Court very wide powers-the constituent Assembly-the Assembly representing the voice of the people through its elected representatives has shown complete confidence in the Court as the final body for dispensing justice between individuals and also between individual and state. We hope to deserve that confidence.

We trust that the people of this country will also maintain the independence, honour and dignity of the Supreme Court of Bangladesh. On 19th August, 2010 we passed the following short order:

(a) The contemnor respondent No. 1, Mahmudur Rahman, is found guilty of gross contempt of this Court and is sentenced to suffer simple imprisonment for six months and to pay a fine of Tk. 1,00,000 (one lac), in default to suffer simple imprisonment for 1(one) month more.

(b) Respondent No. 4, Waliullah Noman, is found guilty of contempt of this Court and is sentenced to suffer simple imprisonment for 1(one) month and to pay fine of Tk. 10,000 (ten thousand), in default to suffer simple imprisonment for 7(seven) days more.

These contemnor nos. 1 and 4 are directed to surrender before the Central Jail, Dhaka to serve out the sentence and the Superintendent of Central Jail is directed to receive and keep them in jail to serve out their respective sentences.

(c) Respondent No. 5, Alhaj Md. Hashmat Ali, is found guilty of contempt of this Court and is sentenced to pay fine of Tk. 10,000 (ten thousand), in default of suffer simple imprisonment for 7(seven) days.

(d) The unqualified apology of the Respondent Nos. 2 and 3 are accepted and accordingly they are let off.

(e) The respondents nos. 1, 4 and 5 are directed to deposit the respective fine to the Accounts Section of this Court which shall receive the same if deposited within time.

The petition is allowed in part. The short order quoted above forms part of this judgment.