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C. K. DAPHTARY & ORS.

v.

O. P. GUPTA & ORS.

March 19, 1971.

B [S. M. SIKRI, C. J., J. M. SHELAT, C. A. VAIDIALINGAM, A. N. GROVER AND A. N. RAY, JJ.]

Contempt of Court—Existing law if violates freedom of speech under Art. 19(1)(a) *of Constitution—Evidence to justify allegations amounting to contempt—If can be permitted—Scope of contents of petition and evidence of contempt when to be adduced—Contemnor's right to op-*
C *portunity—Scope of—Delay in filing petition, what is—Right of Attorney General and other members of Bar to move for contempt—Other contemnors if necessary parties—Punishment.*

Constitution of India, 1950, *Art.* 105—*Publication of pamphlet prepared for impeachment of Judge—Pamphlet containing scurrilous attack on Judge—If protected by Art.* 105.

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Parliamentary Proceedings (Protection of Publication) Act (24 *of* 1956), *ss.* 3 *and* 4—*Scope of—If protect publication of pamphlet constituting contempt of court.*

The State of U. P. filed an appeal in this Court against the judgment of the High Court holding the dismissal of the first respondent from service invalid. The appeal was heard by two Judges of this Court and the junior
E Judge delivered judgment on behalf of the Court, allowing the appeal. The first respondent thereupon wrote, got printed and published and circulated a pamphlet containing scurrilous criticism of the senior Judge using the word *dishonest judgment, open dishonesty deliberately and dishonestly and utter dishonesty.* He also stated in the pamphlet that the senior Judge cleverly asked the junior Judge to deliver the judgment, and that the junior Judge *toed his line* by writing what the senior Judge told him to write. The President of the Bar Association of the Supreme Court and three other
F Advocates filed a petition supported by the affidavits of the advocates, about 4 months after the circulation of the pamphlet, for committing the first respondent and the printer and publisher of the pamphlet for contempt of court.

The first respondent deliberately avoided service till the senior Judge retired and then filed a counter affidavit containing an unconditional apology and fresh abuses of the senior Judge.

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HELD: (1) Under Art. 129 of the Constitution this Court has the power to punish for contempt of itself, and under Art. 143(2) it can investigate any such contempt. [98A-B]

The Constitution makes this Court the guardian of fundamental rights and hence it would not enforce any law which imposes unreasonable re-
H strictions on the precious right of freedom of speech. [92D-E]

Under the existing law of contempt of court any publication which is calculated to interfere with the due course of justice or proper administration of law by this Court would amount to contempt of court. A

scrurrilous attack on a Judge, in respect of a judgment or past conduct has in our country the inevitable effect of undermining the confidence of the public in the Judiciary; and if confidence in Judiciary goes administration of justice definitely suffers. [97C-E] A

Therefore, assuming Art. 19(2) applies to the existing law of contempt the restrictions on freedom of speech are reasonable and are in public interest. [97B]

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Perspective Publications Ltd. v. *State of Maharashtra,* [1969] 2 S.C.R. 779, 791, 792 and *R. C. Cooper* v. *Union of India,* [1970] 2 S.C.C. 298, 301, followed.

Legal Remembrancer v. *B. B. Das Gupta,* [1953] I.L.R. 32 Pat. 1069, 1091, *Lakhan Singh* v. *Balbir Singh,* I.L.R. [1953] 1 All 796, and *State* v *Vikar Ahmed,* I.L.R. [1954] Hyd. 270, 278, approved.

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(2) The pamphlet in the present case, read as a whole, constituted gross contempt of this Court. [98F]

The first respondent admitted that he assisted in drafting an impeachment motion against the senior Judge. The pamphlet was ostensibly prepared for that purpose. He therefore used the word *dishonest* in the pamphlet in order to bring the allegations against the senior Judge within the word misbehaviour in Art. 124(4), and not, with the special sense or meaning that the Judge committed errors; because, even gross errors cannot amount to *misbehaviour.* To say that the junior Judge *toed the line* and surrendered his own judgment in deference to or to the dictation of another Judge is flagrant contempt. The first respondent's apology and avowed respect for the junior Judge were not genuinely intended. [99A; 101G; 104E] D

In re Moti Lal Ghose, [1918] I.L.R. Cal. 169, 182, *Emperor* v. *Marmaduke Pakhall,* A.I.R. 1923 Bom. 8, 10 and *In Re. Murli Monohar Prasad,* [1929] I.L.R. 8 Pat. 323, 340, approved. E

(3) Article 105(2) does not apply to the facts of the case. There was nothing to establish the publication of the pamphlet as a publication by or under the authority of either House of Parliament. [102G; 104B]

(4) The Parliamentary Proceedings (Protection of Publication) Act, 1956, does not protect the first respondent, because the protection of ss. 3 and 4 of that Act is limited to newspapers or broadcasting agencies, and that too provided the publication was in public interest and without malice. But in the present case, the publication was not in a newspaper. [102D, F; 103F, H] F

(5) In the pamphlet the judgment was criticised as containing errors and dishonesty of the senior Judge was alleged. No evidence to justify the contempt could be allowed because, if such justification is allowed, the court hearing the contempt application, will have to act as an appellate court, which is not its function; and it would encourage disappointed litigants to avenge their defeat by abusing the Judge. [104H; 105A] G

In the matter of K. L. Gauba, [1942] I.L.R. 13 Lah. 411, approved.

(6) Notice was issued to the respondents and opportunity was given to them to file affidavits stating facts and contentions in their defence. The first respondent's request for adjournment of the ground that the advocates he wanted to engage were engaged in fighting elections was refused, because, H

A the Court considered the request unreasonable and was made with a view to delay matters. The contemnors, therefore, were given a fair and reasonable opportunity to defend themselves. [105E-F]

(7) Since the essential facts stated in one advocate's affidavit were admitted by the first respondent, and the pamphlet and the affidavit of another advocate were annexed to prove the facts, it was not necessary to disclose any further source of information. [106A, B-E]

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(8) All affidavits were filed along with the petition and the entire evidence of the petitioners was disclosed with the initial petition. [106F]

(9) There was no irrelevant material in the petition. On the facts the charge against the first respondent was quite clear and simple and it was not necessary that a formal charge should have been drawn up by the petitioners or this Court. By setting out the extracts from the pamphlet pointed attention had been drawn to the offending passages. [106G-H; 107D-D]

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Nagar Mahapalika of the City of Kanpur v. *Mohan Singh*, Cr. A. No. 27/1964 dt. 31-1-1966, referred to.

(10) Whether there has been delay or not in filing a petition depends on the facts of a particular case. In the present case, after the first respondent distributed a copy of the pamphlet in the Bar Association of the

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Supreme Court, the petitioners had to ascertain facts regarding its publication, printing etc. Further the petitioners had to take steps only after the Attorney General did not move in the matter. [108B-G]

State Government Madhya Pradesh v. *Vinaya Kumar*, A.I.R. [1952] Nag. 34, referred to.

(11) It is not the law, even in England, that only the Attorney-General

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should move in contempt matters. Besides, the position of an Attorney General in England is quite different from that of the Attorney General in India. Unlike the Attorney General in India, he does not have to receive instructions from Government to move a contempt petition. Moreover, there is nothing in law which prevents this Court from entertaining a petition at the instance of the President of the Supreme Court Bar Association and other Advocates of this Court, since the Bar is vitally concerned in the maintenace of the dignity of courts and the proper administration

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of justice. Further, this Court can issue a notice *suo moto*. [109D-G]

(12) There was no allegation or proof that any of the signatories of the motion of impeachment circulated the pamphlet outside Parliament, and hence, there was no necessity to join them as parties. Also, the fact that those members of Parliament had not been made correspondents did not exonerate the first respondent or make his publication any the less contempt of court. [102C; 109G-H]

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(13) The fact that the first respondent filed a writ petition containing the substance of the impeachment motion did not afford a defence when he committed contempt by circulating the pamphlet. [110A-C]

(14) Even if the senior Judge did not choose to take any action for contempt when the allegations were made during the hearing of the appeal it was open to the petitioners to initiate the proceedings. [110C-D]

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(15) There was no substance in the contention that the petition was filed with the object of protecting the senior Judge who was the first petitioner's junior at the Bar and friend and therefore the filing of the petition with a vengeful motive was itself contempt of court. [110D-F]

(16) The pamphlet constituted gross contempt of this Court. His apology was no apology when it was coupled with fresh abuses of the senior Judge. Therefore, he deserved a heavy sentence, but since such contempts of this Court were happily rare, a lenient sentence of 2 months simple imprisonment should be imposed. [110G; 111G-H]

[The Court however warned that any such future contempt will not be dealt with so leniently.]

CRIMINAL APPELLATE JURISDICTION Criminal Misc. Petition No. 1259 of 1970.

Petition under Article 129 of the Constitution of India praying for action being taken against the respondents for the contempt of the Supreme Court.

The petitioner appeared *in person.*

Respondent No. 1 appeared *in person.*

Jagadish Swarup, Solicitor-General, *V. A. Seyid Muhammad* and *S. P. Nayar,* for the Union of India.

Mela Ram, one of the partners of respondent No. 2 was also present *in person.*

The Judgment of the Court was delivered by

Sikri, C. J. This is a petition under Article 129 of the Constitution of India by Shri C. K. Daphtary and three other advocates bringing to our notice the alleged contempt of this Court committed by the respondents (1) O. P. Gupta, (2) Rising Sun Press, Delhi, through its proprietor, and (3) M/s Kanak Book Depot. Respondent No. 3—Kanak Book Depot—has not been traced. Respondent No. 1, O. P. Gupta, appeared in person, and the proprietor of the Rising Sun Press, Mela Ram, also appeared in person.

In the petition it is stated that Civil Appeal No. 1731 of 1967 was filed in this Court by the State of U. P. against the judgment of the High Court of Allahabad whereby the High Court had held that the order of dismissal from service passed against respondent No. 1, O. P. Gupta, was invalid. This appeal came up for hearing before this Court on various occasions and was ultimately heard by a Bench consisting of Shah, J., as he then was, and Hegde, J., on October 15, 1969 and October 16, 1969 (and, according to respondent No. 1, also on October, 17, 1969). It appears that the appeal was first heard on February 22, 1969 by Hidayatullah, C. J., and another Hon'ble Judge, but later on it was heard, as already stated, by Shah and Hegde, JJ, and the judgment was delivered on October 28, 1969 by Hegde, J.

A It is further stated in the petition that respondent No. 1 "with the deliberate design of bringing into disrepute and scandalising this Hon'ble Court, wrote and got printed and published, by and through Respondent No. 2, a pamphlet which though ostensibly meant for the convenient use of members of Parliament was actually widely circulated and was made available for sale at M/s B Kanak Book Depot, P. O. Ramsanehi Ghat, Distt. Barabanki, U. P., Respondent No. 3." It is also stated that "the said pamphlet was, as the petitioners believe, sold or offered for sale to the public by Respondent No. 3."

It is further stated in the petition that the pamphlet "disparC ages and brings into contempt the authority of this Hon'ble Court and tends to weaken the confidence of the people in it and in any event has the tendency and object of so doing. It is submitted that the pamphlet "by attacking Hon'ble Mr. Justice J. C. Shah and Hon'ble Mr. Justice Hegde, while acting in their judicial capacity, scandalises and brings into disrepute this Hon'ble Court and is clearly contempt of this Hon'ble Court."
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In para 7 of the petition certain passages from the pamphlet were extracted. It is necessary to reproduce these paras in order to show the nature and content of the scandalous remarks made against Mr. Justice Shah and Mr. Justice Hegde.

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> "Moreover, having wrongly persisted in hearing the case, he delivered a demonstrably dishonest judgment which cannot fail to show to any discerning person that he did so only to feed fat his prejudice and bias. He has gone to the extent of writing total falsehoods in the judgment in the defiant belief that there is none to look F into and scrutinise his judgments. His action is highly condemnable and derogatory of a man in his position."
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> "As this enquiry proceeds, hundreds of similar other instances of his misbehaviour are bound to come to light, as he appears to be in the habit of being influenced by G extrajudicial considerations and of victimising the disliked party through dishonest means."
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> "In view of the clear admission by the U. P. Government that the file had never gone to the Governor at all, there was nothing on merits for that Government to file an appeal but still the U. P. Government filed an appeal in H the Supreme Court in the hope that they may be able to influence the judgment and get a wrong decision in their favour. They thought of Shri J. C. Shah, Judge of the Supreme Court in this connection."

"So even while the mater remained pending in the High Court they moved for exparte ad interim stay in the Supreme Court. This was manged to be heard by Shri J. C. Shah and another. Shri J. C. Shah at once ordered stay not only of the balance decretal amount, but even of the Rs. 50,000 which had been received by Shri O. P. Gupta after furnishing full security." A

"The Respondent's counsel, Shri S. P. Sinha, argued on 25th April, 1966 from 11 a.m. to 11 : 40 a.m. Throughout these arguments Shri J. C. Shah made such extremely unreasonable, biased and illegal observations that the counsel Shri S. P. Sinha had to give up the arguments in disgust." B

"Shri O. P. Gupta went back to Allahabad greatly perturbed and upset at such open dishonesty of a Senior Judge of the highest Court of Justice in the land". C

"Whereas in the Lok Sabha every word that is spoken is written down, in the Supreme Court none of the arguments by the parties or observations by the Judge are noted. This is the reason why Shri J. C. Shah makes such illegal and dishonest observations orally in the Court in the belief that these observations will not find place on the record and nobody will be able to catch him." D

"Note : Although both the Judges who delivered this judgment are responsible for it, the responsibility of Shri J. C. Shah is much more serious as he was the Senior Judge and had been specifically charged with bias. The other Judge merely toed his line. His cleverness in getting the judgment delivered by his junior colleague will deceive no one." E

"It is not as if the judge has missed those contentions through carelessness. He has done so deliberately and dishonestly because the High Court had emphasised this contention very strongly and had given clear findings on it." F

"It was only the height of dishonestly on the part of Shri J. C. Shah to ignore and go against all law in this matter." G

"In view of all these binding rulings Shri J. C. Shah has not only conducted himself dishonestly in the above observation but has flouted the Constitution most directly and want only to feed fat his bias." H

"Further, in A. I. R. 1961 S. C. 1070, the Supreme Court has emphatically laid down that admissions have to be taken as a whole. It is not possible for a judge to

A take a few sentences here and there from a statement and treat them as admission and ignore other sentences which explain those so-called admissions. Only a dishonest and prejudicial Judge could have done this."

"In para 9, Shri J. C. Shah himself says that one of
B the essential requirements of reasonable opportunity is that 'he must be given reasonable opportunity to cross-examine the witnesses produced against him. He has belied his own standard and shown not only utter dishonesty but also a feeling that being a Judge of the Supreme Court there is none who can scrutinise his actions."

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In para 8 of the petition it is stated that petitioner No. 3, Shri S. N. Prasad, Advocate, while in Patna and Gauhati during the summer vacation, was asked by several people including some Judges of the High Court about the said pamphlet and was also shown the pamphlet for the first time in Patna. It is further
D stated that petitioner No. 3 was also informed by one of the Chief Justices that the said pamphlet had been sent to him. It is submitted that "this makes it obvious that the pamphlet had been very widely circulated."

Para 9 of the petition may be set out in full :

E "That soon after reopening of the Court after summer acation, Respondent No. 1 was found in the Bar Association room of the Supreme Court and was seen talking to some members. Shri B. P. Singh, Advocate, on spotting the Respondent No. 1, went to the table at which he was sitting with the intention of asking him to
F leave the Bar Association room as he was not a member. On reaching the table, Shri B. P. Singh found the Respondent No. 1 discussing the aforesaid Pamphlet. Shri B. P. Singh asked the Assistant Librarian of the Bar Association to ask Respondent No. 1 to leave the Bar Association room immediately. However, before the Respon-
G dent No. 1 actually left the Bar Association room, he sold a copy of the said Pamphlet to Shri O. N. Mahindroo, Advocate."

In para 10 it is submitted that "from the above mentioned facts it is clear that the Respondant No. 1 has personally distributed and published the aforesaid pamphlet." It is further stated
H in para 11 that the pamphlet as a whole is *ex facia* contempt of Court and has the tendency and object of bringing into disrepute the authority of the court and to weaken the confidence of the public in its justice and fair play.

It is prayed in the petition that this Court be pleased to issue notice to the Respondents to show cause why they should not be committed for contempt of Court and upon hearing the Respondents (a) order attachment and committal, (b) impose such other penalty as may be deemed fit, and (c) pass such order or orders as this Court may think proper.

Shri S. N. Prasad, petitioner No. 3, has filed an affidavit with the petition. Shri B. P. Singh, Advocate, Supreme Court, has also filed an affidavit. In this affidavit it is stated; "Sometimes after the re-opening of the Court after the summer vacations in July 1970, I saw Mr. O. P. Gupta moving about in the Supreme Court Bar Association. I recognise Mr. O. P. Gupta, as I remember having seen him arguing his own case in the Supreme Court. On that day Mr. O. P. Gupta was carrying a bag with him and was aimlessly moving about within the Association's premises."

It is further stated in the affidavit :

> "That Shri O. P. Gupta ultimately sat down to talk to some of the members of the Bar Association and was discussing certain matters with them. Having noticed his presence and having known that he had printed some pamphlet which contains scurrilous remarks against some of the Judges of the Hon'ble Court, I became suspicious as to the purpose of his visit to the Supreme Court Bar Association. I, therefore, went to the table where he was sitting and found that he was discussing the contents of his pamphlet which he chose to describe as a "booklet". Among other members present at the table I distinctly remember the presence of Shri O. N. Mahindroo. I protested against the presence of Shri O. P. Gupta within the Supreme Court Bar Association premises as he was not a member of the Association. ..... In spite of my protest I found that Mr. Gupta had no intention of leaving the Bar Association, and I, therefore, called Shri Gopi, Assistant Librarian and asked him to see to it that Mr. Gupta left the Bar Association premises immediately. Thereafter Mr. Gupta agreed to leave the Association premises."

It is further stated that "while he was leaving he collected a few copies of the 'booklet' which he had circulated amongst the members present there. I distinctly remember that Shri O. N. Mahindroo asked for a copy of the booklet and paid a sum of Re. 1/- to Mr. O. P. Gupta which was the price demanded by Mr. Gupta for the booklet. Thereafter Mr. Gupta was made to leave the association premises."

An affidavit was also filed by Shri O. N. Mahindroo. It is stated in the affidavit :

A "I have read the Affidavit of Mr. B. P. Singh, Advocate, and I confirm what has been stated in paras. 2 and 3 of his affidavit about Mr. O. P. Gupta and me. I did pay him a Rupee as desired by Mr. Gupta for a copy of the booklet as stated in para. 3 of the said affidavit."

This petition was called for hearing on November 23, 1970, B and upon hearing Mr. C. K. Daphtary, one of the petitioners, the Court directed issue of notice of this petition to the respondents returnable 10 days hence, peremptorily. The office reported on December 3, 1970, that "neither the Registered Cover nor A.D. Card in respect of notice issued directly to Respondent No. 1, *viz.* Shri O. P. Gupta has been received back so far. Similarly C no report in respect of Respondent No. 1 has been received from the District Judge, Allahabad." On December 4, 1970, this Court directed that another notice be sent to respondents Nos. 1 and 3 returnable on December 9, 1970. It was further directed that notice be sent to respondent No. 1 at his Delhi address also, returnable on December 9, 1970. The notices were also directed D to be served through the District Magistrates. It may be mentioned that respondent No. 2 was present in Court and had filed an affidavit to which we shall later refer.

The Sub-Divisional Magistrate, Delhi, returned the notice in respect of O. P. Gupta, unserved, with the following report :

E "The wife of the addressee, *viz.*, Mrs. Mithles Kumari, who was present at the address given in the notice, has stated that her husband had gone out to Poona. She had no knowledge about the return of her husband. She did not inform us about his address at Poona.

F On enquiries being made from Shri Baij Nath Kureel, resident of 69, South Avenue (M. P. flats) he stated that he (Mr. Gupta) comes and stays with him as a guest, off and on, and he goes back.

Mr. O. P. Gupta is deliberately concealing himself and is avoiding service of the notice. Therefore, the notice is being returned unserved. The writing of Mr. G O. P. Gupta's wife is enclosed."

As regards the notice sent to O. P. Gupta, through the District Magistrate, Allahabad, the Additional District Magistrate who was contacted on Trunk telephone by the Office on December 8, 1970, reported that Gupta was stated to be in Delhi and H was staying at 69, South Avenue. The District Judge of Allahabad and Barabanki reported that notices could not be served on O. P. Gupta as he was reported to be in Delhi in connection with some case.

On being satisfied on materials before it that respondent No. 1 was deliberately avoiding service, the Court on December 9, 1970, directed issue of non-bailable warrant for the arrest of respondent No. 1 (wherever he may be in India) and his production in this Court on Monday, the 14th December, 1970. The Additional District Magistrate, Delhi, thereupon submitted the following reports:

> "The local police has informed us that despite best of their efforts they have not been able to arrest Shri O. P. Gupta whose where-abouts in Delhi are not known. However we are making further efforts to find out his where-abouts and will be able to send you a final report on Sunday evening. You may kindly inform their Lordships accordingly."

On December 10, 1970, O. P. Gupta sent a letter to the Registrar, giving his address "C/o Station Master, Jagannath Puri (Orissa)", stating that he had heard a rumour that "the Hon'ble Court requires my presence in connection with contempt of Court." He further stated that he was trying to reach Delhi as soon as possible in about ten days. He requested that the matter may be listed for his appearance any day in January 1971. He gave a firm undertaking that he would present himself before the Court on the day the Court reopened after winter vacation. On December 14, 1970 this Court ordered that the "warrant will remain outstanding returnable a day after the reopening of the Court in January 1971, *i.e.* 5-1-1971". On December 15, 1970, referring to the letter of the respondent, mentioned above, this Court observed that "the address given on the letter is c/o the Station Master, Jagannath Puri, Orissa. This clearly shows that he does not want to disclose his wherabouts so that proper processes may be issued to him.....In view of this letter, we are further fortified in our view that he is avoiding service and concealing himself. Warrants will be executed as ordered by us."

The office reported again on January 4, 1971 that the authorities had informed that despite their best efforts they had not been able to arrest O. P. Gupta nor his where-abouts could be found.

Respondent No. 1 wrote another letter on December 24, 1970, objecting to the issue of non-bailable warrants. He stated:

> "As written in my previous letter I had planned to reach Delhi by about the 20th instant and to present myself in Court when it reopens on 4th January, 1971..... But the shocking news of a non-bailable warrant has upset all my plans."

A He further stated that he had thus no alternative but to go back; he wanted to reach the Court as a free man and before appearing in Court he wished to get about two or three weeks time for medical aid. He, therefore, prayed that the warrant be withdrawn and the case fixed for Monday, the 1st February, 1971.

B On January 5, 1971, this Court ordered that "warrants be executed as already directed by this Court. District Magistrates of Allahabad, Delhi and Barabanki should take immediate action with the assistance of the Police, to execute the warrants."

On January 25, 1971, at last O. P. Gupta appeared before the Court, and this Court ordered that the "warrant which was
C ordered to be issued against respondent No. 1 will not be executed on condition that he shall furnish a personal bond in the sum of Rs. 5,000/-with a surety in the like amount to the satisfaction of the Registrar of this Court. Respondent No. 1 will file affidavit in reply within a week from today. Liberty to the petitioners to file a rejoinder, if any. The Petiton will come up for hearing on the
D 12th February, 1971."

On January 28, 1971, respondent No. 1 filed an application alleging that the petition for contempt was not maintainable and deserved to be dismissed without the applicant being called upon to answer it on merits. He stated various grounds regarding the
E non-maintainability of the petition. On February 12, 1971, the Court adjourned the matter to February 18, 1971, and respondent No. 1 was directed to file an affidavit on merits by February 16, 1971, which, however, he failed to do.

On February 22, 1971, respondent moved another application praying that the hearing of the case may be postponed because
F he wanted to engage a counsel and counsel whom he wished to engage (M/s R. D. Bhandare, Mohan Kumaramangalam, K. K. Nayar, D. L. Sen, etc.) were parliamentarians and they were extremly busy in their elections and could not come to Delhi before the middle of March, 1971.

G We have given these facts in order to show that respondent No. 1 was deliberately avoiding service for a long time. We could not at first understand his object in doing so, but during the course of arguments the object became quite clear. Chief Jutice Shah was due to retire on January 21, 1971 and if the respondent had made the affidavit, to which we will presently refer to, before that date, it
H would have amounted to contempt. When it was pointed out to him during the course of hearing that he had abused Mr. Justice Shah in his affidavit he replied that it was not contempt because it was the law that there could not be any contempt in respect of

a Judge who has retired. It seems to us clear that in order to hurl fresh abuses on Mr. Justice Shah, he deliberately avoided service of the notice so that he would not have to file his affidavit before the date of retirement of Mr. Justice Shah. A

We are also surprised at the inability of the Executive to have O. P. Gupta traced and warrants served on him. Article 144 of the Constitution provided that "all authorities, civil and judicial, in the territory of India, shall act in aid of the Supreme Court." We have noticed with regret that in this case the Executive has not shown due diligence in complying with this constitutional provision. B

Respondent No. 1 filed another application on February 18, 1971, praying that the arguments on maintainability of the petition be heard first and that question decided. It was further requested that the petitioners be asked to produce all their evidence because he would like to cross-examine them. It was further stated that after the petitioners had closed their evidence, he "will summon documentary and oral evidence on his behalf, after which arguments may be heard." He requested that the petitioners be asked to produce the "book" or the "pamphlet" from which they had copied annexure 1 to their petition. It was suggested that it would throw great light on their allegations. C D

We may mention that the pamphlet or the booklet was annexed to the petition in original and we could not understand this prayer. This Court directed that the petition would be heard on the affidavits already filed by the parties. This Court also informed respondent No. 1 that the petitioners had no other evidence to lead. E

Respondent No. 1 filed a lengthy counter affidavit on February 18, 1971. He started with tendering unreserved, unqualified and unconditional apology to this Court. He, however, went on to state that in borderline cases it was permissible to make alternative and additional defence of no contempt also and he therefore proceeded to submit his defence. F

In para 3 of the counter-affidavit he maintained that because of the many laches, illegalities and infirmities the petition should be dismissed. In para 3.2 he stated that "I am not at this stage making any attempt to contradict evidence given or to give any evidence on my side. This will be done if and when the occasion arises or the Hon'ble Court so orders. I will have to summon some documents also for that purpose." This statement was made in spite of the direction of this Court that he should file his affidavit on the merits. Until now we have not been told what documents or evidence he would have called, especially in view of the admissions made by him, which we will presently refer to. G H

A In para 4 he complained that he could not find the specific charge. We had informed him that, in brief, the charge against him was that he had committed contempt of Court by the publication and distribution of the pamphlet or the booklet outside Parliament.

B In para 5 he proceeded to assert that the petition was not *bona fide* at all. He cast asperisions on Mr. C. K. Daphtary, who is senior advocate of this Court, and the President of the Supreme Court Bar Association. We need not refer to these because this is really an abuse of the process of this Court.

C In para 8, 8.1, 8.2 and 8.3 the respondent complained against the language of the petition as not being quite respectful to the Members of Parliament. In para 8.4 he stated that "as to facts I must frankly admit that the grievous wrong that Shri J. C. Shah had done to me had created such deep anguish, frustration and desperation in me that had God almightly not intervened Shri J. C. Shah would not have seen the end of 1969." we wondered what exactly D he meant by this passage, but he admitted that it meant that he had at one time decided to murder Mr. Justice Shah. He explained that it was some Member of Parliament who saved him from this act by suggesting that he might instead try to convince the Members of Parliament of the genuineness of his case and prepare them to file an impeachment motion.

E In para 8.5 it was stated that he had a right to approach and convince the Hon'ble Members and he exercised that right. Nobody has said before us that he had no right to approach and convince the Hon'ble Members.

In para 8.6 and 8.7 he mentioned about the filing of the im- F peachment motion in the Lok Sabha on May 15, 1970 and its rejection by the Hon'ble Speaker.

In para 9 he said that "a large number of Hon'ble Members of Parliament made that draft, in the making of which I too took an active part and made my contribution." He submitted that G the "drafting" of the motion could not be a charge. We may mention that he has not been charged with the drafting of the motion.

Regarding the printing of the pamphlet, he stated in para. 9.2 :

H "The Impeachment Motion was printed by respondent No. 2 and I went to him to get it printed. The printing was done under orders and at the instance of the signatories of the Motion. There were 200 of them

and they were anxious to have several copies each. They had a right to have the copies. It was impossible for them to have the copies without printing the motion. It still possess a letter from Hon'ble Shri George Farnandes asking for six copies which I sent to him by registered post."

He submitted that the printing of the motion could not be a charge against him and that "neither the Hon'ble Members who ordered the printing, nor I who got the work actually done, nor respondent 2, who actually printed the motion are in any way guilty of contempt for that action. We need not go into this submission as he was not being charged for printing or assisting in the printing of the motion.

In para 9.3 he contended that the word" "pamphlet" for the printing Impeachment Motion was highly condemnable. In para 9.4 he stated that he never offered the book for sale nor did he widely circulate it. Further in para 9.5 he stated that the "book given to Shri O. N. Mahindroo, from which this annexure must have been copied, was not a new copy, but was a used one inasmuch as it contained several red pencil marks and pen writing in its body. This shows and proves that it was not given to him by way of sale and it was not being offered for sale in general."

In para 9.6 it was stated that annexure 1 to the petition was nothing but the Impeachment Mention filed in the Lok Sabha reproduced in a printed book.

In para 10 he submitted that para 6 of the petition "has needlessly dragged in the fair name of Hon'ble Mr. Justice Hegde in the petitioner's wholesale onslaught." He submitted: Read the entire Impeachment Motion. The name of Hon'ble Mr. Justice Hegde does not occur even once anywhere either disparagingly or otherwise. I have the greatest regard and respect for His Lordship, just as I have for every other Judge in India." He gave reasons why Mr. Justice Hegde's name was not mentioned in the Impeachment Motion, although he had actually delivered the judgment.

In para 10.1 he submitted that "the very same judgment can lead to the Impeachment of one Judge who signs it knowing that its conclusions are wrong while leaving out completely the other Judge who signs it genuinely believing that the conclusions are right."

In para 10.2 he referred to the petition dated 27-10-69 under Art. 32 of the Contitution to demonstrate his great regard and respect for Mr. Justice Hegde.

A In para 10.3 he stated thus :

"It is entirely wrong to say that the Impeachment Motion "disparages and brings into contempt the authority of this Hon'ble Court and tends to weaken the confidence of the people in it and in any event has the tendency and object of so doing." The Motion was solely
B aimed against a "decayed fish" and its laudable object was to save the "entire tank" from contamination, as explained above in para. 9.1. Therefore, the object of the motion clearly was to save the prestige and honour of the Hon'ble Court and to enhance public confidence in it and not the reverse."

C In para 10.4 he submitted that the judgment in question did not excite respect for Mr. Justice Shah.

In para 10.5 he stated that the Impeachment Motion did not attribute any corruption like bribary, liquor, sex, influence, favouritism, etc. to Mr. Justice Shah. He further added:

D "What, however, was a fatal weakness in him, was that he made up his mind on the result of a case either when he read the file at home in a few minutes or within the first few minutes of the opening arguments, and once he made up his mind, he dogmatically refused to listen
E even to the most reasonable arguments of the party disfavoured by him. In order to shut down the arguments of that party, he would go to the length of talking absurdly and like a mad man in open court. Such behaviour made all his virtues useless and made him a man thoroughly unfit to be a judge."

F We need not refer to instances he gave of some other Judges and their behaviour in Court.

In para 10.8 he submitted:

"The Impeachment Motion ought to be read in this light. Wherever it says "prejudice", "bias", "grudge",
G "vengeance" etc., everywhere it means the same—that he had formed his opinion and was seeking to stick to it whatever came his way, and the more I tried to make him see reason, the more offended and revengeful he become. "Extra-judicial considerations" also means the same, because becoming prejudiced by one sided argu-
H ment is certainly not judicial. In this light the entire Impeachment Motion is nothing but extremely fair and and just comment on a man who richly deserved it. The two illustrations given on the back of the title cover,

which are the gist of the entire impeachment motion, also point to this trait of Shri J. C. Shah's character. There is no hint of any other weakness. Even my letter to Shri C. K. Daphtary, annexure A, clearly points only to this weakness of Shri J. C. Shah. Fair comment is not contempt."

In para 11 he asserted that excerpts given in para 7 of the petition, reproduced above, were all correct excerpts from the Impeachment Motion and not from any pamphlet. He further submitted that "they are all true, correct and fair criticism of Shri J. C. Shah as clarified above."

Before dealing with the question of maintainability of the petition and other points raised in his application dated January 28, 1971, we propose to dispose of the point regarding the validity of the existing law relating to contempt of court. The first respondent has urged that the existing law relating to contempt of court by writings in respect of proceedings which have finished is repugnant to Art. 19(1)(a), read with Art. 19(2). He contends that the existing law imposes unreasonable restrictions on a citizen's right to freedom of speach guaranteed under Art.(19)(1)(a). He urges that we should follow the law existing in the United States of America. Mr. C. K. Daphtary, on the other hand, contends, first, that Art. 19(1)(a) and Art. 19(2) do not apply to the law relating to contempt of this Court because of Art. 129 of the Constitution, which reads:

> "The Supreme Court shall be a Court of Record and shall have all the powers of such a court including the powers to punish for contempt of itself."

Secondly, Mr. Daphtary urges that the existing law relating to contempt of court is not a 'law" covered by the definition of the word "law" in Art. 13(3)(a). Thirdly, Mr. Daphtary contends that the existing law only imposes reasonable restrictions within the meaning of Art. 19(2) of the Constitution.

In *Pandit M. S. M. Sharma* v. *Sri Krishna Sinha*(1) this Court held:

> "It would not be correct to contend that Art. 19(1)(a) of the Constitution controlled the latter half of Art. 194(3) or of Art. 105(3) of the Constitution and that the powers, privileges and immunities conferred by them must yield to the fundamental right of the citizen under Art. 19(1)(a). As Arts. 194(3) and 105(3) stood in the same supreme position as the provisions of Part III of the Con-

(1) [1959] Supp. 1 S.C.R. 806.

A stitution and could not be affected by Art. 13, the principle of harmonious construction must be adopted."

"So construed, the provisions of Art. 19(1)(a), which were general, must yield to Art. 194(1) and the latter part of its cl. (3), which are special, and Art. 19(1)(a) could be of no avail to the petitioner."

B

In *Special Reference No. 1 of 1964*(1) the same view was confirmed.

Relying on these authorities Mr. Daphtary urges that at time when the Constitution was enacted it was well known what the powers of a suprior Court of Record were in England and what C was the law of contempt which the Courts of Record were administering, and therefore, there could be no question of testing that law on the anvil of Art. 19(1)(a), read with Art. 19(2).

It is not necessary to decide this point or the point whether the existing law relating to contempt of Court is a 'law' or not within the definition of the word 'law' in Art. (13)(3)(a), as we D have come to the conclusion that in any event the existing law imposes reasonable restrictions within the meaning of Art. 19(2). Apart from this, the Constitution makes this Court the guardian of fundamental rights conferred by the Constitution and it would not desire to enforce any law which imposes unreasonable restrictions on the precious right of freedom of speech and expression E guaranteed by the Constitution.

In this case it is claimed that respondent 1 has committed contempt of court by circulating a pamphlet or booklet containing criticism of the judgment of this Court, delivered by Mr. Justice Hegde, on behalf of himself and Mr. Justice Shah, as he then was, and also containing scurrilous criticism of the conduct F of both the Judges. Then, what is the existing law on this particular point? We are relieved from reviewing earlier authorities because this Court has recently in two cases examined the law. In *Perspective Publications Ltd.* v. *State of Maharashtra* (2) Grover, J., speaking on behalf of the Court, reviewed the entire case law and stated the result of the discussion of the cases on G contempt as follows:

"(1) It will not be right to say that committals for contempt for scandalizing the court have become obsolete.

(2) The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administra- H tion of law and justice.

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(1) [1965] 1 S.C.R. 413. (2) [1969] 2 S.C.R. 779.

(3) It is open to anyone to express fair, reasonable and legitimate criticism of any act or conduct of a judge in his judicial capacity or even to make a proper and fair comment on any decision given by him because "justice is not a cloistered virtue and she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men." A B

(4) A distinction must be made between a mere libel or defamation of a judge and what amounts to a contempt of the Court.

The test in each case would be whether the impugned publication is a mere defamatory attack on the judge or whether it is calculated to interfere with the due course of justice or the proper administration of law by this Court. It is only in the latter case that it will be punishable as Contempt. C

(5) Alternatvely the test will be whether the wrong is done to the judge personally or it is done to the public. To borrow from the language of Mukherjee, J. (as he then was) (*Brahma Prakash Sharma's case*)(1) the publication of a disparaging statement will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties." D E

Later, Hidayatullah, C. J., in *R. C. Cooper* v. *Union of India* (2) observed : F

"There is no doubt that the Court like any other institution does not enjoy immunity from fair criticism. This Court does not claim to be always right although it does not spare any effort to be right according to the best of the ability, knowledge and judgment of the Judges. They do not think themselves in possession of all truth or hold that wherever others differ from them, it is so far error. No one is more conscious of his limitations and fallibility than a Judge but because of his training and the assistance he gets from learned counsel he is apt to avoid mistakes more than others. ..... We are constrained to say also that while fair and temperate criticism of this Court or any other Court even if strong, may not be actionable, attributing improper motives, or tending to G H

(1) (1953) S.C.R. 1169. (2) [1970] 2 S.C.C. 298, 301.

A bring Judges or courts into hatred and contempt or obstructing directly or indirectly with the functioning of Courts is serious contempt of which notice must and will be taken. Respect is expected not only from those to whom the judgment of the Court is acceptable but also from those to whom it is repugnant. Those who err in their B criticism by indulging in vilification of the institution of courts, administration of justice and the instruments through which the administration acts, should take heed for they will act at their own peril. We think this will be enough caution to persons embarking on the path of criticism."

C We are unable to appreciate how the law, as summarised in the two cases places unreasonable restrictions on the freedom of speach. But the argument of the first respondent was that we have now a written constitution, like the United States of America, and if in the United States, in order to give effect to the liberty of speech and freedom of expression the common law has been departed from, we should also follow in their footsteps. But D the American Constitution and the conditions in the United States are different from those in India. In the American Constitution there is no provision like Art. 19(2) of our Constitution.

The relevant part of the First Amendment to the U. S. Constitution is as follows :—

E "Congress shall make no law..... abridging the freedom of speech or of, the press."

The difference between the First Amendment and Art. 19(1)(a) was noted by Douglas J. in *Kingsley Corporation* v. *Regents of the University of New York*(1) where he observed:

F "If we had a provision in our Constitution for "reasonable" regulation of the press such as India has included in hers there would be room for argument that censorship in the interest of morality would be permissible." (In a footnote he set out Art. 19(2)).

Even in the United States, as far as we have been able to ascertain, in some States the law is the same as in England (see G *Re Peter Breen* (2) Annotation at page 572). We may here quote some passages from the decision of the Nevada Supreme Court in that case. An Attorney had made a statement about a reversal by the Supreme Court of a decision of the Trial Court. In proceedings for disbarment the Court observed :

H "In fact, the question is presented whether or not the language and order could, in any event, be deemed

(1) 3 L.ed. 2d. 1512; 1522.
(2) 17 Lawyers Reports Annotated, New Series p. 572.

contemptous or warrant any action upon the part of this court, upon the theory that they are but criticisms of an opinion of a court which it is the province of anyone to indulge in, irrespective of whether such criticisms are just or unjust, or whether or not they are couched in respectful language. The right to criticize an opinion of a court, to take issue with it upon its conclusions as to a legal proposition, or question its conception of the facts, so long as such criticisms are made in good faith, and are in ordinarily decent and respectful language, and are not designed to wilfully or maliciously misrepresent the position of the court, or tend to bring it into disrepute, or lessen the respect due to the authority to which a court of last resort is entitled, cannot be questioned. To attempt to declare any fixed rule making the boundaries where free speech in reference to court proceedings shall end would be as dangerous as it would be difficult. The right of free speech is one of the greatest guarantees to liberty in a free country like this, even though that right is frequently and in many instances outrageously abused. Of scarcely less, if not of equal, importance, is the maintenance of respect for the judicial tribunals, which are the arbiters of questions involving the lives, liberties, and property of the people. The duty and power is imposed upon the courts to protect their good name against ill-founded and unwarranted attack, the effect of which would be to bring the court unjustly into public contempt and ridicule, and thus impair the respect due to its authority. While it is the duty of all to protect the courts against unwarranted attack, that duty and obligation rests especially upon the members of the Bar and other officers of the Court. It would be foolish, as well as useless, for anyone to contend that the very highest courts do not make mistakes. Courts themselves prove this by overruling previous decisions."

"If any considerable portion of a community is led to believe that, either because of gross ignorance of the law, or because of a worse reason, it cannot rely upon the courts to administer jusice to a person charged with crime, that portion of the community, upon some occasion is very likely to come to the conclusion, that it is better no to take any chances on the courts failing to do their duty. Then may come mob violence with all its detestable features. To say that respondent meant no disrespect for this Court is contrary to the plain meaning of the language used, and the order directing that it be spread upon the minutes of the district court."

A The question whether the existing law of contempt is unreasonable within Art. 19(2) of the Constitution has been the subject of decisions in some of the High Courts. They have all come to the conclusion that the restrictions imposed by this law are reasonable. S. K. Das, J., then a Judge of the Patna High Court, in *Legal Remembrancer* v. *B. B. Das Gujta*,(1) after
B referring to the arguments of Mr. Ghosh, observed as follows :

> "I think that the answer to the arguments of Mr. Ghosh is to be found in the words of Lord Atkin—"Justice is not a cloistered virtue." Any and every criticism is not contempt. One of the tests is, to use the words of Mukherjea, J. in *Brahama Prakash Sharma* v. *The State of*
C *Uttar Pradesh* (2) whether the criticism is calculated to interfere with the due course of justice or proper administration of law; whether it tends to create distrust in the popular mind and impair confidence of people in the Courts of law. These tests have been part of the meaning of the expression contempt of Court from before the Constitution and are still a part of its meaning—a meaning
D which the framers of the Consitution must have known when they used the expression. We are giving no wider connotation to it, and it is idle to contend that such a connotation imports any unreasonable restriction on freedom of speech and expression."

E We agree with the observations of the learned Judge.

In *Lakhan Singh* v. *Balbir Singh* (3) it was held that "the law of contempt as laid down by British and Indian Courts imposes resonable restrictions on the exercise of the right of freedom of speech and expression and the previous law continues in force even after the amended Art. 19(2) of the Constitution." It was
F further stated that "conditions in India are different from those prevailing in America. The language of our Constitution after the amendment of Article 19 requires us to see whether the restrictions are "reasonable"." It is true that this case was dealing with a publication which prejudiced mankind against a party before the case was heard, but the general observations are relevant for
G the purpose of this case.

In the *State* v. *Vikar Ahmed* (4) the High Court of Hyderabad was considering the question of scandalising the Court or the Judge. In this connection they said :

> "We may observe that freedom of press under our constitution is not higher than that of citizen, and that

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(1) [1953] I.L.R. 32 Pat. 1069; 1091. (2) [1953] S. C. R. 1169.
(3) [1953] 1 I.L.R. All. 796. (4) I.L.R. [1954] Hyd. 270; 278.

there is no privilege attaching to the profession of the press as distinguished from the members of the public. To whatever height the subject in general may go, so also may the journalist, and if an ordinary citizen may not transgress the law so must not the press. That the exercise of expression is subject to the reasonable restriction of the law of contempt, is borne out by cl. (2) of Art. 19 of the Constitution. It should be well to remember that the Judges by reason of their office are precluded from entering into any controversy in the columns of the public press, nor can enter the arena and do battle upon equal terms in newspapers, as can be done by ordinary citizens."

Respondent No. 1 contends that the present law places unreasonable restrictions because it serves no useful purpose, and even a scurrilous attack on a Judge does not affect the administration of justice. He further says that after a case has been decided, if a judgment is severely and even unfairly criticised, and assuming that this has an adverse effect on the administration of justice, it must be balanced against the harm which would ensue if such criticism is stopped. We are unable to agree with him that a scurrilous attack on a Judge in respect of a judgment or past conduct has no adverse effect on the due administration of justice. This sort of attack in a country like ours has the inevitable effect of undermining the confidence of the public in the Judiciary. If confidence in the Judiciary goes, the due administration of justice definitely suffers.

The first respondent referred to Art. 73, Art. 246, list I entry 77, and Art. 142(2). These do not throw any light on the question whether the existing law of contempt imposes unreasonable restrictions. Article 73 deals with the extent of the executive power of the Union. Article 246 *inter alia* deals with legislative power of Parliament. Entry 77 List I reads :

"Constitution, organisation, jurisdiction and powers of the Supreme Court (including Contempt of such Court) and the ....."

We are not concerned here with the extent of the powers conferred by Art. 246 read with entry 77 of List I.

Art. 142(2) reads :

"(2) Subject to the provisions of any law made in this behalf by Parliament the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any document, or the investigation or punishment of any contempt of itself."

A We are here also not concerned with any law made by Parliament. Art. 129 shows that the Supreme Court has all the powers of a Court of Record, including the power to punish for contempt of itself, and Art. 142(2) goes further and enables us to investigate any contempt of this Court.

B We are accordingly of the opinion that assuming that Art. 19(2) applies, the restrictions imposed by the existing law of contempt are reasonable, and are in public interest.

Respondent No. 1 sought to justify the extracts which we have reproduced above from para 7 of the petition. His justification was, in brief, that he could show that in the judgment C there were numerous errors. He proceeded to point out a number of so-called errors to us but we told him that we were not sitting as a Court of Appeal and we were willing to assume in his favour, without deciding the point, that there were errors in the judgment. But even so, there is no excuse whatsoever for using the language which he employed in these passages. It must be remembered D in this connection that it was Mr. Justice Hegde who drafted and delivered the judgment. He does not impute dishonesty to Mr. Justice Hegde but to Mr. Justice Shah. He explains this by saying that it was Mr. Justice Shah who controlled the hearing and he would not even allow Mr. Justice Hegde to listen to his arguments. We are unable to believe this.

E According to Respondent No. 1, the words "dishonest judgment" and "dishonesty" have to be understood in a special sense. He says that these words were used in order to show the manner in which the appeal was heard and the manner in which Mr. Justice Shah made up his mind quickly and then refused to budge from that position. It is well-settled that we have to give the F plain meaning to the words used in the pamphlet or the booklet. Giving the ordinary and plain meaning it appears to us that "dishonesty" means dishonesty, *i.e.* that he has ascribed to the Judge a conduct which would be most reprehensible. In other words he says that although Mr. Justice Shah was convinced that the appeal of the State of U. P. should be dismissed he cleverly G asked Mr. Justice Hegde to deliver the judgment and allow the appeal, and that Mr. Justice Hegde wrote down what Mr. Justice Shah dictated or told him to write.

We have already set out paras 10.5 and 10.8 of the affidavit filed by the first respondent. We are unable to give any other H meaning to the words "dishonest judgment", "open-dishonesty", "deliberately and dishonestly", "utter dishonestly", *i.e.* the meaning which he now seeks to ascribe to these words. It seems to us that whoever drafted the Impeachment Motion drafted it with

a view to bring the facts within the meaning of the expression "misbehaviour" in Art. 124(4) for he must have realised that to say that a Judge has committed errors, even gross errors, cannot amount to "misbehaviour". A

It seems to us that in view of the decisions of the various High Courts in India and this Court the passages we have extracted, read as a whole, constitute gross contempt of this Court and the two Judges. In this connection we may refer to some of the earlier cases decided by various High Courts. In *Moti Lal Ghosh In re* (1) a newspaper published articles scandalising the High Court and the Chief Justice in his administration thereof, by allegations implying that the Chief Justice had constituted a packed Bench. It was held that the articles constituted contempt of Court. One of the reasons given for holding contempt was that "the mere suggestion that such a thing is within the bounds of possibility is a grave reflection upon the Court and the persons responsible for its administration." One passage of this judgment, which may be referred to, is at page 182 : B C D

> "The other matter to which I refer is the passage at the end of the article in which the author expresses perfect faith in the Chief Justice. This, to my mind, is so inconsistent with the insinuations previously made in the articles, that it is impossible to conceive that it was genuinely intended. It is much in the same style as the conclusion of the previous article, and I do not think there can be any doubt as to the object of the author in using these words, *viz.*, to try and provide a means of escape for himself if he is taken to task for the previous matter contained in his article." E

Similar remarks can be applied to the protestations of the respondent No. 1 that he has respect for this Court and the Judges, including Mr. Justice Hegde. F

In *Emperor* v. *Marmadule Pickhall* (2) the High Court of Bombay observed :

> "The article as a whole would leave on the mind of an ordinary reader the clear impression that injustice had been deliberately done on political grounds to some of the accused who were apparently innocent. In other words it attributes judicial dishonesty to the Judges. I am unable to accept the contention that such an article does not constitute a contempt of Court. We have to con- G H

(1) [1918] I.L.R. 45 Cal. 169, 182.

(2) A.I.R. 1923 Bom. 8, 10.

A sider the natural and probable effect of the article and not only the avowed intention of the editor as indicated in his affidavit. I think that the publication of the article in question constitutes a contempt of Court."

Mr. Justice Shah, Acting Chief Justice, further observed:

B "I am slow to hold that any unfair criticism of Courts of Judges constitutes such an interference with the administration of justice as should be punished. I am wiling to act upon the view that the confidence of the public in Courts tests mainly upon the purity and correctness of their pronouncements and that such confidence is not C lightly shaken by a mistake or unfair criticism of this kind. At the same time it is clear that the tendency of such criticism is to undermine the dignity of the Court and in the end to embarrass the administration of justice. The faith of the public in the fairness and incorruptibility of Judges is a matter of great importance."

D In *Murli Manohar Prasad in re*(1), a Full Bench decision of five Judges, it was observed:

"It is for this Court as a matter of law to construe words and phrases which have no technical significance and to decide what is their meaning and what is the effect E which they are calculated to produce, and I have no hesitation in deciding that the words used by the author mean, and are calculated to mean, and intended to mean that the conduct of cases before the Chief Justice is such that arguments and authorities are ignored and that for that reason the life and liberty of, the subject brought F before the Chief Justice is in peril. Such a statement made about a Judge in the execution of his office is a contempt of Court, of the gravest character."

In *the matter of K. L. Gauba*(2) where a book published by an advocate of the Lahore High Court was concerned, the G Full Bench observed:

"This book contains most scandalous allegations of improper and even corrupt motives against Judges of this Court. It is, therefore, deliberately calculated to interfere with and bring into contempt the administration of justice in this Province and to lower the prestige of this H Court."

(1) [1929] I.L.R. 8 Pat. 323; 340.

(2) [1942] I.L.R. 13 Lah. 411; 423; 424.

We may also mention that following *Ram Mohan Lal, in the matter of* (1) *Coats* v. *Chadwick,* (2) and *Tusher Kanti Ghosh, Editor, In re*(3), the Full Bench disallowed the advocate's application to examine witnesses in defence.

It Observed :

> "There is not a single case on record, except one to which reference will presently be made, where a person guilty of scandalising the Court pleaded or attempted to prove that the libel was true. In *Ram Mohan Lal, in the matter of* (1) an attempt was made by the contemnor to call evidence to prove his allegations but the Court refused to call the witnesses and held that there can be no justification of contempt of Court. Even assuming that the writer of a manifesto believes all the states therein to be true, if anything in the manifesto amounts to contempt of Court, the writer is not permitted to lead evidence to establish the truth of his allegation.

In *Coats* v. *Chadwick* (2) Chitty, J., observed in a contempt case as follows :

> "The Plaintiffs' counsel not only admitted but boldly asserted, and made it part of their argument, that the circular was libellous, and that they could justify the libel, and they referred to some of the evidence which apparently had been adduced for the purpose of sustaining justification. But the evidence and the argument founded on it are irrelevant on this motion."

> In *Tusher Kanti Ghosh, Editor, In re* (3) Mukherji, J., at page 432, describing the characteristics of proceedings to punish *brevi menu* contempt of Court observed that in such proceedings the contemnor is precluded from taking a plea or a defence."

The first respondent has argued his case at great length but we are unable to hold that he did not commit contempt of court. Further, he did so deliberately. He admits that he took part in the drafting of the Impeachment Motion, and it seems to us that whoever is responsible for the final draft deliberately used words in order to bring the allegations within the word "misbehaviour" in art. 124(4). He said that by assisting in the drafting he did not commit any contempt of Court. That may or may not be so. But so far as the present case is concerned we need not go into that wider question as he has admitted that he gave the

(1) A.I.R. [1935] All. 38. (2) L.R. [1894] 1 Ch.D. 347.
(3) A.I.R. 1935 Cal. 419.

booklet or the pamphlet to Mr. Mahindroo though according to him it was not given to him by way of sale and was not being offered for sale in general. He further said that it was admitted that the booklet was widely circulated but that this must have been done by some members of Parliament. He complained that those members had not been arraigned as co-respondents. If some members of Parliament circulated the booklet or the pamphlet, as alleged by Respondent No. 1, to persons who were not members of Parliament they equally committed contempt of this Court. But as no body has chosen to file a petition against them, nor are we aware as to which member or members of Parliament have circulated the booklet or the pamphlet they could not be proceeded against. The fact that these members of Parliament had not been made co-respondents does not exonerate the first respondent or make it any the less contempt of court.

We must now refer to another defence which he relied on. He said that art. 105(2) of the Constitution and the Parliamentary Proceedings (Protection of Publication) Act, 1956 (XXIV of 1956) protect him. He submitted in his affidavit that "firstly, Parliament is authority can be taken to be implied to this publication as it has taken no exception to or action on it; secondly, the article implies that when the publication is without such authority, only the Parliament shall take action for it." He further submitted that Sections 3 and 4 of the Parliamentary Proceedings (Protection of Publication) Act, 24 of 1956, also protect substantially true reports of Parliamentary proceedings unless made with malice. Article 105(2) reads as follows :

> "No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings."

We are unable to appreciate how on the facts proved in this case Art. 105(2) applies. He has not relied on any express authority of the Lok Sabha, and Art. 105(2) does not say anything of any implied authority resulting from non-action of Parliament. Nothing, in fact was shown to us as to establish the publication of the pamphlet or the booklet as a publication "by or under the authority of either House of Parliament of any report, paper, votes or proceedings."

Section 2 of the Parliamentary Proceedings (Protection of Publication) Act, 1956, defines "newspaper" thus :

> "In this Act, "newspaper" means any printed periodical work containing public news or comments on

public news, and includes a news agency supplying material for publication in a newspaper." A

Sections 3 and 4 of this Act read thus :

"3.(1) Save as otherwise provided in sub-section(2), no person shall be liable to any proceedings, civil or criminal, in any Court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament, unless the publication is proved to have been made with malice. B

(2) Nothing in sub-section (1) shall be construed as protecting the publication of any matter, the publication of which is not for the public good. C

4. This Act shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station situate within the territories to which this Act extends as it applies in relation to reports or matters published in a newspaper." D

Various questions of interpretation would have arisen if the pamphlet or the booklet had been published in a newspaper, as defined in s. 2. One of them would be whether a contempt proceeding is a criminal or a civil proceeding or not; a question would also arise whether a notice of impeachment under art. 124(4), if not admitted by the Speaker under s. 3(1) of the Judges (Inquiry) Act, 1968 (Act LI of 1968), is a proceeding of Parliament within the meaning of s. 3 of the Parliamentary Proceedings (Protection of Publication) Act, 1956. But as here we are not concerned with the publication of the pamphlet or the booklet in a newspaper we need not decide these questions. It seems to us that the protection under s. 3 is only given to newspapers or broadcasting agencies. The protection is available provided that the publication has not been made with malice and is for public good. E F

Even so Respondent No. 1 contends that ss. 3 and 4 of the Parliamentary Proceedings (Protection of Publication) Act, 1956, show that Parliament considers it important that proceedings of the Houses of Parliament should be made known to the public, and therefore, if a private person does what is permitted by s. 3, it cannot be said to be contempt of court because by permitting publication under s. 3 Parliament must be deemed to have said that publication even of a proceeding which would ordinarily amount to contempt of court does not affect the due administration of justice. We are unable to deduce such an inference from ss. 3 and 4 on the statute book. This is a limited protection given G H

A to newspapers and even then it will require serious consideration whether a contempt proceeding is a proceeding, civil or criminal, within the meaning of s. 3.

In the result we hold that neither art. 105(2) nor the Parliamentary Proceedings (Protection of Publication) Act, 1956 protect
B the first respondent in respect of the contempt of court committed by him.

The first respondent said, and he has also stated so in para 10 of his affidavit, that the petitioners had "needlessly dragged in the fair name of Hon'ble Mr. Justice Hegde." According to him, the name of Mr. Justice Hegde did not occur even once any-
C where either disparagingly or otherwise, and he had the greatest regard and respect for him, just as he had for every other Judge in India. He said that he took great care to keep out the fair name of Mr. Justice Hegde although he did so at the risk of the impeachment motion not being admitted. It seems to us, however, that at least to persons who knew that the appeal had been heard by Mr. Justice
D Shah and Mr. Justice Hegde and that the judgment was drafted and delivered by Mr. Justice Hegde, and to persons who are familiar with the practice of this Court the statement that "the other Judge merely toed his line" must appear as gross contempt of Mr. Justice Hegde and this Court. The expression "toed the line" used in reference to Mr. Justice Hegde, by clear implication,
E means that the learned Judge, contrary to his own views, followed what was imposed upon him by Mr. Justice Shah. There can be no more flagrant contempt of a Judge than to say that he surrendered his own judgment in deference to or on dictation by another Judge sitting with him.

In para 3.2 of his affidavit Respondent No. 1 submitted :

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> "But I am not at this stage making any attempt to contradict evidence given or to give any evidence on my side. This will be done if and when the occasion arises or the Hon'ble Court so orders. I will have to summon some documents also for that purpose."

G We indicated to him during the course of the hearing that he should file his affidavit or affidavits dealing with the merits of the case but that he would not be permitted to lead any other evidence to justify contempt. We have already referred to cases which show that he cannot justify contempt. If a judgment is criticised as containing errors, and coupled with such criticism, dis-
H honesty is alleged, the Court hearing the contempt petition would first have to act as an Appellate Court and decide whether there are errors or not. This is not and cannot be the function of a Court trying a petition for contempt. If evidence was to be

allowed to justify allegations amounting to contempt of court it would tend to encourage disappointed litigants—and one party or the other to a case is always disappointed—to evenge their defeat by abusing the Judge. A

This takes us to some of the points regarding maintainability of the petition and the defects in procedure, as alleged in his application dated January 28, 1971 (Criminal Misc. Petition No. 172 of 1971.) B

In *Sukhdev Singh Sodhi* v. *Chief Justice and Judges of the Pepsu High Court*(1) this court observed:

> "We hold therefore that the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemnor is made aware of the charge against him and given a fair and reasonable opportunity to defend himself. This rule was laid down by the Privy Council *In re Pollard*(2) and was followed in *India and in Burma in In re Vallabhdas*(3) and *Ebrahim Mamoojee Parekh* v. *King Emperor*(4). C D

In our view that is still the law. It is in accordance with the practice of this Court that a notice was issued to the respondents and opportunity given to them to file affidavits stating facts and their contentions. At one stage, after arguments had begun Respondent 1 asked for postponement of the case to engage some lawyers who were engaged in fighting elections. We refused adjournment because we were of the view that the request was not reasonable and was made with a view to delay matters. We may mention that the first respondent fully argued his case for a number of days. The procedure adopted by us is the usual procedure followed in all cases. E F

The first respondent contended that the affidavit of Mr. S. N. Prasad was defective because the verification was not in accordance with the provisions of law relating to affidavits. In para 2 of the affidavit Mr. S. N. Prasad stated : G

> "that I state that the facts stated in paragraphs 1 and 8 of the petition are true to my personal knowledge and the facts stated in paragraphs 2 to 7 are believed to be true by me on the basis of the information received." H

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(1) [1945] S.C.R. 454; 463 (2) L.R. 2 P.C. 106 at 120

(3) I.L.R. 27 Bom. 394 (4) I.L.R. 4 Rang. 257 at 259-261

A The first respondent said that the source of information had not been disclosed. Para 2 of the petition refers to proceedings in this Court and it was not necessary to have disclosed any further source of information. As far as paras 3 and 4 are concerned, the first respondent admits that he approached members of Parliament to file a motion of Impeachment against Mr. Justice Shah. B Calling this a "campaign" is only to describe in a word his activities. Whether it should be strictly called a campaign is beside the point. The essential facts mentioned in para 5 are admitted by the first respondent. Therefore the fact that the source of information was not disclosed does not debar us from taking the facts into consideration. The last sentence of para 5, viz., "The C said pamphlet, was as the petitioners belive, sold or offered for sale to the public by Respondent No. 3." is a matter of belief. Para 6 contains inferences and submissions in respect of which there was no question of disclosing the source of information. Para 7 contains extracts from the booklet or the pamphlet which was attached as an annexure. In view of the document having been attached it was not necessary that the source of information D regarding para 7 should have been disclosed. The allegations in para 9 of the petition are supported by an affidavit of Mr. B. P. Singh, Advocate, who has verified that the contents in his affidavit are true to his knowledge. Para 10 of the petition contains submissions and it was not necessary to state the source of information. We are unable to see any defect in the affidavit E filed on behalf of the petitioners.

In para 5 of his petition dated January 28, 1971, the first respondent stated that "the complainant must disclose all his evidence with the initial petition and cannot be allowed to supplement any evidence later." He submitted that "In the present F petition, no evidence against the respondents has been disclosed except in regard to paragraph 9 of the petition, although there are very wide and sweeping allegations in other paragraphs." There is no basis for this complaint because all the affidavits were filed alongwith the petition.

In para 6 of the petition dated January 28, 1971, he stated G that "the charges against the alleged contemnors must be specifically written. It is not sufficient to leave the respondents searching for the charges from the entire petition." He submitted that the petition did not clarify specifically as to what the distinct charges against each respondent were. In the course of his arguments he referred to a number of authorities in support of this H para. It is unnecessary to refer to them except one, because it is clear that on the facts the charge against the first respondent is quite clear and simple and it is not necessary that a formal charge should be drawn up by the petitioners or the Court.

In *Nagar Mahapalika of the City of Kanpur* v. *Mohan Singh*,(1) this Court was concerned with the contempt of Allahabad High Court by the Nagar Mahapalika of the City of Kanpur by committing a breach of an injunction issued by the High Court. In this connection Sarkar, J., as he then was, speaking on behalf of the Court, observed :

> "We will deal first with the case of the Municipality. It will have been noticed that it was not the respondent's case that the Municipality had issued any new licence after the order of July 14, 1961. In fact, it was conceded that it did not do so. What was said was that the Municipality adopted a practice of realising rickshaw taxes from the owners and printing the fact of the receipt of the tax on the rickshaws and permitting them to ply without licences. The way the case seems to have been put before the High Court was that this was a subterfuge adopted by the Municipality to get round the order of the High Court, the object of which was to stop new rickshaws plying for hire, by permitting rickshaws to ply without a licence on payment of the tax. This contention was accepted by the High Court. It seems to us somewhat unfortunate that the matter proceeded in this way. An allegation of contempt of court is a serious one and is considered by courts with a certain amount of strictness. A person against whom such an allegation is made is entitled to be told the precise nature of it. In this case the respondent did not state that any subterfuge had been adopted by the Municipality or that the Municipality had sought to defeat the orders of the courts; that was only insinuated. This is not a fair or permissible way of charging a person with contempt of court. The contempt alleged cannot be left to be spelt out from the allegations made nor can the person charged be left to guess what contempt is alleged against him. Further, paragraph 8 of the petition for committal for contempt stated that there was a direct contravention of the order which of course, there was not as no licences had been issued. Neither were any particulars given as to how the alleged practice that was adopted was intended to get round the order, nor of how the Municipality permitted rickshaws to ply without licences. We think the learned Attorney-General was perfectly justified in drawing our attention to these defects in the petition and characterising them as serious."

(1) Cr. Ap. No 27 of 1964; Judgment dated 31-1-1966.

A The facts in this case are quite different and it seems to us that the petition is as clear as it can be. By setting out the extracts from the pamphlet or the booklet pointed attention has been drawn to the offending passages, although the whole booklet or the pamphlet was annexed as an annexure.

B In para 7 of the application dated January 28, 1971 the first respondent submitted that the petition should not have contained anything which was not a charge against him. He complained that the petition contained several wild allegations based entirely on surmises. He further added that "being without evidence they cannot be, and have not been put down specifically as charges against the respondents, and therefore ought not to find place C in the petition." He developed this point by referring to paras 3, 4 and 5 of the petition. These paras seem to be introductory to the main charge and there is no law that anything introductory should not be put in the petition. He admits that he patiently approached each Hon'ble Member and narrated the deep wrong done to him and he was able to satisfy quite a number. Nobody denies D that he has a right to approach and convince the Hon'ble Members and that he exercised that right. But if the petitioners have called it a "campaign" in paras 3 and 4 of the petition, no serious objection can be taken to these paras.

In para 8 of this application Respondent No. 1 submitted E that there was delay of more than 120 days in filing the petition for contempt. He says that delay is always fatal to contempt action unless it is fully explained and condoned in proper cases and on proper application. We are unable to see any delay in this case. After the first respondent gave a copy of the pamphlet or the booklet to Mr. Mahindroo, the petitioners had to ascertain F facts regarding its publication, printing, etc. As the Attorney-General did not move in the matter, the President of the Supreme Court Bar and the other petitioners chose to bring this contempt to our notice. It is no doubt desirable, as stated by *Oswald*(1) that "an application for attachment should be made promptly, or the Court may refuse to attach." But whether there has been delay or not depends on the facts of a particular case. In this G connection Respondent No. 1 referred to page 231 of Ramchandran's book on *'Contempt of Court under the Indian Constitution'* where the author gives the American Law on this point as follows :

> "While delay in contempt proceedings is to be deprecated the power of court to take such action is H not however lost by delay. The summary power is not

(1) Oswald—Contempt of Court—Third edition p. 196

in any way jeopardised on that account except where delay extends substantially beyond the end of trial, in which event it has been held fatal to the power of summary punishment."

But even the American law is quite clear that delay is not fatal.

Similarly, in *State Government, Madhya Pradesh* v. *Vinaya Kumar*(1) it was observed as follows:

"We do not say that delay will always be fatal. There may be cases in which it is not. Examples of both kinds of cases will be found in 7 Halsbury's Laws of England, Hailsham Edition page, 37 Note (p)."

In this connection we may also deal with his objection in para 10 of the application that the petitioners have no *locus standi*. This Court can issue a notice *suo motu*. Further, the advocates of this Court, including the President of the Supreme Court Bar Association, are perfectly entitled to bring to our notice any contempt of this Court.

The first respondent referred to Lord Shawcross Committee's recommendation that "proceedings should be instituted only if the Attorney-General in his discretion considers them necessary." This is only a recommendation made in the light of circumstances prevailing in England. But it is not law. We may mention that the Attorney-General in England has quite a different position than the Attorney-General of India or the Advocates-General of the States. The Attorney-General in England is a member of the Cabinet, and as far as we are aware, unlike the Attorney-General in India, he does not have to receive instructions from Government whether to move a contempt petition or not.

Be that as it may, there is nothing in law which prevents this Court from entertaining a petition at the instance of the President of the Supreme Court Bar Association and three other advocates of the Court. The Bar is vitally concerned in the maintenance of the dignity of Courts and the proper administration of justice.

The next point mentioned in the petition dated January 28, 1971, is regarding non-joinder of the 200 or so signatories of the motion of impeachment. We are unable to see why the petition is bad for non-inclusion of the said signatories. There is no allegation or proof that any of the said signatories circulated this booklet or pamphlet outside the Parliament, to persons other than members of Parliament.

(1) A.I.R. 1952 Nag. 34

A We may now deal with the other legal submissions contained in his affidavit. He submitted, in brief, that the substance of the impeachment motion had already been put in the writ petition which he filed against Mr. Justice Shah on October 27, 1969. According to him, a reproduction of proceedings of court is not contempt unless the Court has prohibited the publication. B We are unable to appreciate this line of argument. Even if he had filed a writ petition containing the substance of the impeachment motion, we are unable to see how it affords a defence to the commission of contempt of this Court by circulating the booklet or the pamphlet.

In para 21 of his affidavit his defence seems to be that he had C told Mr. Justice Shah during the course of the hearing that he was only telling the truth and if in telling the truth it was necessary for him to go to jail for contempt he was ready for the same. He seems to suggest that if Mr. Justice Shah did not choose to take any action for contempt it is improper and not open to the petitioners to initiate these proceedings. We are unable to see any D force in this submission.

In para 23 of his affidavit his defence is that the filing of the petition is itself contempt because "the real object of the petitioners, which is very obvious and writ large on their faces, is to take revenge upon me for having dared to approach the Parliament against their friend, junior and erstwhile boss Shri J. C. E Shah. The cloak of "publication and distribution outside Parliament is too thin to hide their real motive." We are unable to see how the petition is itself contempt. This para shows the real attitude of the respondent. He seems to think that people act only to take revenge as he seems to have done.

F We have already dealt with his submissions in para 24 and 24.1.

The contention of the respondent in para 25 is that even if it is a contempt it is a technical and trivial contempt which is not actionable. We are unable to hold that on the facts of the G case it is a technical and trivial contempt. It constitutes gross contempt of two Judges of this Court and the Court itself. He was well aware of the contents of the pamphlet or the booklet. The affidavit of Mr. B. P. Singh establishes that Respondent No. 1 was showing copies of the pamphlet or the booklet which he was carrying with him to several members of the Bar in the Bar H Association room. His affidavit and Mr. Mahindroo's affidavit further establish that he gave one copy of it to Mr. Mahindroo openly in the Bar room. Being a lawyer he must have known that it would be discussed there.

The cases referred to in para 25 and in the course of the arguments are quite distinguishable and are not applicable.

Now to come to the case of Respondent No. 2. Mela Ram, one of the partners of Rising Sun Press, stated in his affidavit that in the month of April 1970, the first respondent went to him for entrusting printing work and said that he had been sent by Shri Tulsi Ram, Proprietor Youngman & Co., Egerton Road, Delhi, whose printing work was being done by him for the last about 16 years and who used to send customers to him from time to time for printing work. He told the first respondent to see the contractor, Ram Vir, who did composing work for him. He says that he did not look into the material which the first respondent brought for printing and he left the composition work to the contractor above-named. He further says that as at about that time his mother-in-law expired he had to go to District Gurdaspur where he stayed about a week and in his absence the first respondent sat day-to-day with the contractor and compositors for having the composition completed quickly and he also got the printing done in his press before he returned from Gurdaspur. After getting the material printed the first respondent collected the same from the press before his return from Gurdaspur. He further says that the printing forms had already been taken away by the first respondent before he returned and it was not possible for him to know the contents. He further says that the title cover of the printed booklet was not printed by him nor was the binding done by him. He further alleges that the first respondent had not even paid his charges. He expressed his unconditional and unqualified apology to this Court. In view of the unconditional apology tendered by him, we do not think any further action need be taken against him.

The third respondent has not been served or traced. We need not say anything about him for the present.

It seems to us that on the facts of this case a heavy sentence is called for. Not only did the first respondent commit gross contempt of this Court but he took advantage of the retirement of Mr. Justice Shah and hurled fresh abuses on him in Court. It is true that he has offered an apology, but an apology coupled with fresh abuses can hardly be taken note of. However, we have decided to be lenient and impose only a sentence of simple imprisonment for two months. We have decided to be lenient because such gross contempts of this Court are happily rare, but any future gross contempt of this Court of this nature will be dealt with not so leniently. In the result it is held that O. P. Gupta, respondent No. 1, is

A guilty of contempt of this Court and sentenced to simple imprisonment for two months. We direct that he be arrested and committed to civil prison for two months. We further authorise the Registrar to take all necessary steps in this behalf.

V.P.S.