

IN RE : HARIJAI SINGH AND ANR.
IN RE : VIJAY KUMAR

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SEPTEMBER 17, 1996

[KULDEEP SINGH AND FAIZAN UDDIN, JJ.]

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Constitution of India : Article 19(1)(a).

Freedom of press part of freedom of speech and expression—Mother of all liberties in a democratic society—Freedom of press is not absolutely unlimited and unfettered—Element of responsibility must be present in the conscience of the Journalists—Rights of press to be recognised with its duties and responsibilities towards the society—Newspaper publishing improper and false news must be punished by court of law.

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Common cause a regd. society filed a writ petition against alleged misuse and arbitrary exercise of discretionary power by the Petroleum and Natural Gas Ministry in relation to allotment of retail outlets for petroleum products and LPG Dealership from discretionary quota.

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During the pendency of writ petition a Box news under caption "pumps for all" was published in the Sunday Tribune on March 10, 1996 stating that Petroleum Minister has made 17 allotments of petrol pumps and gas agencies to relatives of the then Prime Minister Narasimha Rao out of his discretionary quota though the allotment under this can only be made to the weaker section of the society and war-widows. It also stated that two children of Lok Sabha Speaker Shiv Raj Patil and two sons of a Senior Judge of Supreme Court have also been favoured.

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Similar News item was also published in Hindi Newspaper Punjab Kesari dated March 10, 1996 which stated that 17 relatives of the Prime Minister Narasimha Rao have been allotted petrol pumps or gas agencies out of the discretionary quota. Then it went on to add that the list includes names of two sons of Mr. Ahmadi, Chief Justice of India.

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Notice was issued by the Supreme Court to the Secretary, Ministry of Petroleum and Natural Gas. In his affidavit dated March 20, 1996 he stated that since the allegations regarding allotment under the discretionary quota in favour of two sons of senior Judge of Supreme Court are vague and in the absence of specific names it is difficult to deal with the same. On

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A the request of Additional Solicitor General time was granted to file further affidavit of a responsible officer and it was further directed that relevant files be produced in Court.

B Joint Secretary in the Ministry of Petroleum and Natural Gas, Govt. of India in his affidavit dated March 28, 1996 categorically stated that there was no allotment in favour of son/sons of any Supreme Court Judge.

C Since the allegations were completely false, contempt proceedings were initiated against the Editors and Publishers of the Sunday Tribune, Chandigarh and the Punjab Kesari, Jalandhar and show cause notices were issued to them.

D Editor of "The Sunday Tribune" Hari Jai Singh filed affidavit admitting that the news item published in Sunday Tribune dated March 10, 1996 with regard to the allotment of petrol outlets to the sons of Senior Judge of the Supreme Court was not correct and therefore tendered unqualified apology and prayed for mercy and pardon.

E He further stated that it was an inadvertent publication as the news item was supplied by an experienced journalist Dina Nath Misra who is a journalist of 30 years standing. He submitted that he has the highest respect for the Judiciary in general and to this Court in particular and tendered his unqualified apology with a feeling of remorse. It was further submitted that an apology was already published in the Tribune dated May 10, 1996. Similarly affidavit was also filed by Publisher of the Tribune Lt. Col. S.L. Dheer, tendering his apology and prayed for mercy and pardon due to *Bonafide* Mistake.

F Vijay Kumar Chopra, Editor and Publisher of Punjab Kesari, Jalandhar also filed his affidavit and stated that news item was published on the basis of report sent by a senior Journalist which due to inadvertence escaped the attention of the Editor. And an apology was carried out prominently in the Newspaper on April 7, 1996. He also tendered his unconditional and unqualified apology.

G Thereafter a contempt notice was issued to Dina Nath Misra and he filed an affidavit on August 1, 1996 and admitted that a capsule item about the allotment of Petrol Pumps to the sons of senior Judge of the Supreme Court was not factually correct and he tendered his unqualified apology for the lapse that he had committed.

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He filed additional affidavit on Aug. 29, 1996 and admitted that he has committed a grievous error in writing news items which have no basis and again offered his unconditional apology. Disposing of the contempt petitions, this Court

HELD : 1. Freedom of press is an essential pre-requisite of a democratic form of Govt. The freedom of press is a part of the freedom of the speech and expression as envisaged in Article 19 (1)(a) of the Constitution of India. The freedom of press is regarded as the mother of all liberties in a democratic society. [419-G, 420-A]

Indian Express Newspaper v. Union of India, [1985] 1 SCR 641 and *Indian Express Newspaper v. Union of India*, AIR (1986) SC 872, relied upon.

2. In a democratic set up there has to be an active and intelligent participation of the people in all spheres and affairs of their community as well as the State. The primary function of the press is to provide comprehensive and objective information of all aspects of country's political, social, economic and cultural life. It has an educative and mobilising role to play. It plays an important role in moulding public opinion and can be an instrument of social change. [420-D, 420-F]

3. But it has to be remembered that freedom of press is not absolute, unlimited and unfettered at all times and in all circumstances as giving an unrestricted freedom of speech and expression would amount to an uncontrolled licence. If it were wholly free even from reasonable restraints it would lead to disorder and anarchy. The freedom is not to be misunderstood as to be a press free to disregard its duty to be responsible. In fact the element of responsibility must be present in the conscience of the journalists. In an organised society, the rights of the press have to be recognised with its duties and responsibilities towards the society. Public order, decency, morality and such other things must be safeguarded. The protective cover of press freedom must not be thrown open for wrong doings. If a newspaper publishes what is improper, mischievously false or illegal and abuses its liberty it must be punished by Court of law.

[420-H, 421-A-B]

4. Editors of a Newspaper or a Journal have a greater responsibility to guard against untruthful news and publications. Certain restrictions

A are essential for preservation of the freedom of the press itself. [421-B-D]

5. It is the duty of true and responsible Journalist to inform people with accurate and impartial news after dispassionate evaluation of facts and information received by them. [421-D-E]

B 6. In the instant case neither the printer, nor the editor and reporter took necessary care in publishing the news item of an allegation of a serious nature having great repercussion causing embarrassment to this Court. Such an irresponsible conduct of Editor, Publisher and Reporter is distinctly opposed to the high professional standards. Even the ordinary
C care was not resorted to by the contemnners in publishing such a false news item. This cannot be regarded as a public service but a disservice to the public by misguiding them with a false news. [421-G-H, 422-A]

D 7. This Court is not hypersensitive in matters relating to contempt of courts and has always shown magnanimity in accepting apology. Fair criticism within the parameters of law is always welcome in democratic system. But the news item in the present case is neither fair nor made in good faith but wholly false and explanation given is far from satisfactory. However the written unconditional apology tendered by Hari Jai Singh, Editor of Sunday Tribune, Ft. Col. H.L. Dheer, Publisher and Editor of
E the Sunday Tribune and Vijay Kumar Chopra, Editor and Publisher of Punjab Kesari is accepted with the warning that they should be careful in future. [422-B-D, 422-G]

F 8. As for Dina Nath Mishra, he being a very experienced Journalist, should have taken extra care to verify the correctness and if he had done so there would not have been any difficulty in coming to know that information supplied to him had absolutely no legs to stand and was patently false and the publication would have been avoided which not only caused embarrassment to this Court but conveyed a wrong message to the public at large jeopardizing the faith of the illiterate masses in our
G judiciary. He committed a serious mistake but, his sincere repentence and unconditional apology are accepted. [422-G, H, 423-A]

H 9. The contemnners will publish in the front page of their respective newspaper in a box, their respective apologies, specifically mentioning that the said news item were absolutely incorrect and false. [423-C]

CIVIL ORIGINAL JURISDICTION : Contempt Petition Nos. 206- A
207 of 1996.

IN

Writ Petition (C) No. 26 of 1995. B

(Under Article 32 of the Constitution of India.)

In-Person for Petitioner.

K.T.S. Tulsi, Additional Solicitor General, Ram Jethmalani and Ash- C
wini Kumar, Prashant Bhushan, P.H. Parekh, Arvind Sharma, Sameer
Parekh, Ms. Bina Madhavan and K.S. Chauhan for the appearing parties.

The Judgment of the Court was delivered by

FAIZAN UDDIN, J. When this Court was seized of, Writ Petition D
filed by the "Common Cause, A Registered Society" with regard to the
alleged misuse and arbitrary exercise of discretionary power by the
Petroleum and Natural Gas Ministry in relation to the allotment of retail
outlets for Petroleum products and L.P.G. Dealership, from discretionary
quota, a news item in box with a caption "*Pumps for all*" was published in
the daily newspaper "*The Sunday Tribune*" dated March 10, 1996 which is E
reproduced hereunder :

"Pumps for all!

Believe it or not, Petroleum Minister Satish Sharma has made 17
allotments of petrol pumps and gas agencies to relatives of Prime F
Minister Narasimha Rao out of his discretionary quota. Allotments
in this category can only be made to members of the weaker
sections of society and war widows, yet five of the Prime Minister's
grandchildren have been favoured as have been five of his nephews
from the family of V. Rajeshwar Rao, MP. Besides, three wards G
of his brother Manohar Rao, two relatives of P. Venkata Rao and
the son of AVR Krishnamurthy whose family lives with the Prime
Minister have been allocated petrol pumps and gas agencies.
Similarly, Rao's daughter, Vani Devi, who is the official hostess
has a petrol pump allotted in the name of her daughter Jyotiriyai.
She was also favoured by the Airport Authority of India which H

A released a prime piece of land located in Begumpet area to her for just Rs. 3 lakh. The market value is stated to be over Rs. 1 crore. It has been registered in the name of Shri Jai Balaji Agency, However, the Prime Minister's kin are not the only ones who have benefited from these allotments. Two children of Lok Sabha Speaker Shivraj Patil have also been favoured as have the two sons of a senior judge of the Supreme Court. Interestingly, the Supreme Court had recently asked the government to supply a list of all discretionary allotments made by the ministry. However, the Minister has so far managed to withhold this crucial document. But it has hardly helped as the list has been leaked by Sharma's own men."

A similar news item was also published in the Hindi newspaper "Punjab Kesari" dated March 10, 1996; the English translation of which is as follows :

D *"17 Poor Members of the family of the Prime Minister*

Out of the short cut ways of becoming rich, one way is to obtain Petrol Pump or Gas Agency. But the power to allot the same lies with the Petroleum Minister. He has the discretionary powers to allot petrol pump or gas agencies in charity. This power of doing such charities, has been entrusted in some special cases which include the people belonging to the poor, backward classes and the wives of those who were killed in the war. But all those persons to whom these agencies have been allotted by the Petroleum Minister Capt. Satish Sharma turned out to be a scam in itself. The matter was referred to the Supreme Court in which the Government was directed to submit a list. The Petroleum Minister suppressed the list. The list was demanded in the Parliament. But the list was not presented. Now the list has been leaked out from the Petroleum Ministry. Believe it, there are 17 relatives of the Prime Minister Narsimaha Rao in that list. Five persons are his grandsons and grand-daughters. Five others are the members of the family of V. Rajeshwar Rao. He is a Member of Parliament and the relative of the Prime Minister, Manohar Rao is the brother of Narasimha Rao. These agencies were also allotted to his three children. There is one more relative - P. Venkatrao. Two allottees

have been found in his family. One is A.V.R. Krishna Murty who resides in the residence of the Prime Minister. He has also been allotted the Agency at the Bolaram Road at Sikandrabad. But the most interested story is of Jyotiramal. Narasimha Rao is his real grand maternal father. A

The authorised hostess of the Prime Minister's residence is Vani Devi who is the daughter of the Prime Minister and mother of Jyotirmal. Their agency is situated at Begumpet under the name and style "Shri Sai Balalji Agency". The land of 2000 Sq. M. of the Indian Aviation Authority was given to Sri Sai Balaji Agency merely for rupees three lakhs. Presently, the cost of this land is more than one crore. The Petroleum Minister also allotted the agencies to the two children of Shivraj Patil, Speaker of the Lok Sabha. You should not be astonished if you find the names of two sons of Mr. Ahmadi, Chief Justice of India in the list of the discretionary quota. Otherwise the names of such poor and backward person are also available in this list. B
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Since, the aforesaid news items contained an allegation that two sons of a senior Judge of the Supreme Court and two sons of the Chief Justice of India were also favoured with the allotment of petrol outlets from the discretionary quota of Ministry and therefore, by our Order dated March 13, 1996, we issued a notice to the Secretary, Ministry of Petroleum and Natural Gas to file an affidavit offering his comments and response to the facts stated in the aforesaid two news items. Pursuant to the said notice, Shri Vijay L. Kelkar, Secretary in the Ministry of Petroleum and Natural Gas, Government of India, filed his affidavit dated March 20, 1996 stating that since the allegation regarding allotment under the discretionary quota in favour of two sons of a senior judge of the Supreme Court are vague and in the absence of specific names, it is difficult to deal with the same. Thereafter when the matter again came up before this Court on March 21, 1996, Shri Altaf Ahmad, learned Additional Solicitor General stated that he would look into the records and file further affidavit of a responsible officer giving response to the other allegations regarding relationship of VIPs. We, therefore, granted time for the purpose and at the same time directed the relevant files to be produced in Court. It was thereafter that Shri Devi Dayal, Joint secretary in the Ministry of Petroleum and Natural Gas, Government of India filed his affidavit dated March 26, 1996. In E
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A paragraph 5 of his affidavit, he made a categorical statement that there is no allotment in favour of son/sons of any Supreme Court Judge. After verification at records and affidavits referred to above, we found that the news items referred to above were patently false and, therefore, by our Order dated March 27, 1996, we initiated contempt proceedings against the Editors and Publishers of the daily "The Sunday Tribune" Chandigarh and "The Punjab Kesari", Jalandhar and issued notices to them to show cause why they may not be punished for the contempt of this Court.

In response to the contempt notice, Shri Hari Jaisingh, the Editor of "The Sunday Tribune" filed an affidavit dated June 24, 1996 admitting that the news item published in "The Sunday Tribune" dated March 10, 1996 with regard to the allotment of petrol outlets to the sons of a senior Judge of the Supreme Court was not correct and, therefore, tendered unqualified apology and has prayed for mercy and pardon. He has stated that it was an inadvertent publication made *bona fide* on the faith that the item supplied by an experienced journalist, Shri Dina Nath Misra, who is generally reliable would not be factually incorrect. It has been stated that Dina Nath Misra is a journalist of standing for over 30 years and there have been no complaints about the correctness of the material contributed by him and believing the said item of news to be correct it was published without any further scrutiny in a good faith. He has submitted that he has the highest respect for the judiciary in general and to this Court in particular and rendered his unqualified apology with a feeling of remorse. He has submitted that since it was noticed that the news item was not correct, an apology was already published by him in the Tribune dated May 10, 1996 and necessary instructions to all members of the editorial staff were issued to be careful and assuring the factual accuracy of all legal reports.

Lt. Col. S.L. Dheer (Retd.), the Publisher of "The Tribune", in response to the contempt notice has also filed his affidavit dated June 27, 1996 more or less in the same terms as the one filed by Shri Hari Jaisingh and has tendered his apology and prayed for mercy and pardon due to the *bonafide* mistake.

In response to the contempt notice, Shri Vijay Kumar Chopra, Editor and Publisher of daily "Punjab Kesari" Jalandhar has also filed affidavit dated June 29, 1996 stating that the news item in the daily "Punjab Kesari"

referred to above was published on the basis of the news report sent by a senior journalist which due to inadvertence escaped the attention of the Editor. He has stated that immediately after the incorrectness of the news item was noticed a contradiction and apology was carried out prominently in the issue of the Paper dated April 7, 1996. He has stated that the said news item was not actuated by any malice towards the judiciary and that the mistake was *bonafide*. He has also tendered his unconditional and unqualified apology.

On being apprised that the news items referred to above found to be false which were published on the basis of the information and material supplied by the journalist/reporter Dina Nath Misra to "The Sunday Tribune" and "Punjab Kesari", we issued a similar contempt notice to Dina Nath Misra by our Order dated July 9, 1996. The journalist Dina Nath Misra in his affidavit dated August 1, 1996 admitted to have written a capsule item about the allotment of petrol pumps to the sons of a senior Judge of the Supreme Court which was not factually correct and he has, therefore, tendered his unqualified apology for the lapse that he had committed. He has stated that he has been a journalist for about 4 decades and is known for his integrity and commitment towards the professionalism. He has further stated that a highly reliable source who had earlier given many reliable informations to the deponent gave this information also which was believed by him to be true, but it turned out to be incorrect. He has stated various other facts to show that the mistake was *bonafide*, but we find the said excuses and explanations to be not acceptable at all. He has, however, expressed his deep repentance and tendered unqualified apology and seeks forgiveness for this honest and inadvertent blunder. In yet another additional affidavit dated August 29, 1996, he has reiterated the said facts and admitted that he has committed a grievous error in writing news items which have absolutely no basis, and has again offered unconditional apology to Hon'ble the Chief Justice as well as to this Court.

It may be relevant here to recall that the freedom of Press has always been regarded as an essential pre-requisite of a Democratic form of Government. It has been regarded as a necessity for the mental health and the well being of the society. It is also considered necessary for the full development of the personality of the individual. It is said that without the freedom of press truth cannot be attained. The freedom of press is a part of the freedom of the speech and expression as envisaged in Article

A 19(1)(a) of the Constitution of India. Thus, the freedom of the press is included in the fundamental right of freedom of expression. The freedom of Press is regarded as "the mother of all other liberties" in a democratic society. Further, the importance and the necessity of having a free press in a democratic Constitution like ours was immensely stressed in several landmark judgments of this Court. The case of *Indian Express Newspaper v. Union of India*, [1985] 1 SCR 641, is one of such judgments rendered by Venkataramiah, J. (as he then was). Again in another case of *Indian Express Newspaper v. Union of India*, AIR (1986) SC 872. A.P. Sen, J. (as he then was) described the right to freedom of the press as a pillar of individual liberty which has been unfailingly guarded by the Courts.

C It is thus needless to emphasise that a free and healthy press is indispensable to the functioning of a true democracy. In a democratic set-up, there has to be an active and intelligent participation of the people in all spheres and affairs of their community as well as the State. It is their right to be kept informed about current political, social, economic and cultural life as well as the burning topics and important issues of the day in order to enable them to consider and form broad opinion about the same and the way in which they are being managed, tackled and administered by the Government and its functionaries. To achieve this objective the people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and view points on such matters and issues and select their further course of action. The primary function, therefore, of the press is to provide comprehensive and objective information of all aspects of the country's political, social, economic and cultural life. It has an educative and mobilising role to play. It plays an important role in moulding public opinion and can be an instrument of social change. It may be pointed out here that Mahatama Gandhi in his autobiography has stated that one of the objectives of the newspaper is to understand the proper feelings of the people and give expression to it; another is to arouse among the people certain desirable sentiments; and the third is to fearlessly express popular defects. It, therefore, turns out that the press should have the right to present anything which it thinks fit for publication.

H *But it has to be remembered that freedom of press is not absolute, unlimited and unfettered at all times and in all circumstances as giving an unrestricted freedom of the speech and expression would amount to an uncontrolled licence. If it were wholly free even from reasonable restraints it*

would lead to disorder and anarchy. The freedom is, not to be misunderstood as to be a press free to disregard its duty to be reasonable. In fact, the element of responsibility must be present in the conscience of the journalists. In an organised society, the rights of the press have to be recognised with its duties and responsibilities towards the society. Public order, decency, morality and such other things must be safeguarded. The protective cover of press freedom must not be thrown open for wrong doings. If a newspaper publishes what is improper, mischievously false or illegal and abuses its liberty it must be punished by Court of Law. The Editor of a Newspaper or a journal has a greater responsibility to guard against untruthful news and publications for the simple reason that his utterances have a far greater circulation and impact than the utterances of an individual and by reason of their appearing in print, they are likely to be believed by the ignorant. That being so, certain restrictions are essential even for preservation of the freedom of the press itself. To quote from the report of Mons Lopez to the Economic and Social Council of the United Nations "if it is true that human progress is impossible without freedom, then it is no less true that ordinary human progress is impossible without a measure of regulation and discipline". It is the duty of a true and responsible journalist to strive to inform the people with accurate and impartial presentation of news and their views after dispassionate evaluation of the facts and information received by them and to be published as a news item. The presentation of the news should be truthful, objective and comprehensive without any false and distorted expression.

In the present case, as we have noticed above, neither printer, published nor the editor and reporter took the necessary care in evaluating the correctness and credibility of the information published by them as the news items in the newspapers referred to above in respect of an allegation of a very serious nature having great repercussion causing an embarrassment to this Courts. An Editor is a person who controls the selection of the matter which is to be published in a particular issue of the newspaper. The Editor and Publisher are liable for illegal and false matter which is published in their newspaper. Such an irresponsible conduct and attitude on the part of the editor, publisher and the reporter cannot be said to be done in good faith, but distinctly opposed to the high professional standards as even a slightest enquiry or a simple verification of the alleged statement about grant of Petrol outlets to the two sons of a senior Judge of the Supreme Court, out of discretionary quota, which is found to be

A patently false would have revealed the truth. But it appears that even the ordinary care was not resorted to by the contemnors in publishing such a false news items. This cannot be regarded as a public service, but a dis-service to the public by misguiding them with a false news. Obviously, this cannot be regarded as something done in good faith.

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But it may be pointed out that various judgments and pronouncements of this Court, bear testimony to the fact that this Court is not hypersensitive in matters relating to contempt of Courts and has always shown magnanimity in accepting the apology on being satisfied that the error made in the publication was without any malice or without any

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intention of dis-respect towards the Courts or towards any member of the judiciary. This Court has always entertained fair criticism of the judgments and orders or about the person of a Judge. Fair criticism within the parameters of law is always welcome in a democratic system. But the news items with which we are concerned can neither be said to be fair or made

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in good faith but wholly false and the explanation given is far from satisfactory. Shri Hari Jaisingh, Editor of the Sunday Tribune and Lt. Col. H.L. Dheer, Publisher as well as Vijay Kumar Chopra, Editor and Publisher of daily Punjab Kesari have taken the stand that they had taken the news items to be correct on the basis of the information supplied by a very senior senior journalist of long standing Dina Nath Misra. But this cannot be

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accepted as a valid excuse. It may be stated that at common Law, absence of intention or knowledge about the correctness of the contents of the matter published (for example as in the present case, on the basis of information received from the journalist / reporter) will be of no avail for the editors and publishers for contempt of Court but for determining the

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quantum of punishment which may be awarded. Thus they cannot escape the responsibility for being careless in publishing it without caring to verify the correctness. However, since they have not only expressed repentance on the incident but have expressed their sincere written unconditional apology, we accept the same with the warning that they should be very careful in future. As regards the case of Dina Nath Misra, we find he acted

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in gross carelessness. Being a very experienced journalist of long standing it was his duty while publishing the news item relating to the members of the apex Court, to have taken extra care to verify the correctness and if he had done so, we are sure there would not have been any difficulty in coming to know that the information supplied to him had absolutely no legs to

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stand and was patently false and the publication would have been avoided

which not only caused great embarrassment to this Court but conveyed a wrong message to the public at large jeopardizing the faith of the illiterate masses in our judiciary. Shri Dina Nath Misra has no doubt committed a serious mistake but he has realised his mistake and expressed sincere repentance and has tendered unconditional apology for the same. He was present in the Court and virtually looked to be gloomy and felt repentant of what he had done. We think this sufferance itself is sufficient punishment for him. He being a senior journalist and an aged person and, therefore, taking a lenient view of the matter, we accept his apology also. We, however, direct that the contemnners will publish in the front page of their respective newspapers within a box their respective apologies specifically mentioning that the said news items were absolutely incorrect and false. This may be done within two weeks. The Contempt Petition Nos. 206-207 of 1996 are disposed of accordingly.

S.S.

Petitions disposed of.