DAROGA SINGH AND ORS. A

v.

B.K. PANDEY

APRIL 13, 2004

[R.C. LAHOTI AND ASHOK BHAN, JJ.] B

Contempt of Courts Act, 1971:

Sections 10 and 2(c)—Contempt of subordinate court—Assault on Additional District and Sessions Judge in a pre-planned and calculated manner in his court room and chambers by police officials not in uniform—Jurisdiction of High Court to take cognizance—Held: Acts committed amounts to deliberate interference with the discharge of duty of a judicial officer by intimidation, lowers the dignity of the Court and interferes with the administration of justice and as such are not punishable as contempt under section 228 IPC, but covered under the definition of criminal contempt—Hence, High Court competent to take cognizance of such matter—Penal Code, 1860—Section 228. C D

*Sections 15(2) and 10—Criminal contempt of subordinate court—***Suo motu** *cognizance by High Court—Permissibility of—Held: On proper construction, sub-section (2) of section 15 does not restrict power of High Court to take cognizance of and punish contempt of subordinate court on its own motion—Interpretation of statutes.* E

Sections 17 and 2(c)—Criminal contempt—Procedure for conviction—Held: High Court has to decide contempt proceedings in a summary manner—It must follow fair procedure and give fair and reasonable opportunity to the contemnors—On facts, Judicial Officer assaulted in a pre-planned and calculated manner in his court room and chambers by police officials not in uniform—Conviction on the basis of affidavit filed, High Court giving fair and reasonable opportunity to contemnors—Opportunity of cross-examination not availed at appropriate stage—Thus, no fault could be found with the summary procedure adopted by High Court in conducting the proceedings—Sentence of simple imprisonment imposed on contemnors justified. F G

Investigating Officer was to be cross-examined in Sessions trial. All

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A means of securing his presence were exhausted but still he did not appear. Ultimately non-bailable warrant was issued but was of no avail. After about two months, he appeared before the court and was remanded to judicial custody. On his behalf bail petition was filed after the court hours and was placed for hearing on the next day. On the same day one of the office bearers of policemen's association went to the chambers of the B Judicial Officer for release of the IO but it was declined. Next day when the bail petition was taken up, it was withdrawn. Thereafter, the police officials not in uniform, armed with lathis and other weapons attacked and manhandled the Judicial Officer in his courtroom and chamber and reiterated their demand for unconditional release of the IO. They also C attacked the court staff and some of the lawyers and also damaged furniture and motor vehicles parked in the court compound. Another Judicial Officer sent report of the incident to High Court. It included names of police officials who were identified. Criminal case was registered and also writ petition was filed by Lawyer's Association.

D *Prima facie* case of criminal contempt was made out and proceedings under the Contempt of Courts Act, 1971 were initiated against contemnors and also show cause notice were issued against them. The contemnors filed their detailed replies. Director General of Police filed his independent report which disclosed names of nine officers found guilty for the alleged incident. State Government issued different orders and suspended all the E officials from service. Thereafter, Commission of Inquiry was also set up. Apart from the departmental proceedings, different criminal cases were filed against them. Some of the senior police officials gave their statements and identified more names involved in the incident. Judicial officer involved, his staff and some of the lawyers also filed their affidavits. 26 F persons were issued show cause notices. Out of these persons except for one or two, the remaining asserted that they were not involved in the incident and for proof they attached their duty chart. High Court dropped the proceedings against contemnors other than the nine police officials named in DGP's report. K being the leader of the contemnors was sentenced to simple imprisonment for three months and remaining 8 were G sentenced to simple imprisonment for two months. It was made clear that the departmental proceedings initiated by State Government and criminal cases registered against them would not be affected by disposal of proceedings in the criminal contempt. Hence the present appeals.

Appellants contended that the contempt alleged to have been H committed is of subordinate court which constitutes an offence under

Section 228 IPC and as such the jurisdiction of High Court to take cognizance of such case is expressly barred under proviso to Section 10 of the Act; that High Court cannot take *suo motu* notice of the criminal contempt of a subordinate court but only on a reference made to it by the subordinate court or on a motion made by Advocate General under section 15(2); that the charge of criminal contempt has to be proved beyond reasonable doubt by holding a trial; that the appellants were not given reasonable and adequate opportunity either to defend themselves or put forward their case; that the witnesses were not examined in Court and also the appellants were not given an opportunity to cross-examine the persons who had deposed against them on affidavits; and that the High Court did not take into consideration affidavits of independent witnesses.

Dismissing the appeals, the Court

HELD: 1. For the survival of the rule of law the orders of the courts have to be obeyed and continue to be obeyed unless overturned, modified or stayed by the appellate or revisional courts. The court does not have any agency of its own to enforce its orders. The executive authority of the State has to come to the aid of the party seeking implementation of the court orders. The might of the State must stand behind the Court orders for the survival of the rule of the court in the country. Incidents which undermine the dignity of the courts should be condemned and dealt with swiftly. When a judge is attacked and assaulted in his court room and chambers by persons on whose shoulders lay the obligation of maintaining law and order and protecting the citizen against any unlawful act needs to be condemned in the severest of terms. The effect of such an act is not confined to a particular court or a district, or the State; it has the tendency to effect the entire judiciary in the country. It is a dangerous trend. Such a trend has to be curbed. For passing judicial orders to the annoyance of the police, if the presiding officers of the Courts are to be assaulted and humiliated the judicial system in the country would collapse. If judiciary has to perform its duties and functions in a fair and free manner, the dignity and the authority of the courts has to be respected and maintained at all stages and by all concerned failing which the very constitutional scheme and public faith in the judiciary runs the risk of being lost.

[136-G-H; 130-G-H; 131-A; 137-A, B]

2. In the instant case, the Investigating Officer had appeared as a witness. His cross-examination was not concluded without which his

A testimony was liable to be excluded from being read in evidence. Judge had exhausted practically all means for securing the presence of the witness. Even the threat of initiation of contempt proceedings did not deter him from abstaining. To secure his presence a non-bailable warrant had to be issued. He avoided the service of arrest warrant and appeared in the Court in the late hours. He was not apologetic and felt that he was B above the process of the Court. It cannot be said that the higher authorities of police were not aware of the behaviour of the IO. Either they knew about it or they should have known about it. Instead of offering the bail, the IO was busy managing for the Judge being approached or influenced by extra legal methods. He and his confederate decided to take the law in C their own hands and assault the Judge and anyone who came in their way. As such the appellants do not deserve any sympathy or mercy.

[120-G, H; 121-A, B]

3.1. Criminal contempt defined under section 2(c) of the Contempt of Courts Act, 1971 is wide enough to include any act by a person which D would either scandalize the court or which would tend to interfere with the administration of justice. It would also include any act which lowers the authority of the Court or prejudices or interferes with the due course of any judicial proceedings. It is not limited to the offering of intentional insult to the Judge or interruption of the judicial proceedings, which is E made punishable under section 228 IPC. [130-A, B]

3.2. In the instant case, a judicial officer of the rank of District Judge was attacked in a pre-planned and calculated manner in his courtroom and his chambers. The raising of slogans and demanding unconditional bail for the Investigating Officer further compounded the offence. Courts F cannot be compelled to give "command orders". The act committed amounted to deliberate interference with the discharge of duty of a judicial officer by intimidation apart from scandalizing and lowering the dignity of the Court and interference with the administration of justice. Therefore, it cannot be said that the alleged contempt committed of subordinate Court constituted an offence under section 228 IPC, and as such High Court is G precluded from taking cognizance of it under proviso to section 10 of the Act. [130-F-G]

Bathina Ramakrishna Reddy v. *The State of Madras,* [1952] SCR 425, followed.

H *State of Madhya Pradesh* v. *Revashankar,* [1959] SCR 1367 and *Arun*

Paswan S.I. **v.** *State of Bihar and Ors.*, **(2003) 10 SCALE 658, relied on.** A

Delhi Judicial Service Association **v.** *State of Gujarat and Ors.*, **[1991] 4 SCC 406, referred to.**

4. On proper construction of sub-section (2) of section 15, it does not restrict power of High Court to take cognizance of and punish B **contempt of subordinate court, on its own motion. Hence, High Court could on its own motion take action of a criminal contempt against the appellants. Furthermore, apart from the report sent by the other Judicial Officer of the incident, Young Lawyers Association had also filed a writ petition. The Presidents of the three Bar Associations and Advocate** C **General were present and were heard before initiating the proceedings for the criminal contempt and they arrived at the conclusion that a *prima facie* case of criminal contempt was made out against the contemners. This shows that the Advocate General of the State was also of the opinion that *prima facie* a case for initiation of proceedings for criminal contempt was made out and he was a consenting party to the initiation of the proceedings.** D **[133-E, F, G]**

S.K. Sarkar, Member, Board of Revenue **and** *U.P. Lucknow* **v.** *Vinay Chandra Misra,* **[1981] 1 SCC 436, relied on.**

5.1. The procedure prescribed either under the Code of Criminal E **Procedure or under the Evidence Act is not attracted to the proceedings initiated under Section 15 of the Contempt of Courts Act. High Court can deal with contempt matters summarily and adopt its own procedure. The only caution the Court has to observe while exercising this inherent power of summary procedure is that the procedure followed must be fair and** F **the contemnors are made aware of the charges leveled against them and given a fair and reasonable opportunity. Judge has to remain in full control of the hearing of the case and immediate action is required to be taken to restore order as early and quickly as possible. Dragging the proceedings unnecessarily would impede the speed and efficiency with which justice has to be administered. [134-F, G; 135-D, E]** G

In re Vinay Chandra Mishra, **[1995] 2 SCC 584, referred to.**

5.2. In the instant case, though High Court had decided to proceed with the contempt proceedings in a summary manner but adequate safeguards were taken to protect the contemners' interest. The contemners H

A were issued notices apprising them of the specific allegations made against them. They were given an opportunity to counter the allegations by filing their counter affidavits and additional counter/supplementary affidavits, affidavits of any other persons; and were also given opportunities to produce any other material in their defence, which they did not do. Most of the contemners took the plea that at the relevant time they were on B duty in their respective Police Stations and in support they attached copies of station diaries and duty chart. High Court did not accept the plea of *alibi* as all these papers had been prepared by the contemners themselves and none of the superior officer had supported such a plea. Another judicial Officer, Director General of Police, Superintendent of Police, the C judge who was attacked, two court's officials and some of the lawyers filed their reports with regard to the incident which confirmed the presence of the appellants. [134-H; 135-A-C]

5.3. High Court after verifying and cross-checking the entire evidence and material available on record including the evidence produced by the D contemners, coming from different reliable sources, affording due opportunity of hearing to the counsel for the contemners convicted only nine persons out of twenty six persons arrayed as contemners before it. High Court has taken care not to convict a person unless direct evidence and/or circumstances with sufficient corroborative material doubtless E fastening guilt on the contemners who have been punished was available. Affidavit evidence if based on hearsay has been excluded. Contemners against whom there was single identification were also given the benefit of doubt. It was not necessary for the High Court to discuss each and every affidavit individually. Thus the plea that the High Court did not take into consideration the affidavits of independent witnesses and that due F reasonable and adequate opportunity was not afforded to the appellants to defend themselves and put forth their point of view is not tenable. Therefore, there is no fault in the procedure adopted by High Court in conducting the proceedings. [138-D-F]

5.4. The submission that principles of natural justice were not G observed in as much as opportunity to cross-examine the witnesses who had deposed on affidavits is concerned it may be stated that no such opportunity was asked for in the High Court at trial stage. It was for them to ask for such an opportunity to cross-examine the parties who had deposed against them on affidavit. Since the contemners did not avail of H the opportunity at the trial stage the plea of non-observations of principles

of natural justice is not tenable. Furthermore, High Court in its order has noted that the counsel appearing for both the parties have taken a stand that all possible fair and proper opportunities were extended to them. In view of such statements, at this stage the contemnors cannot take the stand that in the absence of cross-examination of the concerned persons, reliance could not be placed on the statements which were made on oath.

[137-C-D; 134-C-D]

Arun Paswan S.I. **v.** *State of Bihar and Ors.,* **(2003) 10 SCALE 658, referred to.**

6. It is unfortunate that neither the criminal proceedings nor the disciplinary proceedings or the inquiry under the Commission of Inquiry Act have been concluded. No doubt the appellants had been suspended initially but in due course they have been reinstated. Some of them have retired as well. Inaction on the part of the authorities resulted in emboldening others to commit similar acts. [139-B, C]

Arun Paswan, S.I. **v.** *State of Bihar and Ors.,* **(2003) 10 SCALE 658, referred to.**

[The Court directed that the criminal proceedings, disciplinary proceedings and the enquiry under the Commissions of Enquiry Act should be concluded at the earliest; and that the proceedings before criminal court which were kept pending awaiting decision of these appeals when there was no stay by High Court or this Court, be decided on the basis of evidence adduced in these cases.]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 316 of 1998.

From the Judgment and Order dated 10.2.98 of the Patna High Court in original Crl. M.C. No. 24 of 1997.

WITH

Crl. A. Nos. 317, 318, 332 and 396 of 1998

Ms. Meenakshi Arora (A.C.), M.P. Jha, Ram Ekbal Roy, Harshvardhan Jha, Anil K. Chopra, Amitesh Kumar, Lakshmi Raman Singh, Braj Kishore Mishra, Ms. Aparna Jha, Ehaz Maqbool, Ramesh Singh, Ms. Rakhi Ray, Ms. Bina Gupta, Ms. Divya Roy, S.K. Sinha, Ms. Sindhu Pratibha Jha, B.B. Singh, Kumar Rajesh Singh and Ms. Sunita Pandit for the appearing parties.

A The Judgment of the Court was delivered by

BHAN, J. The instant criminal appeals arising from a common judgment relating to the same incident, depict a rare, unfortunate and condemnable act of the police officials who contrary to the duty enjoined upon them to protect and maintain law and order, indulged in the act of attacking in a pre-planned B and calculated manner Shri D.N. Barai, Ist Additional District and Sessions Judge, in his court room and Chambers on 18th November, 1997 at Bhagalpur in the State of Bihar.

Facts of the present case:

C . In Sessions trial No. 592 of 1992, the Investigating Officer (Jokhu Singh) was examined as a witness on 7th May, 1997 in the Court of Shri D.N. Barai, Ist Additional District and Sessions Judge, Bhagalpur. As the cross-examination could not be concluded the case was adjourned to 26th May, 1997. Thereafter the case was adjourned to several dates but this witness D did not appear for the cross-examination. A show cause notice was issued against Jokhu Singh through Superintendent of Police, Madhepura, requiring him to appear on 11th June, 1997. In spite of that Jokhu Singh did not appear. On 14th July, 1997, a wireless message was sent to him through Superintendent of Police to appear in the court on 5th August, 1997. Once again the witness did not turn up. The Court, therefore, having no other E option issued a notice to Jokhu Singh to show cause why proceedings under the Contempt of Courts Act (hereinafter referred to as 'the Act') be not initiated against him. Ultimately, on 27th August, 1997 the case was adjourned to 20th September, 1997 and to procure his presence, non-bailable warrant was issued. On this date also the witness did not turn up. He did not file reply F to the show cause notice either. On 17th November, 1997, Jokhu Singh appeared in the court in the afternoon. Having regard to the previous order of non-bailable warrant of arrest, he was remanded to judicial custody. A petition for bail was filed on his behalf after the court hours. It was directed that the same be placed for hearing on the next date.

G Shri K.D. Choudhary, one of the appellants who was an office bearer of the Policemen's Association at District Level and was posted as SHO of the Police Station in the evening of the same day went to the Chambers of Shri Barai for release of Shri Jokhu Singh on execution of a personal bond. Shri Barai did not agree. Thereafter he approached the District Magistrate and on the basis of his advice he met the District Judge and renewed his H

demand for release of Jokhu Singh, which was declined. A

On 18th November, 1997, when the bail petition of Jokhu Singh was taken up, the learned counsel appearing on his behalf made a prayer seeking withdrawal of the bail application. Accordingly, the bail application was dismissed as withdrawn. Soon thereater, a large number of police officers (without uniform), armed with lathis and other weapons and shouting slogans B against Shri Barai, barged into his court room. The court peon Shri Bishundeo Sharma who tried to shut the door was brutally assaulted. Shri Barai apprehending danger to his life, rushed to his Chambers and managed to bolt the door. Unruly mob forcibly broke open the door, overpowered the bodyguard and assaulted Shri Barai. They reiterated their demand for C unconditional release of Jokhu Singh. Due to the manhandling Shri Barai felt dizziness and became unconscious. It was due to timely arrival of a team of doctors that his life was saved.

The police personnel after assaulting Shri Barai and his court staff, took away certain records and damaged the doors and grills of the gate. They D also assaulted some of the lawyers and damaged their furniture and motor vehicles parked inside the court compound. Since at the relevant time the District & Sessions Judge, Bhagalpur had gone to Banka for holding camp court and Shri Barai was not in a position to send any report, the 5th Additional District and Sessions Judge sent a report to the High Court narrating the incident. On the next day, on return from Banka, District & Sessions Judge E also enquired into the matter and submitted a detailed report. In the report the names of police officials who were identified by the court staff, Shri Barai and the lawyers were also disclosed. They are (i) A. Natarajan, the then Superintendent of Police, Bhagalpur (ii) Harihar Prasad Choudhary, the then Deputy Superintendent of Police, Bhagalpur, (iii) K.D. Choudhary, the then F Inspector of Police, Kotwali P.S., (iv) Ms. Shashi Lata Singh, the then S.I., (v) Daroga singh, the then S.I. (vi) P.K. Singh, the then S.I., (vii) Rajib Rajan Dayal alias Bhagat, the then S.I., (viii) Gurubachan Singh, the then S.I., (ix) Krishna Ram, the then Inspector of Police, (x) C.D. Jha, the then A.S.I., (xi) K.N. Singh, the then Officer Incharge of Harijan P.S. Bhagalpur and (xii) Ranjit Pandey, the then Sergeant Major, Police Line, Bhagalpur. G

On 19th November, 1997, on the basis of the report sent by the 5th Additional District and Sessions Judge, Bhagalpur dated 18th November, 1997, Original Criminal Miscellaneous Case No. 24 of 1997 was registered and placed before a Bench of the High Court for admission. Along with the H

A said case Civil Writ Petition C.W.J.C. No. 10625 of 1997 filed on behalf of the Young Lawyers' Association was also listed. On perusal of the report and after hearing the three Presidents of the High Court Associations and the Advocate General, the Court arrived at the conclusion that a *prima facie* case of criminal contempt was made out against the contemners. Accordingly proceedings under the Contempt of Courts Act were initiated and a direction B was issued to the Registry to issue notices to the above referred persons along with a copy of the report, containing allegations against the concerned persons, calling upon them to show cause as to why suitable action be not taken against them for the alleged misconduct. The show cause was made returnable by 25th November, 1997. The Chief Secretary and the Director C General of Police were directed to affirm on affidavits regarding the steps taken by the State Government in the matter relating to the incident.

On 25th November, 1997, all the contemners appeared through their respective advocates. On a request made the hearing was postponed to 10th December, 1997 to enable them to file their detailed replies to the show cause D notice. Chief Secretary filed his affidavit indicating that the Director General-cum-Inspector General of Police after holding a detailed inquiry, had in his report, disclosed names of nine police officials namely (i) K.D. Choudhary, the then Officer Incharge, Kotwali, (ii) Ranjit Pandey, the then Sergeant Major, Bhagalpur, (iii) Ms. Shashi Lata Singh, the then S.I., (iv) K.B. Singh, E the then Thana Incharge, Harijan P.S. Bhagalpur, (v) Gurubachan Singh, the then S.I., (vi) Daroga Singh, the then S.I., (vii) Prem Kumar Singh, the then S.I. (Officer Incharge Kajraili), (viii) Rajeev Ranjan Bhagar, the then S.I., and (ix) C.D. Jha, the then ASI Bhagalpur.

The Director General of Police found the officers, named above, guilty F for the alleged incident and condemned the police officials for their act. It was also mentioned in the affidavit that the State Government, acting on the basis of the report of the Director General of Police, had issued different orders, suspending all such officials from service. Keeping in view the gravity of the situation, a Commission of Inquiry was also set up under the provisions of the Commission of Inquiries Act, 1952.

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Besides the departmental proceedings, different criminal cases were also lodged against them.

On behalf of some of the contemners a request was made to keep the contempt matter in abeyance until the conclusion of the proceedings initiated H under various provisions of the Indian Penal Code, the departmental

proceedings and the report of the Commission constituted under the Commission of Inquiry Act. The request was declined by the High Court. It was held that the pendency of a criminal case or judicial inquiry could not constitute a bar to the continuation of the contempt proceedings. But before adjourning the proceedings to the next date and having noticed that all the contemners and their advocates were present and every body was condemning the occurrence, the Court expressed the desire that some of the responsible officers like Superintendent of Police, Deputy Superintendent of Police, Inspector of Police Kotwali Shri K.D. Choudhary and Sub-Inspector of Police Ms. Shashi Lata Singh and Sergeant Major of Police Line Ranjit Pandey should disclose details of the occurrence which had taken place in the court premises on 18th November, 1997 and if possible, identify more names of such persons, who, according to them, had taken part at the time of occurrence. On the adjourned date of hearing, the Court recorded the statement of (i) A. Natarajan, the then S.P., (ii) Harihar Choudhary, the then DSP, (iii) K.D. Choudhary, the then Inspector of Police, Kotwali P.S., (iv) Ms. Shashi Lata Singh, the then S.I., and (v) Ranjit Pandey, the then Sergeat Major, Bhagalpur. The Superintendent of Police in his statement fairly narrated a part of the incident and identified certain more names, like Awadhesh Singh, Subodh Kumar Yadav and Aswan, Vice-President of the Association who, according to him, had also taken part in the alleged assault. The court issued notices to these three persons also calling upon them to show cause why they be also not proceeded for the criminal contempt. The officials whose statements had been recorded were directed to file their additional or supplementary replies to the show cause on the next date of hearing.

On 10th December, 1997, all the contemners appeared and filed additional or supplementary replies to show cause notice. The Superintendent of Police in his supplementary reply disclosed names of 14 more police officials and constables, who, as per his inquiry, had also taken part along with the main persons named earlier. They are (i) Ram Suresh Singh 'Nirala', SI, (ii) Sriram Singh, ASI, (iii) Ram Rekha Pandey, SI, (iv) Shivji Singh, SI, (v) B.N. Singh, ASI, Kotwali, (vi) Sukh Narain Sharma, SI, (vii) D.D. Singh Officer Incharge, Tatarpur P.S., (viii) Gopalji Prasad, SI, (ix) Madhusudhan Sharma O/c Sultanganj P.S., (x) Awadesh Singh, Constable, (xi) Subodh Kumar Yadav, Constable, (xii) Ram Prakash Paswan, Constable, (xiii) Dilip Ojha, Treasure, Policemen's Association, Bhagalpur, and (xiv) Anil Kumar Soren, General Secretary, Policemen's Association.

Notices were issued to the above-named persons as well along with

A copies of the report calling upon them to show cause by 8th January, 1998 as to why they be also not proceeded with the criminal contempt. On 9th January, 1998 all the contemners including those fourteen against whom notices were issued on 10th December, 1997 appeared and filed their replies to the show cause notice.

B At the same time, affidavits were also filed on behalf of Shri Barai, Ist Additional District & Sessions Judge, Bhagalpur and his staff namely R. Das and B.Sharma and some of the lawyers of the Bhagalpur Court namely Shri M.P.Singh, President Bar Association, Bhagalpur, Shri Y.K. Rai, Secretary, Advocate Assiciation and S/Shri N.K. Choudhary, J.K.,Gupta (Secretary, Bar C Association), B.N. Mishra and S.C.Pandey, Advocates. Copies of the affidavits filed were served on their opposites on 16th January, 1998 all the learned advocates appearing for different parties fairly accepted that copies of all the material brought on the record so far was properly served on the advocates appearing for the contemners and those who were appearing in support of the contempt proceedings.

D

In response to the show cause all the contemners in their affidavits condemned the incident of assault on Shri Barai and the lawlessness created in the civil court campus, Bhagalpur. It would be relevant to notice that some of the contemners like Harihar Choudhary, DSP, K.D. Choudhary, Inspector of Police and few others have tried to justify the act by saying that there was E a resentment amongst the police personnels for the arrest of Jokhu Singh and removal of stars from his uniform in the court. The reply of the Superintendent of Police also indicated that because of such steps taken by Shri Barai the Police Officers Association led by Shri K.D. Choudhary on 17th December, 1997 met the Inspector General (Prosecution) and the Zonal I.G. and protested F against the arrest of Jokhu Singh and the removal of stars. After showing their resentment these contemners also criticised the unfortunate incident and assault on Shri Barai, and his staff but they denied their presence at the time of incident in the court premises on 18th November, 1997. Show cause notice had been issued to 26 persons. Except for one or two the remaining asserted that they were not involved in the incident and were on duty elsewhere G at the relevant time. In proof of such defence they attached their duty chart etc.

After considering the relevant evidence on the record, and after taking due care and caution to see that innocent persons are not punished the High H Court dropped the proceedings against the contemners other than Shri K.D.

Choudhary, Ms. Shashi Lata Singh, Daroga Singh, P.K. Singh, Rajib Ranjan Bhagat (Dayal), Gurubachan Singh, C.D. Jha, K.N. Singh and Ranjit Pandey. Shri K.D. Choudhary was found to be the ring leader of the contemners and was imposed with the punishment of undergoing simple imprisonment for a period of three months and the remaining eight to undergo simple imprisonment for a period of two months. It was made clear that the discharge of rule of contempt notice of the proceedings against the other seventeen would not absolve them of their misconduct and guilt for their respective offences, if any. In other words, the departmental proceedings initiated by the State Government and the criminal cases registered against them would not be affected by the disposal of the proceedings in the criminal contempt.

Learned counsel appearing for the State of Bihar, has fairly stated that neither the departmental proceedings nor the criminal cases nor the Commission of Inquiry have been concluded so far. The plea taken is that they are awaiting the result of the present appeals.

Appellants who were convicted under the Contempt of Courts Act and visited with the punishment of simple imprisonment have filed five different appeals. S/Shri Daroga Singh, Chakradhar Jha, Shashi Lata Singh and P.K. Singh have filed Criminal Appeal No. 316 of 1998, Shri K.D. Choudhary has filed Criminal Appeal No. 332 of 1998, Shri Kedar Nath Singh has filed Criminal Appeal No. 318 of 1998, Shri Ranjeet Pandey has filed Criminal Appeal No. 317 of 1998 and Shri Gurbachan Singh and Rajib Ranjan Dayal have filed Criminal Appeal No. 396 of 1998. Daroga Singh, P.K. Singh, C.D. Jha have already retired from service. The remaining are still in service and posted at different places.

Learned counsels appearing for the appellants in different appeals, apart from the merits in individual appeals, which we shall deal with later, have raised some common points challenging the correctness of the impugned judgment. The same are:

(i) the alleged contempt is that of a court subordinate to the High Court and the allegations made constitute an offence under Section 228 IPC, and therefore the jurisdiction of the High Court to take cognizance of such a case is expressly barred under proviso to Section 10 of the Act;

(ii) that the High Court cannot take *suo motu* notice of the contempt of a court subordinate to it. The procedure given in the High

A Court Rules and Orders for initiation of proceedings for contempt of subordinate court having not been followed the entire proceedings are vitiated and liable to be quashed;

(iii) the standard of proof required in the criminal contempt is the same as in a criminal charge and therefore the charge of criminal B contempt has to be proved by holding a trial as in a criminal case. The appellants could not be convicted on the basis of evidence by way of affidavits only. The witnesses should have been examined in Court and in any case the appellants should have been given an opportunity to cross-examine the persons who had deposed against them on affidavits to verify the version C of the incident as according to them there were conflicting versions of the incident;

(iv) reasonable and adequate opportunity was not afforded to the appellants either to defend themselves or put forward their case; and

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(v) affidavits of independent witnesses which were on record have not been dealt with by the High Court.

Answer to the first point would depend upon the interpretation to be put on Section 10 of the Act. Section 10 which deals with the power of the E High Court to punish for the contempt of subordinate courts reads:

> "10. **Power of High Court to punish contempts of subordinate courts.**- Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate F to it as it has and exercises in respect of contempts of itself:
>
> Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860)."

G

According to the learned counsels appearing for the appellants the proviso to Section 10 means that if the act by which a party is alleged to have committed contempt of a subordinate court constitutes offence of any description whatsoever punishable under the Indian Penal Code, the High Court is precluded from taking cognizance of it. According to them in the H present case the allegations made amounts to an offence under Section 228

of the Indian Penal Code and consequently the jurisdiction of the High Court is barred. A

We do not find any force in this submission. The point raised is concluded against the appellants by a judgment of the Constitution Bench of this Court in *Bathina Ramakrishna Reddy* v. *The State of Madras,* [1952] SCR 425. In that case, sub-section (3) of Section 2 of the Contempt of Courts Act, 1926 which is similar to proviso to Section 10 of the Act was under consideration. Section 2(3) of the Contempt of Courts Act, 1926 provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code. Interpreting this Section, it was held that sub-section (3) excluded the jurisdiction of the High Court to take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it only in cases where the acts alleged to constitute contempt are punishable as contempt under specific provisions of the Indian Penal Code, but not where these acts merely amount to offences of other description for which punishment has been provided in the Indian Penal Code. B C D

This judgment was analyzed and followed by a Bench of three Judges of this Court in the *State of Madhya Pradesh* v. *Revashankar,* [1959] SCR 1367. In this case as well the point arose regarding the interpretation to be put to a similar provision and it was held: E

> "The sub-section was considered in two decisions of this Court, *Bathina Ramakrishna Reddy* v. *The State of Madras,* [1952] SCR 425) and *Brahma Prakash Sharma* v. *The State of Uttar Pradesh,* [1953] SCR 1169. In the earlier case of *Ramakrishna Reddy* [1952] SCR 425 the appellant was the publisher and managing editor of a Telugu Weekly known as "Praja Rajyam". In an issue of the said paper dated February 10, 1949, an article appeared which contained defamatory statements about the stationary Sub-Magistrate, Kovvur, and the point for consideration was if the jurisdiction of the High Court to take cognizance of such a case was expressly barred under section 2(3) of the earlier Contempt of Courts Act, when the allegations made in the article in question constituted an offence under section 499, Indian Penal Code. On behalf of the appellant it was argued that what the sub-section meant was that if the act by which the party was alleged to have committed contempt of a subordinate court constituted F G H

A offence of any description whatsoever punishable under the Indian Penal Code, the High Court was precluded from taking cognizance of it. This argument was repelled and this Court said at page 429. :-

> "In our opinion, the sub-section referred to above excludes the jurisdiction of High Court only in cases where the acts alleged
B to constitute contempt of a subordinate court are punishable as contempt under specific provisions of the Indian Penal Code but not where these acts merely amount to offences of other description for which punishment has been provided for in the Indian Penal Code. This would be clear from the language of the
C sub-section which uses the words "where such contempt is an offence" and does not say "where the act alleged to constitute such contempt is an offence."

On an examination of the decisions of several High Courts in India it was laid down that the High Court had the right to protect
D subordinate courts against contempt but subject to this restriction, that cases of contempt which have already been provided for in the Indian Penal Code should not be taken cognizance of by the High Court. This, it was stated, was the principle underlying section 2(3) of the Contempt of Courts Act, 1926. This Court then observed that it was not necessary to determine exhaustively what were the cases
E of contempt which had been already provided for in the Indian Penal Code; it was pointed out, however, that some light was thrown on the matter by the provision of section 480 of the Code of Criminal Procedure which empowers any civil, criminal or revenue court to punish summarily a person who is found guilty of committing any
F offence under sections 175, 178, 179, 180 or section 228 of the Indian Penal Code in the view or presence of the court. The later decision of *Brahma Prakash Sharma* [1953] S.C.R. 1169 explained the true object of contempt proceedings. Mukherjea J. who delivered the judgment of the Court said (at page 1176) :

G
> "It would be only repeating what has been said so often by various Judges that the object of contempt proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individuals; it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the
H court is lowered and the sense of confidence which people have

in the administration of justice by it is weakened." A

It was also pointed out that there were innumerable ways by which attempts could be made to hinder or obstruct the due administration of justice in courts and one type of such interference was found in cases where there was an act which amounted to "scandalising the court itself" : this scandalising might manifest itself in various ways B but in substance it was an attack on individual Judges or the court as a whole with or without reference to particular cases, causing unwarranted and defamatory aspersions upon the character and ability of the Judges. Such conduct is punished as contempt for the reason that it tends to create distrust in the popular mind and impair the C confidence of the people in the courts which are of prime importance to the litigants in the protection of their rights and liberties."

These two judgments have been followed recently in *Arun Paswan, S.I.* v. *State of Bihar and Ors.,* (2003) 10 SCALE 658. We respectfully agree with the reasoning and the conclusions arrived at in these cases. D

"Criminal contempt" is defined in Section 2 (c) of the Act, to mean :

"(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever E which -

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or F

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

Section 228 of the Indian Penal Code provides :

"**228. Intentional insult or interruption to public servant sitting in** G **judicial proceeding**.- Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both." H

A What is made publishable under Section 228, IPC is the offence of intentional insult to a Judge or interruption of court proceedings but not as a contempt of Court. The definition of criminal contempt is wide enough to include any act by a person which would either scandalize the court or which would tend to interfere with the administration of justice. It would also include any act which lowers the authority of the Court or prejudices or interferes B with the due course of any judicial proceedings. It is not limited to the offering of intentional insult to the Judge or interruption of the judicial proceedings. This Court observed in *Delhi Judicial Service Association* v. *State of Gujarat and Ors.*, [1991] 4 SCC 406 :

C "...The public have a vital stake in effective and orderly administration of justice. The Court has the duty of protecting the interest of the community in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not to protect the dignity of the Court against insult or injury, but, to protect and vindicate the right of the public so that the administration of justice D is not perverted, prejudiced, obstructed or interfered with. The power to punish for contempt is thus for the protection of public justice, whose interest requires that decency and decorum is preserved in Courts of Justice. Those who have to discharge duty in a Court of Justice are protected by the law, and shielded in the discharge of their duties. Any deliberate interference with the discharge of such duties E either in court or outside the court by attacking the presiding officers of the court, would amount to criminal contempt and the courts must take serious cognizance of such conduct."

In the present case, a judicial officer of the rank of District Judge was F attacked in a pre-planned and calculated manner in his court room and when he tried to protect himself from physical harm by retiring to his chambers, by chasing him there and causing injuries to him. The raising of slogans and demanding unconditional bail for Jokhu Singh further compounded the offence. The Courts cannot be compelled to give "command orders". The act committed amounts to deliberate interference with the discharge of duty of a judicial G officer by intimidation apart from scandalizing and lowering the dignity of the Court and interference with the administration of justice.The effect of such an act is not confined to a particular court or a district, or the State, it has the tendency to effect the entire judiciary in the country. It is a dangerous trend. Such a trend has to be curbed. If for passing judicial orders to the annoyance of the police the presiding officers of the Courts are to be assaulted H

and humiliated the judicial system in the country would collapse. A

The second contention raised on behalf of the appellants is that the High Court cannot on its own motion take action of a criminal contempt of a subordinate court. According to the learned counsels the High Court can take cognizance of a criminal contempt under Section 15 (2) of the Act of a subordinate court only on a reference made to it by the subordinate court B or on a motion made by the Advocate General. Since the procedure as laid down in the High Court Rules and Orders had not been followed the very initiation of proceedings for contempt was vitiated and therefore liable to be quashed. We do not find any force in this submission as well. This point also stands concluded against the appellants by a decision of this Court in *S.K. Sarkar, Member, Board of Revenue, U.P. Lucknow,* v. *Vinay Chandra Misra,* C [1981] 1 SCC 436. In this case an advocate filed a petition before the High Court under the Contempt of Courts Act alleging that the appellant therein as a Member of Revenue Board made certain contemptuous remarks, viz., *nalayak gadhe saale ko jail bhijwa dunga; kis idiot ne advocate bana diya hai* and acted in a manner which amounted to criminal contempt of the Court D of Revenue Board, in which he (the advocate) was the counsel for one of the parties. The advocate requested the High Court to take *suo motu* action under the Contempt of Court Act against the member of the Revenue Board or pass such orders as it deemed fit. The question for determination was whether the High Court was competent to take cognizance of contempt of a subordinate E court when it was moved by a private petitioner and not in accordance with either of the two motions mentioned in Section 15 (2). Analyzing Section 15 (2) of the Act and in reading it in harmony with Section 10 of the Act it was held:

> "16. Section 2(c) of the Act defines "criminal contempt". Section 9 F emphasizes that "nothing contained in this Act shall be construed as implying that any disobedience, breach, publication or other act is punishable as contempt of court which would not be so punishable apart from this Act". Section 10 runs as under :
>
> > Every High Court shall have and exercise the same jurisdiction, G powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself :
>
> Then, there is a proviso which is not material for our purpose. The provision in Section 10 is but a replica of Section 3 of the 1952 Act. H

A The phrase "courts subordinate to it" used in Section 10 is wide enough to include all courts which are judicially subordinate to the High Court, even though administrative control over them under Article 235 of the Constitution does not vest in the High Court. Under Article 227 of the Constitution the High Court has the power of superintendence over all courts and tribunals throughout the B territories in relation to which it exercises jurisdiction. The Court of Revenue Board, therefore, in the instant case, is a court "subordinate to the High Court" within the contemplation of Section 10 of the Act.

17. Section 14 provides for the procedure where contempts is C committed in the face of the Supreme Court or a High Court. Section 15 is very material for our purpose. It provides in regard to cognizance of "criminal contempt" in cases other than those falling under Section 14. The material portion of Section 15 reads thus :

> 15. (1) In the case of a criminal contempt, other than a contempt D referred to in Section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by -
>
> (a) the Advocate General, or
>
> (b) any other person, with the consent in writing of the Advocate General.
>
> E (2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate General or, in relation to a union territory, by such law officer as the Central Government may, by notification in the Official Gazette, F specify in this behalf ...
>
> The operation of sub-section (1) appears to be confined to cases of "criminal contempt" of the Supreme Court or the High Court, itself. Criminal contempt of a subordinate court is dealt with in sub-section (2).

G 18. A comparison between the two sub-sections would show that whereas in sub-section (1) one of the three alternative modes for taking cognizance, mentioned is "on its own motion", no such mode is expressly provided in sub-section (2). The only two modes of taking cognizance by the High Court mentioned in sub-section (2) H are : (i) on a reference made to it by a subordinate court; or (ii) on

a motion made by the Advocate General, or in relation to a union territory by the notified Law Officer. Does the omission in Section 15(2) of the mode of taking *suo motu* cognizance indicate a legislative intention to debar the High Court from taking congnizance in that mode of any criminal contempt of a subordinate court ? If this question is answered in the affirmative, then, such a construction of sub-section (2) will be inconsistent with Section 10 which makes the powers of the High Court to punish for contempt of a subordinate court, coextensive and congruent with its power to punish for its own contempt not only in regard to quantum or prerequisites for punishment, but also in the matter of procedure and practice. Such a construction which will bring Section 15(2) in conflict with Section 10, has to be avoided, and the other interpretation which will be in harmony with Section 10 is to be accepted. Harmoniously construed, sub-section (2) of Section 15 does not deprive the High Court of the power of taking cognizance of criminal contempt of a subordinate court, on its own motion, also. If the intention of the legislature was to take away the power of the High Court to take *suo motu* cognizance of such contempt, there was no difficulty in saying so in unequivocal language, or by wording the sub-section in a negative form. *We have, therefore, no hesitation in holding in agreement with the High Court, that sub-section (2) of Section 15, properly construed, does not restrict the power of the High Court to take cognizance of and punish contempt of a subordinate court, on its own motion."* [Emphasis supplied]

We respectfully agree with the view taken in this judgment and hold that the High Court could initiate proceedings on its own motion under the Contempt of Courts Act against the appellants. On the facts of this case apart from the report sent by the 5th Additional District and Sessions Judge of the incident, Young Lawyers Association had also filed a writ petition. The Presidents of the three Bar Associations and the Advocate General were present and heard before initiating the proceedings for the criminal contempt. It has been noted by the High Court that "all the three Presidents of the High Court Associations and the Advocate General arrived at the conclusion that a *prima facie* case of criminal contempt was made out against the contemners". This shows that the Advocate General of the State was also of the opinion that *prima facie* a case for initiation of proceedings for criminal contempt was made out and he was a consenting party to the initiation of the proceedings.

The third contention raised by the learned counsel for the appellants is

A that the standard of proof required in the criminal contempt is the same as in a criminal charge and therefore the charge of criminal contempt has to be proved beyond reasonable doubt. That the appellants could not be convicted on the basis of the affidavits filed. That the witnesses should have been examined in Court and in any case the appellants should have been given an opportunity to cross-examine the persons who had deposed against them on B affidavits to verify the version of the incident as according to them there were conflicting versions of the incident. It was emphasized that justice must not only be done, but must be seen to be done by all concerned to establish confidence that the contemners will receive a fair, just and impartial trial. We do not find any substance in this submission as well. High Court in its order C has noted that the learned counsels appearing for both the parties have taken a stand that all possible fair and proper opportunities were extended to them. In view of the statements made by the counsels for the parties it will not be open to the counsels for the parties at this stage to take the stand that in the absence of cross-examination of the concerned persons, reliance could not be placed on the statements which were made on oath. Learned counsel who had D appeared for the contemners before the High Court did not claim the right of cross-examination. Only at the stage of arguments a submission was made that opportunity to cross-examine the concerned persons was not given which vitiated the trial. High Court rejected this contention by holding that such a stand could not be taken at that stage of the proceedings. It has been held in E *Arun Paswan case* (supra) that a party which fails to avail of the opportunity to cross-examine at the appropriate stage is precluded from taking the plea of non-observance of principles of natural justice at a later stage. Such a plea would not be tenable.

It has repeatedly been held by this Court (Ref: [1995] 2 SCC 584) that F the procedure prescribed either under the Code of Criminal Procedure or under the Evidence Act is not attracted to the proceedings initiated under Section 15 of the Contempt of Courts Act. The High Court can deal with such matters summarily and adopt its own procedure. The only caution that has to be observed by the Court in exercising this inherent power of summary procedure is that the procedure followed must be fair and the contemners are G made aware of the charges levelled against them and given a fair and reasonable opportunity. Having regard to the fact that contempt proceedings are to be decided expeditiously in a summary manner the convictions have been recorded without extending the opportunity to the contemners to cross examine those who had deposed against them on affidavits. Though the H procedure adopted in this case was summary but adequate safeguards were

taken to protect the contemners' interest. The contemners were issued notices apprising them of the specific allegations made against them. They were given an opportunity to counter the allegations by filing their counter affidavits and additional counter/supplementary affidavits as per their request. They were also given opportunity to file affidavits of any other persons which they did. They were given opportunities to produce any other material in their defence which they did not do. Most of the contemners had taken the plea that at the relevant time they were on duty in their respective Police Stations though in the same town. They also attached copies of station diaries and duty chart in support of their *alibi*. The High Court did not accept the plea of *alibi* as all these papers had been prepared by the contemners themselves and none of the superior officer had supported such a plea. The evidence produced by the respondents was rejected in the face of the reports made by the Additional District and Sessions Judge, Director General of Police coupled with affidavits of Mr. Barasi, the Additional District and Sessions Judge, two court's officials and affidavits of some of the lawyers who had witnessed the occurrence.

The contempt proceedings have to be decided in a summary manner. The Judge has to remain in full control of the hearing of the case and immediate action is required to be taken to make it effective and deterrent. Immediate steps are required to be taken to restore order as early and quickly as possible. Dragging the proceedings unnecessarily would impede the speed and efficiency with which justice has to be administered. This Court while considering all these aspects held in *In re: Vinay Chandra Mishra* (the alleged contemner), [1995] 2 SCC 584, that the criminal contempt no doubt amounts to an offence but it is an offence *sui generis* and hence for such offence, the procedure adopted both under the common law and the statute law in the country has always been summary. It was observed that the need was for taking speedy action and to put the Judge in full control of the hearing. It was emphasised that immediate steps were required to be taken to restore order in the court proceedings as quickly as possible. To quote from the above-referred to case

> "However, the fact that the process is summary does not mean that the procedural requirement, viz., that an opportunity of meeting the charge, is denied to the contemner. The degree of precision with which the charge may be stated depends upon the circumstances. So long as the gist of the specific allegations is made clear or otherwise the contemner is aware of the specific allegation, it is not always necessary to formulate the charge in a specific allegation. The

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

In the present case the High Court had decided to proceed with the contempt proceedings in a summary manner. Due opportunity was afforded to all the contemners and after verifying and cross checking the material available before it, coming from different reliable sources the High Court convicted only nine persons out of twenty six persons arrayed as contemners before it. The High Court took due care to ascertain the identity of the contemners by cross-checking with the affidavits filed by the different persons. It is also based on the independent reports submitted by the Director General of Police and Superintendent of Police. We do not find any fault in the procedure adopted by the High Court in conducting the proceedings in the present case. For the survival of the rule of law the orders of the courts have to be obeyed and continue to be obeyed unless overturned, modified or stayed by the appellate or revisional courts. The court does not have any agency of its own to enforce its orders. The executive authority of the State has to come to the aid of the party seeking implementation of the court orders. The might of the State must stand behind the Court orders for the survival of the rule of the court in the country. Incidents which undermine

the dignity of the courts should be condemned and dealt with swiftly. When a judge is attacked and assaulted in his court room and chambers by persons on whose shoulders lay the obligation of maintaining law and order and protecting the citizen against any unlawful act needs to be condemned in the severest of terms. If judiciary has to perform its duties and functions in a fair and free manner, the dignity and the authority of the courts has to be respected and maintained at all stages and by all concerned failing which the very constitutional scheme and public faith in the judiciary runs the risk of being lost.

It was urged with some vehemence that principles of natural justice were not observed in as much as opportunity to cross examine the witnesses who had deposed on affidavits is concerned it may be stated that no such opportunity was asked for in the High Court at trial stage. It was for them to ask for such an opportunity to cross examine the parties who had deposed against them on affidavit. Since the contemners did not avail of the opportunity at the trial stage the plea of non-observations of principles of natural justice is not tenable. Appellants were made aware of the procedure which was adopted by the High Court. They were given full opportunity to put forth their point of view. Each of them filed detailed affidavits along with evidence in support thereof. They had attached their duty charts showing that they could not have been present at the place of occurrence as they were on duty somewhere else. High Court has considered and discussed the entire evidence present on the record before recording the conviction. The contention that the affidavits of independent witnesses were not considered cannot be accepted. Only those were convicted against whom corroboration of the fact of their presence and participation in the incident was confirmed from more than one source.

Plea that reasonable and adequate opportunity was not afforded to the appellants is equally untenable. We find from the record that all the material (affidavits, show cause notice etc.) which were brought on record was properly served on the learned advocates appearing for the contemners. The reports submitted by the 5th Additional Sessions Judge, District Judge affidavit of Shri Barai and his staff, namely, R. Dass and B. Sharma and the other affidavits of the advocates who had seen the occurrence and the reports submitted by the Director General of Police and the Superintendent of Police were given to the learned advocates who were appearing in the contemners in the High Court. Statements of A. Natarajan, the then S.P., Harihar Chaudhary, the then Deputy Superintendent of Police, Ranjeet Pandey, the then Sergeant Major

A and Shashilata Singh, the then S.I. were recorded by the High Court in the presence of all the lawyers. The Registry of the High Court was directed to keep their statements in a sealed cover. The contemners were permitted to file affidavits and produced any other material in support of the same. They were also permitted to file affidavits of any other person supporting their version. They were all taken on record. After affording due opportunity of B hearing to the counsels appearing for the contemners the High Court recorded the order of conviction. Thus the appellants were given the evidence which had come on the record. They were given an opportunity to controvert the allegations made against them and produce evidence in support thereof. Counsel appearing for the contemners were satisfied with the opportunity C provided to them by the High Court. Plea that reasonable opportunity was not afforded to the contemners was not raised before the High Court. We are of the opinion that due reasonable and adequate opportunity was afforded to the appellants to defend themselves and put forth their point of view.

The High Court has taken into consideration the entire evidence and D material available on the record including the evidence produced by the contemners. It was not necessary for the High Court to discuss each and every affidavit individually. Out of 26 persons named only 9 have been convicted by the High Court. Since the procedure adopted was summary the High Court has taken care not to convict a person unless direct evidence and/ E or circumstances with sufficient corroborative material doubtless fastening guilt on the contemners who have been punished was available. The High Court found only those contemners guilty against whom the element of doubt was completely eliminated. Affidavit evidence if based on hearsay has been excluded. Contemners against whom there was single identification were also given the benefit of doubt. The version put forth by the appellants was not F accepted as it fell short of proof. High Court has considered the entire evidence on the record while recording a finding of guilt against the appellants. Thus the plea that the High Court did not take into consideration the affidavits of independent witnesses is not tenable.

Learned counsel for the appellants tried to point out that the appellants G were not present at the scene of incident as the appellants were on duty elsewhere. He made reference to their duty charts which had been placed on record. We find that the presence of S/Shri K.D. Choudhary, Ranjit Pandey, Ms. Shashi Lata Singh, K.B. Singh, Gurubachan Singh, Daroga Singh, Prem Kumar Singh, Rajeev Ranjan Bhagar and C.D. Jha, appellants herein has H been confirmed by several persons. The plea of *alibi* taken by the appellants

has been negatived by the High Court as the duty charts had been prepared by these officers themselves. None of the superior officers supported their versions. Presence of most of the appellants had been confirmed by the 5th Additional Sessions Judge, Shri Barai, the other two Court officials, advocates, the reports of Director General of Police and the Superintendent of Police. None of these has any interest in falsely implicating any of the appellants.

It is unfortunate that neither the criminal proceedings nor the disciplinary proceedings or the inquiry under the Commission of Inquiry Act have been concluded. No doubt the appellants had been suspended initially but in due course they have been reinstated. Some of them have retired as well. Inaction on the part of the authorities resulted in emboldening others to commit similar acts. In *Arun Paswan* (supra), proceedings for criminal contempt were initiated against the appellant therein pursuant to the complaint lodged by the District & Sessions Judge, Sasaram addressed to the Registrar General of the High Court of Patna. In the report it was stated, *inter alia,* that S.I. Arun Paswan (contemner) was directed to produce the case diary in case No. 2000/2001 under Sections 302 and 201/34 I.P.C. As the investigation officer did not appear in the case on the date fixed the District & Sessions Judge issued notice requesting the investigation officer to appear personally to show cause as why he should not be prosecuted under Section 349 Criminal Procedure Code. The investigation officer produced the case diary and replied to the show cause notice. The court was not satisfied with the cause shown for absence and rejected the explanation. Contemnor was directed to remain present in the court till the rising of the court at 4.30 P.M. A group of persons in plain clothes as also in police uniforms came on the road in front of the court room of the District & Sessions Judge and started raising the abusive slogans against the District & Sessions Judge. One of the slogans raised was *"District Judge Murdabad, Bhagalpur Dohrana Hai"*. Proceedings under the Contempt of Courts Act were initiated. They were convicted under the Contempt of Courts Act and their conviction was upheld by this Court. What is being emphasised is that had timely action been taken by the authorities and the criminal proceedings concluded in time, incident, as referred to above, where slogans were raised "District Judge Murdabad, Bhagalpur Dohrana Hai" could have been avoided.

The incident with which we are dealing with took place on 18th November 1997. The incident which has been dealt with in the case of *Arun Paswan, S.I.* (supra) is dated 20th January, 2002. Both the incidents have taken place in the State of Bihar, one in Bhagalpur and the other in Sasaram.

A The manner in which the police personnel belonging to middle level of police administration and entrusted with such responsibilities as require theirs coming into contact with public day to day persuades us to make observation that there is something basically wrong with the police in Bihar. Misconduct amounting to gross violation of discipline committed not by a single individual but by so many collectively and that too by those who have formed an B association consisting of members of a disciplined force in uniform was not promptly and sternly dealt with by the State or its senior officials so as to take care to see that such incident, even if happened, remains solitary incident. Faced with the initiation of contempt proceedings, the persons proceeded against did not have the courtesy of admitting their guilt and tendering an C apology which if done could have been dealt with mercy. They decided to contest, of course the justice administration system allows them the liberty of doing so — and they had every right of doing so — but at the end it has been found that their pleas were false and their denial of charges was aimed at prolonging the hearing as much as they could. We are shocked to learn that the criminal courts seized of trial of the accused persons on substantive D charges for offences under the penal law of the land are awaiting the decision of this appeal? Why for? Neither the High Court nor this Court has ever directed the proceedings before the criminal Courts to remain stayed. The criminal Court shall have to decide on the charges framed against the accused persons on the basis of the evidence adduced in those cases and not on the E basis of this judgment.

Though we have found no merit in any of the pleas raised on behalf of the appellants and we have formed an opinion without hesitation that the appeals are to be dismissed, this is a case the facts whereof persuade us to place on record certain observations of ours.

F

In the constitutional scheme the judiciary is entrusted with the task of upholding the Constitution and the laws. Apart from interpreting the Constitution and the laws, the judiciary discharges the function of securing maintenance of law and order by deciding the disputes in a manner acceptable to civilised and peace loving society. In order to maintain the faith of the G society in the rule of law the role of the judiciary cannot be undermined. In a number of cases this Court has observed that foundation of the judiciary is the trust and confidence of the people of the nation and when such foundation or trust is rudely shaken by means of any disrespect by the very persons who are required to enforce the orders of the court and maintain law and order the H people's perception of efficacy of the systems gets eroded.

The Judges are — as a jurist calls — 'paper tigers'. They do not have any machinery of their own for implementing their orders. People, while approaching the Court of law which they regard as temple of justice, feel safe and secure whilst they are in the Court. The police personnel is deployed in the Court campus for the purpose of maintaining order and to see that not only the Judges can work fearlessly in a calm, cool and serene atmosphere but also to see that anyone coming to the Court too feels safe and secure thereat. Every participant in court proceedings is either a seeker of justice or one who comes to assist in administration of justice. So is the expectation of the members of the Bar who are treated as officers of the Court. We shudder to feel what would happen if the police personnel itself, and that too in an organised manner, is found to be responsible for disturbing the peace and order in the Court campus, for causing assault on the Judges and thus sullying the temple of justice apart from bringing a bad name to an indispensable organ of the executive wing of the State.

Police is the executive force of the State to which is entrusted the duty of maintaining law and order and of enforcing regulations for the prevention and detection of crime. (Encyclopaedia Britanica, Vol.58, p.158). The police force is considered by the society as an organised force of civil officers under the command of the State engaged in the preservation of law and order in the society and maintaining peace by enforcement of laws and prevention and detection of crime. One who is entrusted with the task of maintaining discipline in the society must first itself be disciplined. Police is an agency to which social control belongs and therefore the police has to come up to the expectations of the society.

We have not been able to forget the policing role of the police of *British Raj* wherein an attitude of hostility between the police and the policed under the colonial rule was understandable. It is unfortunate that in one of the largest constitutional democracies of the world the police has not been able to change its that trait of hostility.

Long back Sardar Patel had said, after achieving independence, — "the police have inherited a legacy of suspicion and dislike. For this reason, there is insufficient respect for the police today. But, now that the country is free, both the public and the police must change their attitude." Shri S.V.M. Tripathi, former Director General of Police has, in his evaluation 'Indian Police After Fifty Years of Independence', said — "A sensitive police officer can ensure justice and fair-play as no other public servant can. The least he should do

A is to prevent injustices on the poor in the society and other areas of administration, specially a police station. Upholding human rights, and protection of life and property of citizens should be a matter of habit with the police rather than that of display. The sooner we accept this premise as imperative and honestly work towards achieving it, the better it would be for the society and the nation. The police leadership will have to push the limits B of feasibility for this purpose." (The Indian Police Journal - Vol.XLV - Nos.1 & 2, at p.5). Citizens of democratic India expect the police as humane and efficient, professional and disciplined. It must be remembered that the task entrusted to police is onerous and the police cannot succeed in fulfilling their functions without people's cooperation and public approval. Professor R. C Deb, a scholar in Indian Police Service said - "If law represents the collective conscience of Society, the Policeman, its principal law enforcing agent ought to be the staunchest protagonist, defender and keeper of that conscience." (Police and Law Enforcement, published by S.C. Sarkar & Sons in 1988, p.1). He quotes Shri B.N. Mallick — an eminent policeman of his times, as saying, that a modern policeman ought to be an ideal citizen from every point D of view. "He must be on the side of good everywhere, and at all times. But to do good the *policeman must himself be good.* To be able to induce others to obey the laws of society, *he must obey them first.* With his example set before them, people will flock to his banner not only to seek his help and protection but also to assist him in his noble task. He must be the leader E amongst men. This leadership he must earn by his integrity, kindness, character, steadfastness, dignity, ability and self-sacrifice. He must always set the right example". Professor R.Deb's description of an ideal police is — "He should never forget that, like every other citizen he too is subject to the Rule of Law, and is legally responsible for his actions in carrying out his duties, for he who enforces law must live by the law. In discharging his onerous duties and F responsibilities under the law the policeman must eschew all temptations to have recourse to short-cuts and extra-legal methods. He must also be absolutely honest, impartial and fair even to the worst legal transgressor. In fine he must be the ideal citizen and a true servant of the people in the performance of his duties under the law." (ibid, p. 9)

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After all, what the learned Addl. Sessions Judge had done. Jokhu Singh had appeared as a witness. His cross-examination was not concluded without which his testimony was liable to be excluded from being read in evidence. The learned Judge had exhausted practically all means for securing the presence of the witness. He would neither attend nor make any communication to the H Court. Even the threat of initiation of proceedings under the Contempt of

Courts Act did not deter him from abstaining. To secure his presence a non-bailable warrant had to be issued. He avoided the service of non-bailable warrant of arrest and appeared in the Court in the late hours. He was not apologetic and felt that he was above the process of the Court. It cannot be said that the higher authorities of police were not aware of the behaviour of Jokhu Singh. Either they knew about it or they should have known about it. Instead of offering the bail, Jokhu Singh was busy managing for the Judge being approached or influenced by extra legal methods. Jokhu Singh and his confederate decided to take the law in their own hands and assault the Judge and anyone who came in their way. We do not think that any of the appellants deserve any sympathy or mercy.

We trust and hope that this case would set in motion the thinking process of the persons occupying higher echelons in police administration specially in Bihar and take care to ensure that such incidents do not recur in future.

We direct the disciplinary authorities before whom the disciplinary proceedings are pending and the criminal Courts before whom the prosecutions are pending against the appellants to conclude the proceedings and the trial at the earliest. The Commission holding the enquiry under the Commissions of Enquiry Act, 1952 would also do well to conclude its proceedings at the earliest. We request Hon'ble the Chief Justice of the High Court of Patna to watch and if necessary monitor the proceedings of the Commission of Inquiry and issue directions to the criminal courts to expeditiously conclude the pending criminal cases. If the commission of enquiry faces non-cooperation or any obstruction in its progress, the Secretary of the Commission may send a communication to the Registrar General of this Court pointing out the difficulties, if any, faced by the Commission and contributing to the delay in proceedings and any communication so received shall be placed by the Registrar General before the Court for directions on judicial side. The result of disciplinary proceedings, the judgment of the criminal Courts and the findings of Commission of Enquiry shall be communicated forthwith to the Registrar General of this Court and in any case before expiry of a period of six months from today. Copies of this judgment shall be circulated to the Registrar General, High Court of Patna and the Chief Secretary of the State of Bihar for being brought to the notice of all concerned. Non-compliance with the directions given herein may be treated as disobedience of the order of this Court liable to be dealt with accordingly.

A The appeals are dismissed. The appellants who are on bail shall forthwith surrender to their bail bonds and taken into custody to serve out the sentences as passed by the High Court of Patna. The Director General of Police, Bihar is directed to ensure compliance with this order by securing presence of all the appellants to serve out the sentences passed on them by the High Court.

B We place on record our appreciation for the invaluable assistance rendered to the Court by Ms. Meenakshi Arora, who appeared as Amicus Curiae at our request.

N.J. Appeals dismissed.