

ITEM NO.8 + 11

COURT NO.5

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s). 54/2019

COMMON CAUSE & ANR.

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(FOR ADMISSION and IA No.8979/2019-APPROPRIATE ORDERS/DIRECTIONS)

with

Contempt Petition (Cr1.) No. 1/2019

Contempt Petition (Cr1.) No. 2/2019

Date : 06-02-2019 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE NAVIN SINHACounsel for the
parties

Mr. K. K. Venugopal, Attorney General

Mr. Tushar Mehta, ASG

Mr. Rajat Nair, Adv.

Mr. R. Balasubramaniam, Adv.

Ms. Shraddha Deshmukh, Adv.

Mr. Kanu Agrawal, Adv.

Mr. Rajeev Ranjan, Adv.

Mr. A. K. Sharma, Adv.

Mr. Ankur Talwar, Adv.

Ms. Uttara Babbar, Adv.

Ms. Bhavana Duhoon, Adv.

Mr. Prashant Bhushan, Adv.

Mr. Rohit Kumar Singh, Adv.

Ms. Cheryl D'Souza, Adv.

UPON hearing the counsel the Court made the following
O R D E RWrit Petition(s)(Civil) No(s). 54/2019

Heard the learned counsel for the parties.

Arguments concluded.

Order reserved.

Contempt Petition (Cr1.) No. 1/2019 and Contempt Petition (Cr1.) No. 2/2019

Heard Sh. K.K.Venugopal, learned Attorney General for India, and Sh. Tushar Mehta, learned Solicitor General of India.

To contend that by act in question, contempt of court has been committed, reliance has been placed on the decision of this Court in RE : P.C.SEN (Criminal Appeal No. 119 of 1966), reported in (1969) 2 SCR 649, wherein the following observations have been made by this Court :-

"8. The law relating to contempt of Court is well settled. Any act done or writing published which is calculated to bring a Court or a Judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the Court, is a contempt of Court : R. v. Gray, [1900] 2 Q.B.D. 36 at p. 40. Contempt by speech or writing may be by scandalising the Court itself, or by abusing parties to actions, or by prejudicing mankind in favour of or against a party before the cause is heard. It is incumbent upon Courts of justice to preserve their proceedings from being misrepresented, for prejudicing the minds of the public against persons concerned as parties in causes before the cause is finally heard has pernicious consequences. Speeches or writings misrepresenting the proceedings of the Court or prejudicing the public for or against a party or involving reflections on parties to a proceeding amount to contempt. To make a speech tending to influence the result of a pending trial, whether civil or criminal is a grave contempt. Comments on pending proceedings, if emanating from

*the parties or their lawyers, are generally a more serious contempt than those coming from independent sources. The question in all cases of comment on pending proceedings is not whether the publication does interfere, but whether it tends to interfere, with the due course of justice. The question is not so much of the intention of the contemner as whether it is calculated to interfere with the administration of justice. As observed by the Judicial Committee in *Debi Prasad Sharma and Ors. v. The King-Emperor* , L.R. 70 I. A. 216 at p. 224: ".... the test applied by the Board which heard the reference was whether the words complained of were in the circumstances calculated to obstruct or interfere with the course of justice and the due administration of the law."*

If, therefore, the speech which was broadcast by the Chief Minister was calculated to interfere with the course of justice, it was liable to be declared a contempt of the Court even assuming that he had not intended thereby to interfere with the due course of justice. There is nothing in Saibal Kumar Gupta and Ors. v. B. K. Sen and Anr., on which counsel for the appellant relied, which supports his contention that intention of the contemner is the decisive test. The observations of Imam, J., speaking for the majority of the Court that the appellants should be acquitted, because they "had at no time intended to interfere with the course of justice and their conduct did not tend to interfere with the course of justice", does not imply that conduct which tends to or is calculated to interfere with the administration of justice is not liable to be punished as contempt because the contemner had no intention to interfere with the

course of justice. Nor does the judgment of the Judicial Committee in Arthur Reginald Perera v. The King, [1951] A.C. 482 support the contention that in determining whether conduct which is otherwise calculated to interfere with the due administration of justice will not be contempt of Court because on the part of the contemner there was no intention to interfere with the administration of justice. In that case, a member of the House of Representatives in Ceylon, on receiving a complaint from some of the prisoners about the practice of producing followed by the Jail Authorities in the Court when an appeal filed by the prisoners was being heard, made an entry in the prison visitors' book that "The present practice of appeals of remand prisoners being heard in their absence is not healthy. When represented by counsel or otherwise the prisoner should be present at proceedings". Information conveyed to Perera was inaccurate. It was held by the Judicial Committee that Perera acted in good faith and in discharge of what he believed to be his public duty as a member of the legislature, and that he had not committed any contempt of Court because the words made no direct reference to the Court or to any of its Judges, or to the course of justice or to the process of the Courts. His criticism was honest criticism on a matter of public importance and there was nothing in his conduct which came within the definition of contempt of Court."

As the issues raised are of vital importance, whether in a matter which is sub-judice, it is open to criticise the court proceedings to affect the public opinion by litigants and lawyers

and protection of various other rights of the litigants are also involved; what are the rights of the litigants and what may amount to interference in the course of administration of justice. In view of the aforesaid decision and facts and circumstances, we deem it appropriate to hear the matter. As such, we issue notice to the respondent.

Mr. Prashant Bhushan, who is present in Court, accepts notice. He has prayed for three weeks' time to reply to the petitions.

Rejoinder affidavit, if any, be filed within one week thereafter.

List the matter on 07.03.2019.

(JAYANT KUMAR ARORA)
COURT MASTER

(JAGDISH CHANDER)
BRANCH OFFICER