MURRAY AND CO. A

v.

ASHOK KR. NEWATIA AND ANR.

JANUARY 25, 2000

[G.B. PATTANAIK AND UMESH C. BANERJEE, JJ.] B

Contempt of Courts Act, 1971 :

Contempt petition—Arose as a result of the litigation spirit of the parties—Merits of—Held : This, by itself, should not affect the merits of the C *contentions raised.*

Section 2(c)—False statement on oath—Contemnor deliberately made a false statement on oath before the Supreme Court—Held : Amounts to contempt of court.

D

Section 2(c)—Criminal contempt—Administration of justice—Interference with—Held : Whether or not a person has obtained a definite advantage in making a false statement is immaterial in deciding whether the person has committed contempt of court—However, it is a relevant factor for imposing the quantum of punishment. E

Section 2(c) and 13—Punishment—"Due course of justice"—Interference with—Scope of—Held : Substantial interference is necessary before imposition of punishment.

F

Section 2(c) and 13—Punishment—Quantum of—Held : Depends upon particular facts and circumstances of each individual case—No generalised guidelines can be laid down—However, accepted norm is: more serious the violation, more severe is the punishment.

Section 13—Punishment —Positive assertion of fact deliberately made G *in an affidavit before the Supreme Court knowing it to be false with a view to gaining a possible advantage—Unconditional apology tendered—Held : This, by itself, would not exonerate the contemnor—In the circumstances of the case, imposition of fine of Rs. 2,500 on each contemnor would sub-serve the ends of justice.* H

A *Words and Phrases :*

"Due course of justice"—Meaning of—In the context of S.13 of the Contempt of Court Act, 1971.

The petitioner and the respondents initiated proceedings both at
B **Calcutta and at Kanpur and obtained diverse orders including an order of injunction from the High Court restraining the respondents from transferring or alienating or encumbering or dealing with immovable properties without the leave of the High Court.**

The respondents, however, moved this Court for transfer of the
C **original suit from Calcutta to Kanpur in which an application for clarification was filed by the petitioner and it is in connection therewith that the respondents had averred in the petition of objection verified by an affidavit to the following effect :-**

D **"..... it is further incorrect to say that the petitioner in any manner has committed disobedience of the order passed by the Court or sold away the property or in any manner taking any steps to sell the property. The contentions to the contrary are false and fictitious....."**.

The above statement was stated to be a deliberate falsehood and the
E **said false statement was made wantonly as the respondents knew that the property was sold long prior thereto.**

The petitioner, therefore, filed the present contempt petition before this Court and notice was issued to the respondents for wrong assertion
F **of facts pertaining to the sale of immovable property in the affidavit. There was no plea of justification and the Advocate appearing for the respondents, without any reservation whatsoever, pleaded unconditional apology before this Court.**

The question that arose before this Court was whether the said false
G **statement made by the respondent in the affidavit, in fact, lowered the authority of the Court or there was any obstruction to the administration of justice by this Court bringing it within the purview of Section 2(c)(iii) of the Contempt of Courts Act, 1971 and in the event the answer to the above issue is in the affirmative, then and in that event to what result?**

H **Disposing of the petition, this Court**

HELD : 1. Contempt petition is the result of the litigation spirit of the parties and an attempt to score over each other. But that by itself, however, would not prompt this Court to come to a conclusion as regards the merits of the contentions raised in the matter. [374-G] A

2. The right to inflict punishment for contempt of court in terms of the Contempt of Courts Act, 1971 on the Law Courts has been for the purposes of ensuring the rule of law and orderly administration of justice. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of Law since the image of such majesty in the minds of the people cannot be led to be distorted. The respect and authority commanded by Courts of Law are the greatest guarantee to an ordinary citizen and the entire democratic fabric of the society will crumble down if the respect for the judiciary is undermined. It is true that the judiciary will be judged by the people for what the judiciary does, but in the event of any indulgence which even can remotely be termed to affect the majesty of law, the society is bound to lose confidence and faith in the judiciary and the law courts thus, would forfeit the trust and confidence of the people in general. [375-A-C] B C D

3. Hypersensitiveness on the part of the law Courts, if it does not obstruct or impede the course of justice, as such cannot be appreciated but angelic silence on the part of a Judge is also not expected vis-a-vis an infraction of the majestry of law. This is a special jurisdiction conferred on the law courts to punish an offender for his contemptuous conduct or obstruction to the majesty of law. To violate the order of the court or to obstruct or tend to obstruct is a quasi criminal offence and as such the courts, in the matter of award of punishment, ought to be rather cautious in its approach even if the court is otherwise satisfied as to act or conduct of the party. The approach of the Court is thus different in the matter of imposition of punishment against a contemnor - the same being totally dependent on the facts and circumstances of each individual case. No generalised guidelines can be had nor a set of general principles in the matter of award of punishment can be formulated. The Court must otherwise come to a conclusion that on facts the acts tantamount to obstruction of justice which, if allowed, would even permeate into our society - it is only then that this power ought to be exercised. [379-D-F] E F G

4.1. While it is true that the statement made in the affidavit has been H

A introduced as and by way of a denial but the fact remains that such a statement has in fact been made in an affidavit before this Court. The litigant public ought to be extremely careful and cautious in the matter of making statements before Courts of Law. Whether, however, the respondents have obtained a definite advantage or not is wholly immaterial in the matter of commission of offence under the Act, though the same would B be a relevant factor in the context of punishment to be imposed against a contemnor. [379-G]

4.2. Having a conspectus of the whole issue and the facts it must be held that the respondents cannot escape the liability of being held guilty of C contempt by reason of a definite and deliberate false statement. The statement on oath is a fabricated one and contrary to the facts and there exists no extenuating circumstance to come to any other conclusions. [380-B-C]

Afzal v. *State of Haryana,* [1995] Supp. 2 SCC 388; *Rita Markand* v. *Surjit Singh Arora,* [1996] 6 SCC 14 and *Secretary, Hailakandi Bar Association* v. *State of Assam,* [1996] 9 SCC 74, held inapplicable. D

5. Punishment in one matter cannot be the guiding factor for punishment in another. Punishment has a co-relation with facts and in each case where punishment is imposed, the same must be the resultant effect of the E acts complained of - more serious the violation, more severe is the punishment - and that has been the accepted norm, in matters though, however, within the prescribed limits. [380-D]

6.1. Section 13 of the Act postulates no punishment for contemptuous F conduct in certain cases and the language used therein seems to be with utmost care and caution. It is not enough that there should be some technical contempt of court but it must be shown that the act of contempt would otherwise substantially interfere with the due course of justice which has been equated with "due administration of justice". [380-E-F]

G

6.2. The words 'due course of justice' used in Section 13 are wider in scope than the words 'due course of any judicial proceedings or administration of justice' used in sub-clause (ii) or (iii) of Section 2(c). Having regard to Sections 2(c) and 13 it is clear that the statute puts an obligation on to the court to assess the situation itself as regards the factum of any inter- H ference with the course of justice or due process of law. [381-E; 382-D]

Rachapudi Subba Rao v. *Advocate General, Andhra Pradesh,* [1981] 2 SCC 577, relied on. A

Legal Remembrancer v. *Matilal Ghose,* ILR 41 Cal 173, referred to.

Attorney General v. *Times Newspapers Ltd.,* (1973) 3 All ER 54, referred to. B

7.1. While it is true that contextual facts do not depict of drawing any advantage or even any attempt to gain any advantage through the statement as made in the affidavit noted herein before, but there is no dispute as such on the factum of a false and fabricated statement finding its place in the C affidavit. The statement cannot be termed to be a mere denial though reflected in the affidavit as such. Positive assertion of a fact in an affidavit known to be false cannot just be ignored. It is a deliberate act. It is not possible to accept the contention of the respondent that the statement has been made without realising the purport of the same. It is not a mere denial D of fact but a positive assertion and as such made with definite intent to pass off a falsity and if possible to gain advantage. This practice of having a false statement incorporated in an affidavit filed before a court should always be deprecated and the same is hereby recorded. The fact that the deponent has in fact affirmed a false affidavit before this Court is rather serious in nature and thereby rendered himself guilty of contempt of this Court as E noticed herein before. This Court would be failing in its duties, if the matter in question is not dealt with in a manner proper and effective for maintenance of majesty of Courts as otherwise the Law Courts would lose their efficacy to the litigant public. [382-E-H]

7.2. In the above perspective it is expedient to record that by mere F tendering of unconditional apology to this Court would not exonerate the contemnor in the contextual facts, but having regard to the nature of the act of contempt, it is deemed fit to impose a fine of Rs. 2,500 each so as to sub-serve the ends of justice against the respondent-contemnors in default of payment of which they (each of them) will suffer simple imprisonment G for one month. The fine shall be paid to the Legal Service Authority of this Court viz. the Supreme Court Legal Services Committee. [383-A-B]

CIVIL ORIGINAL JURISDICTION : Contempt Petition (C) No. 378 of 1998. H

A In

Transfer Petition (C) No. 745 of 1993.

Under Article 129 of the Constitution of India.

B S.S. Ray, Ms. Pinky Anand, D.N. Goburdhan, Ms. Geeta Luthra, Arvind Kumar, Mrs. Laxmi Arvind, Ms. Sunita Yadav, N.P. Midha, C.S. Ashri and R.A. Mishra for the appearing parties.

The Judgment of the Court was delivered by

C **BANERJEE, J.** Though judicial hypersensitiveness is not warranted but angelic silence on the part of a Judge is also not expected vis-a-vis an infraction of majesty of law. The Contempt of Courts Act, 1971 has been engrafted in the Statute Book for the purpose of bringing in a feeling of confidence of the people in general for due and proper administration of D justice in the country. It is undoubtedly a powerful weapon in the hands of the Courts and as such, it must be exercised with due care and caution and in cases of larger interest for due administration of justice.

In this matter, this Court by its Order dated 7th September, 1998, E issued notice to the respondents for wrong assertion of facts pertaining to the sale of immovable property in an affidavit filed before this Court.

Incidentally, the affidavit spoken of earlier, was filed by Respondent No. 1 in an interlocutory application (IA No. 1/94) in a Transfer Petition being Civil No. 745/93, by way of an objection, on behalf of the respondent F herein an application for clarification moved by the petitioners herein. The factual backdrop not strictly relevant but is being noticed herein below for the purposes of assessment of the situation in its proper perspective.

The litigation between the parties has a chequered career. Proceedings both at Calcutta and at Kanpur in Uttar Pradesh have been initiated G by the parties and diverse orders were obtained including an order of injunction passed on 14th May, 1993 by the Calcutta High Court restraining the respondents herein from transferring or alienating or encumbering or dealing with immovable properties standing in the names as mentioned in paragraph 34 of the Petition (the High Court Petition) without the leave H of the Calcutta High Court.

The factual matrix further depict that the respondents herein, however moved this Court for transfer of the original suit from Calcutta to Kanpur in which an application for clarification was filed by the petitioners herein and it is in connection therewith that the respondents have averred in the petition of objection verified by an affidavit on 9th February, 1994 to the following effect.

> ".....it is further incorrect to say that the petitioner in any manner has committed disobedience of the order passed by the Court or sold away the property or in any manner taking any steps to sell the property. The contentions to the contrary are false and fictitious....."

This statement is stated to be a deliberate falsehood and the said false statement was made wantonly as the respondent knew that the property was sold long prior thereto.

Mr. Ray, the learned Senior Advocate, appearing in support of the petition for contempt contended that the statement as above cannot but be termed to be a motivated falsehood and thus has to be dealt with utmost seriousness as otherwise it will not be possible for any Court to administer justice in the true sense of the term and to the satisfaction of those who approach the Courts with a firm hope that the truth will ultimately prevail. Mr. Ray contended that anyone who takes recourse to fraud or falsehood deflects the Courts of judicial proceedings and amounts to interference with the administration of justice. Before however, adverting to the contentions raised as above, it will be worthwhile to note the order as passed in the transfer petition by this Court on 1st October, 1993. The order is set out as below :

> "This petition is to seek transfer of OS 166/93 titled *Ajanta Services Pvt. Ltd. & Ors.* v. *V. Murray and Co. Pvt. Ltd. & Ors.* pending in the Calcutta High Court. The aforesaid suit was said to have been filed on May 12, 1993. Before hand Murray & Co. and a few others had filed suit No. 649/93 in the Court of Civil Judge, Nagar Kanpur, seeking relief of permanent injunction against the defendants restraining them from acting as Directors of the plaintiff company, i.e. Murray & Co. and also from selling the properties of the company situated at Calcutta and Kanpur and of their personal properties in any manner and from operating the bank accounts

A in India and also from making any settlement on behalf of the company in matters pending in the Courts. Besides, a decree for mandatory injunction was also prayed for directing the defendants to hand over all the papers and documents regarding the affairs of the company in their possession to the plaintiff company and Ashok Kumar Nevatia, the second plaintiff, at Kanpur. The suit at
B Calcutta is in the nature of a cross-suit filed by the some shareholders seeking almost the identical relief against the defendants who are Directors of the company. It appears that two rival groups in the company are engaged in this continuous litigation trying to score over each others. It is seen that not only is the suit
C filed in Kanpur earlier in time but the registered office of the company is also at Kanpur. We are told at the Bar the income-tax returns of the company are also filed at Kanpur. It goes without saying that the two suits otherwise deserve to be decided by one and the same Court. For what has been said earlier, the balance
D of convenience also suggests that the Court at Kanpur should be the most convenient Court to try these two suits. Therefore, we allow this transfer petition and direct that the file of OS 166/93 titled *Ajanta Service P. Ltd. & Ors.* v. *Murray & Co. P. Ltd.* pending in the Calcutta High Court be transferred to the file of the Civil Judge, Nagar Kanpur so that the same is tried along with the suit
E No. 649/93 *Murray & Co. Pvt. Ltd. & Co.* v. *Madanlal Poddar & Ors.*. Transfer Petition is allowed accordingly."

Needless to record here that the clarification was sought for by the petitioner herein by way of an interlocutory application only after the
F passing of the order as above.

This Court itself thus recognised the litigations spirit of the parties and an attempt to score over each other Obviously, this application for contempt is also no exception to that - but that by itself, however, would
G not prompt this Court to come to a conclusion as regards the merits of the contentions raised in the matter. The issue, therefore, before this Court is as to whether the statement as above has, in fact, lowered the authority of the Court or there is any obstruction to the administration of justice by this Court bringing it within the purview of Section 2(c)(iii) of the Act of 1971 and in the event the answer to the above issue is in the affirmative, then
H and in that event to what result.

The right to inflict punishment for contempt of court in terms of the Act of 1971 on to the law Courts has been for the purposes of ensuring the rule of law and orderly administration of justice. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law since the image of such a majesty in the minds of the people cannot be led to be distorted. The respect and authority commanded by Courts of Law are the greatest guarantee to an ordinary citizen and the entire democratic fabric of the society will crumble down if the respect for the judiciary is undermined. It is true that the Judiciary will be judged by the people for what the judiciary does, but in the event of any indulgence which even can remotely be termed to affect the majesty of law, the society is bound to lose confidence and faith in the judiciary and the law courts thus, would forfeit the trust and confidence of the people in general.

Mr. Ray placed strong reliance on the decision of this Court in the cause of *Afzal* v. *State of Haryana,* [1995] Supp. 2 SCC 388, wherein this Court observed :

> "It cannot be lightly brushed aside and the tendency to file false affidavits or fabricated documents or forgery of the document and placing them as part of the record of the Court are matters of grave and serious concern."

This observation, however, ought to be read in the facts of the matter under consideration in *Afzal's* case. The Judgement itself starts with the following observation :

> "The facts in these cases bring to focus the mixed blend of efficacy of pragmatic procedure under Section 32; absolute disregard for truth; rank indiscipline among the so-called disciplined police force, despite scientific advancement persistence of crude methods of investigation; depraved conduct of the official to forge signatures of higher official and the complicity of persons who moved this Court in callous compromise with the officials to speak contrary to the facts placed before the Court. A practicing advocate is no exception. He had sworn to an affidavit but had not even the slightest hesitation to make a somersault and deny his averments made in the sworn affidavit filed in this Court. These disturbing trends cause not only a deep anguish to this Court of the degeneration in the moral and official conduct but also make it difficult to

A place absolute reliance on affidavit evidence placed on record."

This Court further in paragraph 7 of the report observed :

"7. The report of the District Judge exposes the so-called disciplined police officials are rank undisciplined not only audacious enough to forge the signature of respondent- Superintendent of Police but also have no compunction to justify that no forgery was committed. The affidavit of Ahlawat dated 5.9.93, his evidence before the District Judge and the report of the latter do establish that the signature of Ahlawat was forged on the affidavit dated 30.9.93 and it is a "crude forgery which needs thorough investigation and deterrent action."

The punishment inflicted in the matter in issue in *Afzal's* case (supra) however would appear from paragraph 33 of the judgment wherein Ramaswamy, J. directed the punishment to be inflicted on to the contemnors in the manner as below :

"From the above discussion and conclusions the question is : what punishment is to be imposed on Randhir Singh (ASI), Ishwar Singh (SI) and M.S. Ahlawat (Superintendent of Police)? None of them made any candid admission nor tendered unqualified contrite apology. Police officers, who are supposed to be the so-called disciplined force, have deliberately fabricated false records placed before this Court without any compunction. It is, therefore, of utmost importance to curb this tendency, particularly, when they have the temerity to fabricate the records with false affidavit and place the same before the highest Court of the land. Their depravity of conduct is writ large. M.S. Ahlawat is unworthy to hold any office of responsibility. Therefore, Randhir Singh (ASI) and Ishwar Singh (SI) shall be punishable under Section 193 IPC and accordingly they are convicted and sentenced to undergo rigorous imprisonment for a term of three months and six months respectively. Ahlawat, the Superintendent of Police, is punishable under Section 193 IPC. He also committed contempt of the proceedings of this Court punishable under Article 129 of the Constitution. Accordingly, he is convicted and sentenced under

Section 193 IPC to undergo rigorous imprisonment for a term of one year. He is convicted and sentenced to undergo rigorous imprisonment for a term of six months under Article 129 of the Constitution. Both the sentences are directed to run concurrently, Krishan Kumar, Head Constable is exonerated of the charge under Section 193 IPC with warning to show exemplary conduct hereafter. His bail bonds are discharged."

It is on the factual backdrop as above that Ramaswamy, J. speaking for the Bench observed as above. The situations, however, are not as critical or endangering in the present context. There is an order of injunction passed by the Calcutta High Court which operate as a binding order inter parties and while the operation of the order was in force, some properties have been alienated, but in an affidavit affirmed before this Court, there is an averment to the effect that no property has been disposed of neither there is any intention even to sell or dispose of any of the properties. Undoubtedly, if the factum of the sale deed as annexed to the petition for contempt is otherwise correct, there is thus a definite averment which runs counter to the actual state of affairs - a serious matter indeed. But probably not so serious, a matter, as was dealt with by this Court in *Afzal's* case. As such the observations of this Court as above ought not to be made use of in the facts of the matter under consideration. It depends upon facts of each individual case and this cannot have universal application in all possible situations. The decision thus lands no assistance to Mr. Ray in the contextual facts.

Mr. Ray next relied upon the decision of this Court in *Rita Markand* v. *Surjit Singh Arora,* [1996] 6 SCC 14, wherein in paragraph 14 of the report, this Court observed that there cannot be any manner of doubt that by filing false affidavits, the respondent had not only made deliberate attempts to impede the administration of justice but succeeded in his attempt in delaying the delivery of possession, and by reason, therefore this Court held the respondent guilty of criminal contempt of Court. This Court however, while considering the issue of punishment, came to a conclusion that not only the respondent had made deliberate attempt to impede administration of justice but succeeded in his attempt in delaying the delivery of possession and as such this Court held the respondent guilty of

A criminal contempt and observed as below as regards the question of punishment. In paragraph 15 of the Report, this Court observed :

> "Though the respondent had tendered unconditional apology before the Court, the apology appeared to be not genuine and *bona fide* for, in his earlier affidavit, he had also offered a similar
B unconditional apology but falsely reiterated that he had vacated the premises. The record, however, shows that following his arrest pursuant to the non-bailable warrant issued by the Court, the respondent was in custody for some days till he was released on bail under orders of the Court. Considering this aspect of the
C matter and the fact that he has now handed over vacant possession of the suit premises, it is not necessary to send him behind the bars again by imposing substantive sentence. At the same time, he should be punished with fine not only for the wrong done by him but also to deter others from filing such false affidavits. He is, therefore, sentenced to pay a fine of Rs. 2000, in default of payment
D of which he will suffer simple imprisonment for one month. The fine, if realised, shall be paid to the petitioner as compensation. The rule is thus made absolute."

It, therefore, appears that this Court took a serious exception by
E reason of the peculiar facts of the matter in issue and particularly for the reason that contemnor did in fact had taken an advantage. The case is thus also distinguishable on facts and the same also does not lend any assistance to the contentions raised.

F Similar is the situation in regard to the case of the *Secretary, Hailakandi Bar Association* v. *State of Assam & Anr.*, [1996] 9 SCC 74 wherein this Court held that the contemnor deliberately forwarded the inaccurate report with a view to mislead the Court and thus thereby interfered with the due course justice by attempting to obstruct this Court from reaching to a correct conclusion.

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Incidentally, in the matter under consideration, there is no plea of justification and the learned advocate appearing for the respondents without any reservation, whatsoever, pleaded unconditional apology before this Court and it is on this perspective that this apology is to be considered
H as to whether the same is otherwise proper and sufficient remedy in the

matter under consideration. Undoubtedly, the matter is rather serious and there is not an iota of doubt as regards the falsity of the averments by reason of the preponderance of the documentary evidence. But since the matter is pending in the Civil Court, we are not expressing any opinion insofar as the document of sales is concerned and as such further proceeding in the matter will have to be only on the assumption of correctness and not on its falsity, though, however, subject to further orders of the Civil Court. But the fact remains as to whether this particular statement has in any way impeded the course of justice by reason of which certain definite advantage has been gained by the respondents. The transfer order has been passed and it is only in connection with the clarification application that such a statement has been made in an affidavit. As noticed above, hypersensitiveness on the part of the law Courts, if it does not obstruct or impede the course of justice, as such cannot be appreciated. This is a special jurisdiction conferred on to the law courts to punish an offender for his contemptuous conduct or obstruction to majesty of law. Needless to record that to violate the order of the court or to obstruct or tend to obstruct is a quasi-criminal offence as such the courts, in the matter of award of punishment ought to be rather cautious in its approach even if the court is otherwise satisfied as to the act or conduct of the party. The approach of the Court is thus different in the matter of imposition of punishment against a contemnor - the same being totally dependent on the facts and circumstances of each individual case. No generalised guidelines can be had nor a set of general principles in the matter of award of punishment can be formulated. The Court must otherwise come to a conclusion that on facts the act tantamounts to obstruction of justice which, if allowed, would even permeate into our society - it is only then that this power ought to be exercised. While, it is true that the statement made in the affidavit has been introduced as and by way of a denial but the fact remains such a statement has in fact been made in an affidavit before this Court. Litigant public ought to be extremely careful and cautious in the matter of making statements before Courts of Law. Whether, however, the respondent has obtained a definite advantage or not is wholly immaterial in the matter of commission of offence under the Act, though the same would be a relevant factor in the context of punishment to be imposed against a contemnor. It is on this score, the learned senior Advocate appearing for the respondents, submitted that there cannot be any defence neither the respondents

A B C D E F G H

A desires to put forth any excepting however, pleading unconditional apology before the Court. This pleading of unconditional apology obviously is at the instance of the respondents since Respondent No. 1 was present in the Court.

Having a conspectus of the whole issue and the facts, we do feel it
B inclined to hold that the respondents cannot escape the liability of being held guilty of contempt by reason of a definite and deliberate false statement. The statement on oath is a fabricated one and contrary to the facts and there exists no extenuating circumstances to come to any other conclusions than as above.

C

As regards the question of punishment, be it noted that punishment in one matter cannot be the guiding factor for punishment in another. Punishment has a co-relation with facts and in each case where punishment is imposed, the same must be resultant effect of the acts complained of - more serious the violation, more severe is the punishment - and that has
D been the accepted norm, in matters though, however, within the prescribed limits.

Incidentally, Section 13 of the Act of 1971 postulates no punishment for contemptuous conduct on certain cases and the language used therein
E seems to be with utmost care and caution when it records that unless the court is satisfied that contempt is of such a nature that the act complained of substantially interferes with the due course of justice, question of any punishment would not arise. It is not enough that there should be some technical contempt of court, but it must be shown that the act of contempt would otherwise substantially interfere with the due course of justice, which
F has been equated with "due administration of justice". Jenkins, CJ. in an old Calcutta High Court decision in the case of *Legal Remembrancer* v. *Matilal Ghose & Ors.,* ILR 41 Calcutta 173 observed :

> "Then this motion raises a question of high importance, which it
G would not be right for me to pass by without remark. I allude to the question-what circumstances ordinarily justify recourse to this summary process of contempt.
>
> It is not enough that there should be a technical contempt of court : it must be shown that it was probable the publication would
H substantially interfere with the due administration of justice."

In this context, reference may also be made to the observations of Lord Diplock in *Attorney-General* v. *Times Newspapers Ltd.,* (1973) 3 All ER 54 Lord Diplock observed : A

> "Since the Court's discretion in dealing with a motion for committal is wide enough to entitle it to dismiss the motion with costs despite the fact that a contempt has been committed, if it thinks that the contempt was too venial to justify its being brought to the attention of the Court at all, the distinction between conduct which is within the general concept of 'contempt of court' and conduct included within that general concept, which a court regards as deserving of punishment in the particular circumstance of the case, is often blurred in the judgments in the reported cases. The expression 'technical contempt' is a convenient expression which has sometimes been used to describe conduct which falls into the former but outside the latter category; and I agree with my noble and learned friend, Lord Reid, that given conduct which presents a real risk as opposed to a mere possibility of interference with due administration of justice this is at very least a technical contempt."

Substantial interference with the course of justice is the requirement of the statute for imposition of punishment. There is no manner of doubt that the words 'due course of justice' used in Section 13 is wider in scope than the words 'due course of any judicial proceeding or administration of justice' used in sub-clause (ii) or (iii) of Section 2(c). In this context reference may be made to the decision of this Court in *R. Subba Rao's* case (*Rachapudi Subba Rao* v. *Advocate General, Andhra Pradesh,* [1981] 2 SCC 577. For proper appreciation of the intent of legislation, Section 13 as also Section 2(c) are set out hereinbelow. Section 13 reads as under :

> "13. Contempts not punishable in certain cases- Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interfere, or tends substantially to interfere with the due course of justice."

Section 2 (c) is noted as below :

A 2. *Definitions :* In this Act, unless the context otherwise requires;

.....

© "Criminal Contempt" means the publication (whether by words, B spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which

(i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of any court; or

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

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

D Statute therefore, puts an obligation on to the court to assess the situation itself as regards the factum of any interference with the course of justice or due process of law.

While it is true that contextual facts do not depict of drawing any advantage or even any attempt to gain any advantage through the statement E as made in the affidavit noted hereinbefore, but there is no dispute as such on the factum of a false and fabricated statement finding its place in the affidavit. The statement cannot be termed to be a mere denial though reflected in the affidavit as such. Positive assertion of a fact in an affidavit known to be false cannot just be ignored. It is a deliberate act. The learned F Advocate appearing for the respondents, made a frantic bid to contend that the statement has been made without realising the purport of the same. We are, however, not impressed with the submission and thus unable to record our concurrence therewith. It is not a mere denial of fact but a positive assertion and as such made with definite intent to pass off a falsity and if possible to gain advantage. This practice of having a false statement G incorporated in an affidavit filed before a Court should always be deprecated and we do hereby record the same. The fact that the deponent has in fact affirmed a false affidavit before this Court is rather serious in nature and thereby rendered himself guilty of contempt of this Court as noticed hereinbefore. This Court in our view, would be failing in its duties, if the H matter in question is not dealt with in a manner proper and effective for

maintenance of magesty of Courts as otherwise the Law Courts would lose its efficacy to the litigant public. It is in this perspective that we do feel it expedient to record that by mere tendering of unconditional apology to this Court would not exonerate the contemnor in the contextual facts but having regard to the nature of the act of contempt, we do deem it fit to impose a fine of Rs. 2,500 each so as to sub-serve the ends of justice against the respondent-contemnors in default of payment of which they (each of them) will suffer simple imprisonment for one month. The fine, be realised within a period of four weeks form the date of this order and shall be paid to the (Legal Service Authority of this Court) Supreme Court Legal Services Committee.

The Contempt Petition is disposed of, accordingly. No order as to costs.

As regards the second petition for direction to the Central Bureau of Investigation for examination of documents, we do not feel it inclined to pass any order. As such, the said application stands rejected without any order for cost.

V.S.S. Petition disposed of.