

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 339 OF 2007

Anup Bhushan Vohra Appellant(s)

Versus

The Registrar General,
High Court of Judicature at Calcutta Respondent(s)

WITH

**CRIMINAL APPEAL NOS. 340, 345, 346, 358, 362,
388, 390, 391, 392, 393, 394, 395, 396, 397, 398,
399 and 400 of 2007**

JUDGMENT

J U D G M E N T

P. Sathasivam, J.

1) These appeals, under Section 19 of the Contempt of Courts Act, 1971 (hereinafter referred to as “the Act”), are filed against the common judgment and order dated 02.03.2007

passed by the Division Bench of the High Court of Judicature at Calcutta in Suo Moto Contempt Motion being Crl.C.P.No.1 of 2007 with C.R.R. No. 187 of 2007 whereby the High Court found all the appellants guilty of criminal contempt and sentenced them to undergo simple imprisonment for a term of six months with a fine of Rs.2,000/- each and, in default of payment of fine within a period of one month, to further undergo simple imprisonment for one month.

2) **Brief facts:**

a) A Committee was constituted by some local persons, who were active in public life, along with lawyers at Jalpaiguri named "Circuit Bench 'O' Sarbik Unnayan Dabi Adyay Samannya Committee, Jalpaiguri" (hereinafter referred to as "the Committee"). The Committee had passed a resolution for the formation of a High Court Circuit Bench at Jalpaiguri and in order to achieve the said purpose to stage Satyagrah in front of the District Court at Jalpaiguri. The Members of the Committee put their resolution into action on 15.12.2006 and started agitation outside the main gate of the District Court premises and put up a rostrum there on which a number of

persons started sitting in Satyagrah. They prevented the Judicial Officers including the District Judge, Jalpaiguri to enter into the Court premises from that day. In order to overcome the said situation, the District Judge drew attention of such fact to the Inspector-in-Charge, Kotwali Police Station, Jalpaiguri for extending police help, but no action was taken. Subsequently, the District Judge brought the matter to the notice of the Registrar General of the High Court of Calcutta for taking necessary steps.

b) After taking note of the situation, Hon'ble Mr. Justice V. S. Sirpurkar, the then Chief Justice of the High Court, instructed the District Judge through the Registrar General to seek necessary help and protection from the Superintendent of Police, Jalpaiguri to take immediate steps so that the Judicial Officers could enter the Court premises and attend the judicial work. The District Judge conveyed the said decision of the High Court to the Superintendent of Police, Jalpaiguri but failed to get any response from him. Subsequently, he approached the District Magistrate but no action was taken from his end also. Failing to get any response either from the

Superintendent of Police or the District Magistrate, Jalpaiguri, the District Judge sent a note to the then Chief Justice of the Calcutta High Court who gave direction over phone to the Director General of Police to take effective steps without any further delay. The Director General of Police gave assurance that he would take up the matter with the Home Secretary, Government of West Bengal and also suggested the Registrar General to inform the District Judge to write to the District Magistrate, Jalpaiguri to take steps for ensuring proper functioning of the Court with a copy to the Superintendent of Police, Jalpaiguri. On 12.01.2007, the District Judge again wrote to the District Magistrate. In spite of that, no effective development had taken place and the Judicial Officers and the District Judge were unable to enter the court building.

c) In view of the above situation, the District Judge sent a Fax message to the Registrar General of the High Court requesting him to take appropriate instructions and directions. On the basis of the said information, on 15.01.2007, the then Acting Chief Justice of the High Court sitting in a Bench issued two *Suo Motu* Rules of Contempt,

one, against the 16 persons actively associated with the aforesaid Committee to show cause as to why they are creating impediments in functioning of the judiciary in the District Court by obstructing Judicial Officers from entering into the Court premises and the other upon the Director General of Police, Government of West Bengal, the District Magistrate, Jalpaiguri, the Superintendent of Police, Jalpaiguri and the Inspector-in-charge, Kotwali Police Station, Jalpaiguri to show cause as to why they remained silent spectators in spite of repeated directions.

d) On the same day, the Committee withdrew the Satyagrah and removed the rostrum and cleared the entry gate. In response to the Rules, the appellants herein filed their affidavits before the High Court. After examining the appellants herein, the High Court, by impugned judgment dated 02.03.2007, imposed simple imprisonment for a term of six months with a fine of Rs.2,000/- each and in default of payment of fine within a period of one month, to further undergo imprisonment for one month. Aggrieved by the order

of the High Court, the appellants/contemnors have filed these appeals under Section 19 of the Act.

3) Heard M/s Mukul Rohtagi, Kalyan Bandopadhyay, R. Venkataramani, learned senior counsel, P.C. Sen, Tara Chandra Sharma, learned counsel for the appellants and Mr. Pradip Kr. Ghosh and Mr. Jaideep Gupta, learned senior counsel for the respondent-High Court.

4) Since we are going to dispose of all the 18 appeals by this judgment, the following details pertaining to these appeals are relevant:

S.No.	Name	Age	Profession	Case Number (Crl. Appeal)
1.	Sri Mukulesh Sanyal (Dead)	84	Editor of a local weekly	No. 395/2007
2.	Sri Chitta Dey	84	Trade Unionist	No. 390/2007
3.	Sri Benoy Kanta Bhowmic	83	Advocate	No. 394/2007
4.	Sri Samarendra Prosad Biswas	78	Business	No. 396/2007
5.	Smt. Pratima Bagchi (Dead)	74	Teacher (Retd.)	No. 399/2007
6.	Sri Jiten Das	73	Ex.M.P. (Retd. Professor)	No. 362/2007
7.	Sri Sadhan Bose	73	Business	No. 398/2007
8.	Sri Amal Roy	64	Political Worker	No. 392/2007
9.	Sri Debaprasad Roy	63	M.L.A.	No. 358/2007
10.	Sri Anup Bhushan Vohra (D.G.)	63	DGP, W.B. (Retd.)	No. 339/2007
11.	Sri Prasanta Chandra (Inspector-in-Charge)	58	Dy. S.P., Murshidabad	No. 346/2007

12.	Sri Subhas Kumar Dutta	57	Teacher	No. 393/2007
13.	Sri Rabindra Narayan Chowdhury	57	Business	No. 400/2007
14.	Sri Somnath Pal	46	Business	No. 388/2007
15.	Sri Sanjoy Chakraborty	44	Secretary of an NGO	No. 397/2007
16.	Sri Prabal Raha	40	Social worker	No. 391/2007
17.	Sri Tripurari (S.P.)	39	D.C. Central	No. 345/2007
18.	Sri R. Ranjit	38	D.M., Jalpaiguri, W.B.	No. 340/2007

5) Since all the appellants were proceeded for criminal contempt under the Act, it is useful to refer the relevant provisions applicable for disposal of these appeals. Section 2 (c) of the Act defines “criminal contempt” which reads as under:

“2.(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 which-

(i) scandalizes or tends to scandalize, 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

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

Section 12 of the Act provides punishment for contempt of court. The procedure to be followed has been dealt with in the Calcutta High Court Contempt of Courts Rules, 1975. It is

settled law that the law of contempt must be strictly interpreted and complied with before any person can be committed for contempt.

6) In ***Muthu Karuppan vs. Parithi Ilamvazhuthi & Anr.***, AIR 2011 SC 1645 = (2011) 5 SCC 496, this Court, while considering the criminal contempt held that the court should be satisfied that there is a reasonable foundation for the charge and further held that the punishment cannot be imposed on mere probabilities and the court can not punish the alleged contemnor without any foundation merely on conjectures and surmises. How the criminal contempt has to be proceeded with has been explained in para 9, which reads as follows:

“9. The contempt proceedings being quasi-criminal in nature, burden and standard of proof is the same as required in criminal cases. The charges have to be framed as per the statutory rules framed for the purpose and proved beyond reasonable doubt keeping in mind that the alleged contemnor is entitled to the benefit of doubt. Law does not permit imposing any punishment in contempt proceedings on mere probabilities, equally, the court cannot punish the alleged contemnor without any foundation merely on conjectures and surmises. As observed above, the contempt proceeding being quasi-criminal in nature require strict adherence to the procedure prescribed under the rules applicable in such proceedings.”

In para 23, it was further held that any deviation from the prescribed Rules should not be accepted or condoned lightly and must be deemed to be fatal to the proceedings taken to initiate action for contempt.

7) With this background, let us analyse whether the appellants have committed criminal contempt in terms of Section 2(c) of the Act and whether the High Court is justified in imposing simple imprisonment for a term of six months with a fine of Rs. 2,000/- each and, in default, to further undergo simple imprisonment for one month.

8) The impugned order of the Division Bench shows that these appellants were punished for criminal contempt not only on the ground that they prevented the Judicial Officers including the District Judge and other staff members from entering into the District Court at Jalpaiguri, but also on the ground of alleged serious lapses/inaction on their part. It is useful to refer the findings recorded by the Division Bench regarding the role and part played by the appellants which are as under:-

“We, therefore, unhesitantly come to the conclusion that the Director-General of the Police, the District

Magistrate of the District, the District Superintendent of the Police and the Inspector-in-charge of the local Police Station have committed not only the Criminal Contempt of the Judges Court in the District of Jalpaiguri by deliberately taking no action against the agitators resulting in interference with due Administration of Justice in the said District and at the same time the Director-General of Police has in addition to that also committed further contempt of this Court by disobeying the order of the then Chief Justice to take immediate step for restoration of the function of Judiciary in the said District.

We disbelieve the statements of the three Officers of the District Administration that the learned District Judge never sought for Police assistance and on the other hand, supported the agitators. In his affidavit, the District Magistrate was constrained to admit that at least on January 10, 2007 the learned District Judge-in-Charge in writing asked for his assistance but in spite of such fact, he did not find any time to take appropriate step till January 15, 2007, the day on which we issued the Rules and directed the Chief Secretary to take appropriate step for restoration of the functions of Judiciary in the District. Moreover, the fact that a G.D. was lodged complaining obstruction to the entry of the employees of the Court was sufficient for taking action to see the Judiciary could function in the District in accordance with the Constitution of India and further request for Police help at the instance of the learned District Judge was unnecessary. The justification sought to be given that the agitation was peaceful was insignificant in the fact of the present case in view of the fact that the question of "breach of peace" arises if there is a resistance at the instance of an opposition group. The Judges are not expected to wrestle with those agitators by taking the law in their own hands of the purpose of entering the Court premises. They complied with the law of the land by drawing attention of the local Police by lodging a G.D. through an employee of the Court and at the same time, it has been well established from the materials on record that the local administration was quite alive to the situation that due to the purported "Satyagraha" by staging agitation and raising a rostrum at the main entrance gate of the Court premises, there was interference with due Administration of Justice and in such circumstances, it was the duty of the local administration to take step of their own once they found commission of a cognizable offence."

9) As stated in the earlier paras, a Committee constituted of some local persons, who were active in public life, along with the lawyers at Jalpaiguri, had passed certain resolutions to stage Satyagrah for the formation of High Court Circuit Bench in front of the District Court at Jalpaiguri. As a follow-up action, the Members of the Committee put their resolution into action on 15.12.2006 outside one of the two gates of the District Court premises that is the main gate and put up a rostrum there on which a number of persons started sitting in Satyagrah.

10) It is the stand of the police that on being aware of the said resolution of the Committee, on 15.12.2006, a police picket consisting of three officers and four constables was deployed under Sub-inspector Dilip Kumar Sen at the place of Satyagrah to watch and monitor the law and order situation.

It was pointed out that the Sub-inspector Dilip Kumar Sen noted the above details in the General Diary (GD) of Kotwali P.S., under GDE No. 899 dated 15.12.2006 recording that the Judicial Officers and the staff of the District Court had arrived at the court premises, but they were persuaded by the

members of the Committee not to enter into the Court. The officer has also recorded that the Judicial Officers did not ask the police for help to enter into the court. Mr. Rohtagi, learned senior counsel appearing for the appellant- Anup Bhushan Vohra, former Director General of Police in Criminal Appeal No. 339 of 2007 has brought to our notice a true extract of GD entry made on 15.12.2006 under GDE No. 899 which reads as under:-

“It is important to add here that each of the Judges and Magistrates (total of 11) of the said District Court are provided with one armed policemen and two other security guards as normal security to enable them to fulfill the duties of their office: i.e. the Judges and Magistrates of the District Court always had 27 security guards including 9 armed guards.”

The further information relates to GD entry made on 19.12.2006 under GDE No. 1152, in which the S.I. detailed for duty at the District Court recorded that with force he was present at the main gate of the court premises and at 1050 hrs. when some of the Judicial Officers had arrived at the main gate of the District Court, they were requested “with folded hands” by the agitating Members of the Committee not to enter into the court. The Judicial Officers, thereafter, returned back. The S.I. and his force were standing at the

spot, but there was no order/request by the Judicial Officers for help to enter into the court. It is also pointed out that in all those days, there was no pushing or cajoling, no threatening gestures made, no law and order problem and no circumstance was created for the police to interfere using force.

11) Apart from the GD entries made in those dates, similar effect GD entries were made at the local police station by the concerned police officials who were detailed with force for duty at the District Court on 22.12.2006, 26.12.2006, 27.12.2006, 31.12.2006, 02.01.2007 and 05.01.2007 under GDE Nos. 1338, 1620, 1690, 1916, 91 and 275 respectively. All those GD entries are placed before us in the form of annexures. By pointing out these details, learned senior counsel appearing for the appellants pointed out that there was no intimation by the High Court till 05.01.2007. They also highlighted that at no point of time, there was any law and order problem and there was no coercion exercised by any of those conducting Satyagrah. On every single day from 15.12.2006 to 05.01.2007, whenever Judicial Officers of the District Court,

Jalpaiguri attempted to enter into the Court premises, they were requested by the persons sitting in Satyagrah not to enter the court premises and thereupon the Judges and the officials and the staff voluntarily complied with and went back.

12) From the materials placed on record, it is seen that only on 05.01.2007, the Registrar General of the Calcutta High Court, for the first time, spoke over phone to Shri Anup Bhushan Vohra, DGP to enquire whether he knew about the problem which was “deteriorating” as no work was taking place in the Court at Jalpaiguri. In the affidavit filed by Mr. Vohra, it is stated that the Registrar General then handed over the phone to the then Chief Justice of the High Court - Hon’ble Mr. Justice V.S. Sirpurkar, who directed him to “keep the situation under watch”. The affidavit further shows that the appellant Vohra assured the then Hon’ble Chief Justice that he would speak to the Superintendent of Police, Jalpaiguri and the Home Secretary of the State. According to him, as assured to the then Chief Justice, he informed both the officers. He also mentioned that this was not done in writing, but orally over phone to Mr. Prasad Ray, Home Secretary and Mr.

Tripurari, Superintendent of Police, Jalpaiguri. The assertion of the DGP in the form of an affidavit shows that there was no order by the then Hon'ble Chief Justice either on the administrative side or on the judicial side but only over phone he was asked to watch the situation and, in turn, he also assured him as well as intimated the same to the Home Secretary and Superintendent of Police, Jalpaiguri. In those circumstances and in view of the the materials placed by the DGP, the conclusion of the Division Bench that there was an "order" by the then Chief Justice is factually incorrect.

13) It is brought to our notice that for the first time, that is, on 09.01.2007, the District Judge communicated to the Registrar General of the High Court regarding cessation of work by the Members of the Local Bar Association, Jalpaiguri and the Committee for Circuit Bench of the High Court at Calcutta. The contents of the said letter are also relevant, which reads as under:

"To
The Registrar General,
High Court, Appellate Side,
Calcutta.

Dated : the 9th January, 2007.

Sub: Cease work by the members of the Local Bar Association, Jalpaiguri and Samannyay Committee for Circuit Bench of the Hon'ble Court at Calcutta.

Sir,

With due respect, I am to inform that today i.e., on 9.1.07 I, along with all Judicial Officers, had been to the Court but at the entrance gate of the Court premises we were obstructed to enter into the premises.

I held discussion with the agitating members and insisted that we should be allowed to enter into the premises for smooth functioning of the judicial administration but it was impressed by the agitating members of the Samannyay Committee, mainly, along with member of local bar that when the door for discussion is open we should communicate the Hon'ble Court that the impasse can only be resolved by discussion from and on behalf of the Hon'ble Court. The agitating members did not agree to my proposal to allow us to enter into the premises

The recent resolution, enclosed herewith, will show that they have taken up different agitation programs till 15.1.07 copy of which is enclosed herewith. When persuasion failed, we have come to the chamber and office of the District Judge at his bungalow where all the members of the office staff have also come.

This is for your information and we are soliciting necessary instruction from your honour's end.

Yours faithfully,

JUDGMENT

(S. Bhattacharjee)

Add District Judge, 1st Court and
District Judge-in-Charge,
Jalpaiguri.

Memo No. 17/G Dated: 9.1.07.

Copy forwarded to the Superintendent of Police, Jalpaiguri, for information and necessary action.

Sd/-(S. Bhattacharjee)

Add District Judge, 1st Court and
District Judge-in-Charge,
Jalpaiguri.”

It was highlighted that no immediate response was received by the District Judge from the Registrar General, particularly, as to the contents of his letter.

14) However, on 10.01.2007, it was pointed out that for the first time the Addl. District Judge/District Judge-in-Charge Mr. S. Bhattacharjee, wrote directly to the District Magistrate Mr. R. Ranjit (appellant in Criminal Appeal No. 340 of 2007) requesting him to look into the matter and make endeavour to resolve the crisis so that the Judges could enter into the court premises to discharge their functions. The GD entry made on 10.01.2007 under No. 614 recorded that police force was present at the main gate of the District Court from 1000 hrs. to 1300 hrs. and the Judicial Officers had come in some vehicles and after talking to the Members of the Committee, who with folded hands requested them not to enter into the court, they left the place. It was emphasised that even on this day, there was no request from the Judicial Officers to the police to help them enter into the court.

15) The GD entry made on 13.01.2007 under No. 795 was pressed into service which shows that a strong police arrangement was made at the District Court where Shri T.K. Das Addl. Superintendent of Police (HQ), Shri Swapan Kumar Das, Dy. Superintendent of Police (HQ) and Shri David Ivan Lepcha had supervised the duty and Shri Ashok Das, Executive Magistrate, was also present. It was pointed out that in the afternoon of 13.01.2007, the District Magistrate, the Superintendent of Police and other officers convened a meeting at the Circuit House with the Members of the Committee and had told them in no uncertain terms that administration will not wait for any “amicable settlement” any further and would resort to applying force on 15.01.2007 to ensure proper functioning of the court. This was conveyed over phone to the District Judge and it was also informed to him that heavy police arrangement would again be made on 15.01.2007 onwards to ensure that Judges and Magistrates may enter into the court without any hindrance. This was also stated in the GD Entry No. 961 dated 15.01.2007. When the Addl. District Judge/District Judge-in-Charge arrived at

the court gate at 1030 hrs., he was requested by the Addl. SP to enter into the court premises, but after seeing a large gathering of the Members of the Committee and their sympathisers, the District Judge decided not to enter the court and returned back. It was recorded in the said GD entry that the Members of the Committee and their sympathisers were successfully persuaded to remove the rostrum from the gate of the court premises, which they themselves removed. The court gate was opened by 1530 hrs., and the District Judge was also intimated about the same. Apart from the above information, it was also pointed out that between 15.12.2006, the day from which the Committee started agitation to 15.01.2007 when they called off the agitation, all bail/custody matters were dealt with by the Judges/Magistrates at their official residences in Jalpaiguri, arrested accused persons were produced by the police before them and in total 192 such cases were dealt with by the Magistrates at their residences during the said period, namely, 15.12.2006 to 15.01.2007.

16) Apart from the above details, Mr. Vohra has also highlighted that he was informed of the importance of the situation only on 05.01.2007 and no specific information/report was received before this date from any State or Central Government Agency or officer about the same. He asserted that he acted promptly on or after 05.01.2007, briefing the Home Secretary of the State, Superintendent of Police, Jalpaiguri.

17) In the meantime, it was pointed out that the then Chief Justice of the High Court, Hon'ble Mr. Justice V.S. Sirpurkar was elevated to the Supreme Court and he took oath on 12.01.2007 and on 15.01.2007, the then Acting Chief Justice - Mr. Justice Bhaskar Bhattacharya, sitting in a Bench *Suo Motu* issued two Rules to the following effect.

"The learned Registrar General of this Court has drawn attention of this Court to the fact that due to agitation started by the "Circuit Bench 'O' Sarbik Unnyayan Dabi Adyay Samannaya Committee, Jalpaiguri," the Judicial Officers in the District of Jalpaiguri including the learned District Judge, Jalpaiguri, are unable to enter into the Court premises from December 15, 2006.

Office of the learned District Judge immediately drew attention of such fact to the Inspector-in-charge, Kotwali Police Station, Jalpaiguri Sadar, but no action was taken. Subsequently, the learned District Judge brought the matter to the notice of the learned Registrar General of this Court, who in terms of the order by the then Hon'ble Chief Justice

of this Court, instructed the learned District Judge to ask the Superintendent of Police, Jalpaiguri to take immediate action, so that the Judicial Officers can enter into the Court premises for doing their duties.

Although the learned District Judge, Jalpaiguri conveyed the decision of this Court to the Superintendent of Police, Jalpaiguri, so that the Judicial Officers can enter into the Court building and function, the Superintendent of Police, Jalpaiguri paid deaf ears to the request of the learned District Judge. Subsequently, the learned District Judge was directed to approach the District Magistrate of the District, so that the judiciary in the District can function. In spite of such communication, no action was taken from the end of the District Magistrate, Jalpaiguri.

It appears from the note given by the learned Registrar General of this Court, that on January 5, 2007, the then Hon'ble Chief Justice of this Court directed the Director General of Police, West Bengal over phone to ensure proper functioning of the Jalpaiguri Court by taking effective steps without further delay and as a follow up action, the learned Registrar General also talked to the Director General of Police, West Bengal and enquired as to what effective steps had been taken for bringing back the normal situation, so that the learned District Judge's Court could function properly.

The Director General of Police, however, informed the learned Registrar General of this Court that he would take up the matter with the Home Secretary, Government of West Bengal and in the meantime, the learned District Judge, Jalpaiguri should be asked to write to the District Magistrate, Jalpaiguri requesting him to take steps for ensuring proper functioning of the Courts in Jalpaiguri with a copy to the Superintendent of Police, Jalpaiguri.

As pointed out earlier, in spite of written communication given by the learned District Judge to the District Magistrate, Jalpaiguri, till today the Judges in the District Judge's Court at Jalpaiguri are unable to enter into the Court building.

It appears from the various papers submitted by the learned District Judge through fax message to the learned Registrar General of this Court that the "Circuit Bench 'O' Sarbik Unnayayan Dabi Adyay Samannaya Committee,

Jalpaiguri" took a resolution of obstructing the ingress and egress to the Court building by various resolutions taken from time to time. From the resolution allegedly taken on December 23, 2006 which has been sent to the learned Registrar General of this Court by the learned District Judge concerned, it appears that in a meeting held at Nababbari premises the following persons participated and unanimously took a resolution to continue with the agitation:

- (1) Sri Mukulesh Sanyal, President;
- (2) Sri Sri Jiten Das, Ex. M.P. (C.P.M.);
- (3) Sri Sri Debaprasad Roy, M.L.A. (Congress);
- (4) Smt. Pratima Bagchi (R.S.P.);
- (5) Sri Prabal Saha (Forward Block);
- (6) Sri Pabitra Bhattacharyya (C.P.I.);
- (7) Sri Somenath Pal (T.M.C.);
- (8) Sri Amal Roy (C.P.I.M.L.);
- (9) Sri Subhas Kumar Dutta, C.P.I.M.L. (Liberation);
- (10) Sri Rabindra Lal Chakraborty (B.J.P.);
- (11) Sri Chittaq De (Convenor, Co-ordination Committee of Plantation Works);
- (12) Sri Sadhan Bose (Merchant Association);
- (13) Sri Sarnarendra Prasad Biswas (North Bengal Chamber of Commerce);
- (14) Sri Biswajit Das (Federation of Chamber of Commerce, Siliguri);
- (15) Sri Sanjoy Chakraborty (Jalpaiguri Welfare Organisation).

It further appears from the resolution of the meeting dated December 18, 2006 of the said "Jalpaiguri 'O' Sarbik Unnyayan Dabi Adyay Samannaya Committee" that one Sri

Benoy Kanta Bhowmick, presided over as President, supported the said illegal act of the Committee.

In our view, the aforesaid act on the part of those persons abovenamed, acting on behalf of the said Committee, has resulted in constitutional breakdown in the District of Jalpaiguri, as a result, the citizens of Jalpaiguri District are immensely prejudiced and such act interferes with and obstructs administration of justice in the said District.

We are also prima facie convinced that inaction on the part of the Director General of Police, West Bengal, District Magistrate, Jalpaiguri, the Superintendent of Police, Jalpaiguri and I.C., Kotwali Police Station, Jalpaiguri Sadar amounts to aiding and abetting the members of the said Committee, as a result of which, the judiciary is unable to function in that District for the last one month and all those persons are prima facie guilty of criminal contempt of a serious nature.

Accordingly, let a **Rule of contempt** be issued calling upon all those 15 persons and Sri Benoy Kanta Bhowmick, abovenamed, to show cause why they should not be penalised or otherwise dealt with for committing criminal contempt as defined in Section 2(c) of the Contempt of Courts Act, 1971 by creating impediment in functioning the judiciary in the District of Jalpaiguri for the last one month by restraining the Judicial Officers from entering into the Court building.

Similarly, a **Rule be also issued** upon the Director General of Police, West Bengal, District Magistrate, Jalpaiguri, Superintendent of Police, Jalpaiguri, Inspector-in-charge, Kotwali Police Station, Jalpaiguri Sadar to show cause why they should not be penalised or otherwise dealt with for aiding and abetting the aforesaid criminal contempt by remaining as silent spectators in spite of repeated directions not only given by the learned District Judge of the District, but also by the learned Registrar General and the former Hon'ble Chief Justice of this Court.

Let these Rules be immediately served upon all the concerns through the Chief Secretary, Government of West Bengal by tomorrow.

The Chief Secretary, Government of West Bengal, is directed to communicate to this Court what action the District Administration or the State Administration has taken for removing the impediments creating by those persons.

Having regard to the serious nature of a criminal contempt prima facie found by this Court, we direct the Chief Secretary, Government of West Bengal to see that in course of this day proper step is taken, so that the learned District Judge and all the Judicial Officers including the staff of the District Court may enter into the building and function normally.

The Chief Secretary will further ensure that no obstruction takes place in the matter of proper functioning of the Court in any part of the said District.

Office is directed to see that this order is communicated to the Chief Secretary, Government of West Bengal by 2 p.m. of this day.

Let Rules be also issued by the office in course of this day.

The Rules are returnable on January 19, 2007 at 10.30 a.m.

On the returnable date, the alleged contemnors above named are directed to be present in Court at 10.30 a.m.”

18) Pursuant to the issuance of the above Rules, the DGP-Mr. Vohra and other three officials of the State Government i.e., the District Magistrate, Superintendent of Police and Inspector in-Charge, Kotwali P.S. Jalpaiguri also filed separate affidavits highlighting their stand. Apart from the affidavit filed by the Inspector in-Charge of Kotwali P.S., copies of the

entries made in the GD (which we referred in the earlier paras) maintained at the said P.S. were annexed to the affidavit.

19) It is further seen that all the officials including the DGP were examined by the High Court while hearing the contempt petition and their depositions were recorded. We were also taken through their depositions and these were mostly in the nature of cross-examination. Learned senior counsel appearing for the DGP has highlighted even the copies of fax messages sent by the District Judge to the Registrar General of the High Court on various dates which were supplied to him after cross examination by the court. Even otherwise, as rightly pointed out that in none of the fax messages, the Judges/Magistrates had requested the police for help to neither enter into the court nor do the fax messages record that they went back to their residences voluntarily on being requested by the agitators. The impugned order of the High Court also shows that apart from the official witnesses, the other parties were also heard on 16.02.2007 by the Bench and ultimately the impugned order was passed on 02.03.2007 convicting the appellants for criminal contempt of court and

sentencing them to simple imprisonment for a term of six months with a fine of Rs. 2,000/- each.

20) Though the High Court has concluded that the above-mentioned government officials had “aided and abetted” the perpetrators to agitation, as rightly pointed out by the learned senior counsel for the appellants, there is no material/basis for such conclusion. We have already pointed out that from the GD entries on various dates, i.e., from 15.12.2006 till 15.01.2007, on all working days, whenever the Judicial Officers reach the main gate of the District Court, the organisers made a request with folded hands not to enter into the court premises and by their persuasion, the Judicial Officers returned to their homes. We have also noted that on any day neither the District Judge nor any other Judicial Officers directed the District Magistrate or the police officers present in the premises to remove all those persons. On the other hand, till the agitation was called off on 15.01.2007, the agitation was entirely peaceful and there was no law and order problem, sufficient police force was stationed and that the

Members of the Committee and their sympathisers kept requesting the District Judge/Magistrates and the officials and staff with folded hands not to enter the courts in view of their demand for establishment of the High Court Circuit Bench and the District Judge/Judicial Officers and the staff voluntarily returned home and did not ask the police to help them get into the court premises. We have already pointed out the assertion made in the form of an affidavit by the DGP - Mr. Vohra that when the then Chief Justice (Hon'ble Mr. Justice V.S. Sirpurkar) talked to him over phone, he did not order or direct him to remove the agitators by force but only directed him "to monitor the situation". There is no contra assertion or statement from the side of the High Court through Registrar General, who was supposed to be present when the then Hon'ble Chief Justice discussed with the DGP over phone.

21) We are conscious of the fact that it is the responsibility of the State Administration to see that courts function on all working days without any hindrance. The administration of justice should never be stalled at the instance of anyone including the members of the bar even for any cause.

However, we have already noted that though the said Committee started Satyagrah in front of the District Court as early as on 15.12.2006 till 05.01.2007, no request from the District Judge or from the Registrar General for removal of rostrum put up in front of the gate and clearing the agitators/satyagrahis who comprises not only members of the bar, legislature, NGOs, persons from media and representatives from different walks of life was made. We have already observed that there is no reason to disbelieve the assertion of the DGP Mr. Vohra about the conversation made by the then Hon'ble Chief Justice and it is the definite case of the DGP that he was asked "to monitor the situation" and "keep a watch over the development". He asserted that there was no direction either from the then Chief Justice or from the Registrar General for taking appropriate action against the agitators.

22) We are also satisfied that in none of the fax messages sent by the District Judge to the Registrar General, there was even a whisper that the Judges at the District Court had asked for any police help and there was no grievance that

police help was not made available to the Judges. In the facts and materials placed and demonstrated, we are of the view that the conclusion of the High Court that the appellants, more particularly, government officials were responsible for “aiding and abetting the agitators by non-action” cannot be accepted.

23) We are also satisfied from the materials placed that the police force was present at the gate of the District Court on all days except Sundays and holidays to supervise law and order situation and to assist the Judges and Judicial Officers, the fact remains that the District Judge and the Judicial Officers never asked for any police help for their entry into the court premises on all days starting from 15.12.2006 ending with 15.01.2007 and all of them acceded to the humble request made by the agitators and returned home. It is true that on 10.01.2007, the District Judge and the Judicial Officers requested the District Magistrate to take sincere efforts to resolve the crisis so that they may enter into the court premises and discharge judicial functions.

24) Another aspect with which we are unable to accept the conclusion of the Division Bench relates to the fact that fax messages were sent from the office of the District Magistrate. On this assumption, the Division Bench concluded that the District Magistrate himself had knowledge about the contents of the fax messages. It was explained that fax messages were sent from one of the nine fax machines installed at different rooms at the premises of the Office of the District Magistrate and, as rightly pointed out, this does not necessarily mean that the District Magistrate had knowledge about the matter of the contents. Merely because the fax machines available at the office of the District Magistrate were utilised, it cannot be presumed that the District Magistrate could have noted the contents. The said assumption cannot be accepted without any further material.

25) It is true that several litigants might have suffered due to the non-functioning of the courts, however, it is brought to our notice that the concerned Magistrates were holding court at their residences and chambers to deal with all urgent matters

and 192 cases were dealt with by different Magistrates during the period 15.12.2006 to 15.01.2007.

26) We are also satisfied that there was no wrongful restraint on the Judges and Judicial Officers of the District Court as is evident from the GD entries wherein it was recorded that the Judges and Judicial Officers had acceded to the request of the agitators and restrained themselves from entering the court premises though police force was present at the spot to facilitate their entry as and when directed.

27) Though the Division Bench recorded a finding in the impugned judgment that because of the obstruction, the administration of justice in the District Court, Jalpaiguri was obstructed for a month in spite of specific request of District Judge, it was brought to our notice (which we have already noted in the earlier paras) that the District Judge for the first time on 10.01.2007 had communicated to the District Magistrate with a request to make endeavour to resolve the crisis and even in that communication there was no mention of using police force to remove the agitators by force. It is also evident that Judges of the District Court wanted a peaceful

solution and without use of force although in the fax messages sent by the District Magistrate to the Registrar General, it was complained that the Judges in the District Court were not allowed to enter into the court premises.

28) We are also satisfied that there is no acceptable material in holding that the officials committed criminal contempt of the Judges in the District of Jalpaiguri by deliberately taking no action against the agitators resulting in interference with the due administration of justice. If we analyse the entire materials including their statements, affidavits, GD entries, fax messages, correspondence between District Judge and Registrar General and District Magistrate, it cannot be concluded that the officials deliberately abstained from taking any action against the agitators.

29) As mentioned above, in the absence of any order either on the judicial side by the then Chief Justice or any communication and direction through the Registrar General and in view of the assertion of DGP in the form of an affidavit about the conversation made by the then Chief Justice and himself, the contrary conclusion arrived at by the Division

Bench holding that the DGP has disobeyed the order of the then Chief Justice to take immediate step for restoration of functioning of the judiciary in the District cannot be accepted.

30) In a matter of this nature, when the agitation started on 15.12.2006 by way of a Committee comprising persons from different walks of life including members of the bar, media, business community, NGOs, elected representatives etc, it is but proper for the High Court to intervene at the earliest point of time by sending Administrative/Port-folio Judge or the Registrar General to the spot. Such recourse was admittedly not resorted to. Till 05.01.2007, no communication or any effort was made by the Registrar General to the District administration, particularly, officers concerned and to the District Magistrate. Even the District Judge did not make any request or issued directions for removal of the agitators who were conducting Satyagrah in a peaceful manner. We have already pointed out that every day on their request, all the Judicial Officers returned home to avoid any confrontation with the members of the bar and the Committee comprising persons from different walks of life.

31) In the earlier part of our order, we have highlighted that the allegations against all the appellants relate to criminal contempt. Though the High Court has heard certain officials, it is the grievance of the appellants that proper procedure was not followed in all their cases. In other words, “fair procedure” provided for “criminal contempt” had not been adhered to by the High Court. It is also their grievance that even no formal charge was framed. Inasmuch as the matter pertains to criminal contempt, the issue is to be proved beyond reasonable doubt. Admittedly, the District Judge did not file any affidavit highlighting his stand and steps taken, if any, even after knowing the claim of the appellants, particularly, with reference to the various GD entries and their specific stand. We are also satisfied that that charge against the criminal contempt has not been made out in the manner known to law.

32) It is also brought to our notice that all the appellants filed separate affidavits explaining their stand and tendered unconditional apology at the earliest point of time. Considering the nature of the demand which, according to

them, the High Court itself has passed a resolution acceding for the formation of the High Court Circuit Bench at Jalpaiguri and other relevant materials, the Division Bench ought to have accepted the affidavits tendering apology. In fact, the explanation to sub-section (1) of Section 12 of the Act enables the court to accept the apology if the same is *bona fide* and discharge the accused accordingly. Unfortunately, even such recourse was not followed by the High Court. In appropriate case, the acceptability of unconditional apology and regret has been explained by this Court in **O.P. Sharma & Ors. vs. High Court of Punjab & Haryana**, 2011 (5) Scale 518 = (2011) 6 SCC 86. Considering the fact that the members of the bar who misbehaved with the court by raising slogans and realizing their mistake, dignity of the court and conduct of the legal profession tendered unconditional apology first before the Judge before whom the unfortunate incident had occurred, before the High Court where *suo motu* contempt was initiated and before this Court by filing affidavits. Expressing unconditional apology and regret with an undertaking that they would maintain good behaviour in future and if the same

is at the earliest point of time and *bona fide*, the Courts have to accept the same. In view of the language used in “proviso” and “explanation” appended to Section 12(1) of the Act, this Court accepted the affidavits filed by all the appellants in **O.P. Sharma (supra)** and discharged all of them from the charges leveled against them.

33) In **Vishram Singh Raghubanshi vs. State of Uttar Pradesh**, (2011) 7 SCC 776, this Court reiterated the principles laid down in **O.P. Sharma (supra)** with regard to tendering unconditional apology and acceptance of the same.

34) Finally, it is worthwhile to refer to a Full Bench decision of the Bombay High Court in **Mohandas Karamchand Gandhi and Anr.**, AIR 1920 Bombay 175. It was an appeal filed against Mohandas Karamchand Gandhi and Mahadev Haribhai Desai, who were the Editor and Publisher respectively of a newspaper called ‘Young India’. They were charged with contempt of Court for publishing in that newspaper, on 6th August, 1919, a letter dated 22nd April, 1919 written by the District Judge of Ahmedabad to the Registrar of the High Court and also with publishing comments on that

letter. The gist of the charge was that the letter in question was a private official letter forming part of certain proceedings then pending in this Court and that the comments which both of them made in their newspaper were comments on that pending case. Ultimately, this Court, after stating that the same ought not to have been published, reprimanded them. Though we are not concerned about the factual details and the ultimate decision, the following observation relating to power of the Court in contempt proceedings and how the same to be applied had been reiterated at page 180 which reads as under:

“.....We have large powers and, in appropriate cases, can commit offenders to prison for such period as we think fit and can impose fines of such amount as we may judge right. But just as our powers are large, so ought we, I think, to use them with discretion and with moderation remembering that the only object we have in view is to enforce the due administration of justice for the public benefit.”

35) It is not in dispute that all the appellants have filed separate affidavits tendering unconditional apology at the earliest point of time before the High Court. We are satisfied that no case has been made out for criminal contempt against the appellants and there is nothing wrong in accepting their unconditional apology and request which was made at the earliest point of time.

36) Keeping the above principles and factual details as mentioned in earlier paras in mind, we pass the following order:

In view of the above discussion and abundant materials, we are satisfied that in this *suo motu* proceeding, the High Court has not made out a case to punish all the appellants under “criminal contempt” in terms of Section 2 (c) read with Section 12 of the Act. We were informed that the appellant-Mukulesh Sanyal in Criminal Appeal No. 395 Of 2007 and appellant-Smt. Pratima Bagchi in Criminal Appeal No. 399 of 2007 have been reported dead. Thus these two appeals filed by them stand abated. The conviction and sentence on the other appellants are set aside and all of them are discharged from the charges leveled against them. All the appeals are allowed.

.....J.
(P. SATHASIVAM)

NEW DELHI;
SEPTEMBER 16, 2011.

.....J.
(DR. B.S. CHAUHAN)