law in *Venkatesh Yashwant Despande's case* would be applicable in the case of a discretion to ask for an opinion under sub-section (2) of section 401.

In this view of the matter, it is fruitless to consider the argument that the order of the State Government to refer the matter to the Court for opinion could not have been revised or reviewed. Nor is it necessary to consider the question whether the first order passed by the Ministry was revoked *mala fide* by the Governor incharge of the administrative machinery of the Government as the delegate of the President. We are, therefore, of the opinion that the petitioner, not having a legal right to have a remission, cannot in a writ petition enforce the decision once taken by the Government to obtain an opinion of the Court under sub-section (2) of section 401.

GURDEV SINGH, J.—I agree entirely.

K.S.K.

FULL BENCH

Before Mehar Singh, C.J., A. N. Grover and Prem Chand Pandit, JJ.

SHER SINGH,—*Petitioner*

versus

R. P. KAPUR AN ANOTHER,—*Respondents*

Criminal Original No. 87 of 1965

April 3, 1967

Contempt of Courts Act (XXXII of 1952)—S. 3—Contempt of Court—Nature of the offence of—Proceedings for contempt of Court initiated by a private Person—Whether cease to be competent on the death of the applicant—Summary procedure provided for trial of contempt of Court proceedings—Whether violative of Articles 14 and 19 of the Constitution of India (1950)—Production of an anonymous letter in the Court containing allegations that the trial judge is being influenced by others and requesting for enquiry being made—Whether constitutes contempt—Anonymity of letter—Whether a defence available to contemner—Production of an anonymous letter in the High Court containing allegation that "pressure is being put through the High Court" on the trial judge—Whether constitutes contempt of Court—Contemner—Whether entitled to produce evidence

in justification of his act or to prove that no embarrassment was caused to the Judge, etc.—Plea of justification or absence of mala fides, *etc.—Whether available to the contemner.*

Held, that a contempt of Court is basically an offence against the Court and not against the Judge personally and it is punishable because of the necessity of maintaining the dignity of and respect towards the Court. The power to punish for a contempt is exercised to vindicate the Court's dignity. This power quite clearly does not depend on the personal desire of a private party whether or not to pursue the proceedings for contempt, even though initiated by it. Proceedings for contempt are undisputably of quasi-criminal nature. The death of the party initiating contempt proceedings is of least import. Once the proceedings get going, it quite clearly becomes a matter between contemner on the one hand, and, the Court, of which the contempt is stated to have been committed, on the other. Contempt of Court is a mysterious and indefinable offence, being as easy to commit as it is liable to speedy and deserved punishment. Since the foundation of our present judicial system to punish for contempt is really regarded as of its own class (*sui generis*), in order to keep the Court of justice free, impartial and objective, Courts by their very creation, are vested with the inherent power, *inter alia,* to preserve themselves from the approach of pollution, however, subtly designed. With the death of the person approaching High Court with the allegation of someone having committed contempt of Court, therefore, the proceedings cannot be held to cease to be competent.

Held, that the summary procedure provided for the trial of the application of contempt of Court is not violative of Article 14 and 19 of the Constitution of India. The offence of contempt of Court is a peculiar type of an offence which is a class by itself and, therefore, it has a procedure for itself. The classification is intellegible as also the classification has rational relation to the object in that in the matter of contempt the punishment is awarded summarily for that is done not with object of providing protection to individual Judges but in the interest of administration of justice so that the public confidence in the impartiality of the Judges be not shaken. It is this object with which the proceedings in contempt of Court have been classified as proceedings of a class by themselves with a procedure of their own. So the procedure provided for the summary trial of the contempt of Court is not violative of Article 14 nor can it be said that it constitutes an unreasonable restriction affecting the fundamental right of the contemner under Article 19(1) (a) of the Constitution of India.

Held, that the production of a letter containing an allegation that the Subordinate Judge, who was trying a suit, was being approached by a Judge and the Registrar of the High Court on behalf of one of the parties, was bound to affect the mind of the Subordinate Judge and calculated to embarrass him and to deflect him from the strict performance of his duties in the trial of the suit and constituted contempt of Court. It created an atmosphere calculated to make it difficult for the trial Judge to proceed with the trial of the case. So far as

the offence of contempt of Court is concerned, the essence of the matter is the tendency to interfere with the due course of justice. Any act or publication calculated to create an atmosphere in which administration of justice would be difficult, or which is an attempt to influence a Judge, or which might impede the due administration of justice, or which is an attempt to impair the administration of justice, or which is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties, or which would affect the mind of the Judge and would deflect him from the strict performance of his duties as such, is contempt of Court. The fact that the Subordinate Judge was not at all embarrassed or affected by the production of the letter is a consideration which is irrelevant in contempt of Court proceedings because what has to be seen is whether what is done is likely or has tendency or is calculated to interfere with the due course of administration of justice and that is to maintain the public confidence in the administration of justice so that the impartiality of the Judges is not impaired.

Held, that the production of a letter in the High Court containing an allegation that "pressure is being put through the High Court" constitutes contempt of Court. This is a statement alleging interference by the High Court with the administration of justice in a subordinate court and this is patently calculated to impair the administration of justice by creating an impression that the High Court whose duty it is to uphold and administer justice is itself interfering with the due course of justice. It is likely immediately to bring High Court and the administration of justice into disrepute. The attack is on the Court as a whole and it is calculated to undermine the confidence of the public in the integrity of High Court. It scandalises it in such a way as to create distrust in regard to its integrity and capacity not only to administer justice in a fair and impartial way but imputes to it interference with the impartial administration of justice in the courts below. That this amounts to contempt of Court admits of not the least doubt.

Held, that it is no defence to the contemner to say that the letter he received and produced in the Court was anonymous and that he did not know who had written it and that in his application he had only asked for an enquiry to be made into the allegations contained in the letter. By the production of the letter in Court he takes the responsibility for its contents.

Held, that where a contemner wishes to defend himself, he is to be given every opportunity having regard to the nature of summary proceedings in the trial of contempt matters but the Court has the right not to allow him to produce evidence which is irrelevant or beside the point. It is utterly wrong to say that when a Court in contempt proceedings considers the question whether the document produced had the effect of embarrassing the Judge or interfering with the administration of justice or of deflecting the Judge from the strict performance of his duty, it reaches a conclusion subjectively and that it can only reach a conclusion objectively by the opinion of some outsiders. What the Court does in reaching its conclusion is to consider the document objectively and its

likely effect or its tendency to affect the course of justice and the mind of the trial Judge before whom it is produced.

Held, that pleas of justification or privilege are not, strictly speaking, available to the defendant in contempt proceedings nor is intention material in such cases. It is also not necessary that the contemner should have acted with untruth or malice or with improper motive or in absence of *bona fides* or without prejudice or without reasonable care and caution or in an unwarranted manner or without a *prima facie* ground.

Petition under section 3 of the Contempt of Courts Act praying that proceedings under the Contempt of Courts Act be started against the respondents Nos. 1 and 2 and both may be suitably punished and further praying that the original letter and the envelope be not returned to the respondents during the pendency of this petition.

DEWAN CHETAN DASS DEPUTY ADVOCATE-GENERAL, HARYANA, for the Petitioner.

R. P. KAPUR in person.

ORDER

MEHAR SINGH, C.J.—These contempt proceedings started with a petition (Criminal Original No. 87 of 1965) on July 5, 1965, by Mr. Sher Singh, deceased, petitioner, against Mr. Raghu Pati Kapur and his wife Mrs. Shila Kapur, respondents 1 and 2, under section 3 of the Contempt of Courts Act, 1952 (Act 32 of 1952).

Sometime in 1961 Kutail Madhuban Co-operative Cold Storage Limited, through its president, respondent 2, filed a suit against the petitioner for recovery of Rs. 10,257.73 Paise. During the pendency of the suit respondent 1 obtained power-of-attorney from respondent 2 to conduct the proceedings in the suit for the plaintiff. One witness of the petitioner, who was defendant in the suit, named Kartar Singh, was under examination in the Court of Mr. R. P. Gaind, Subordinate Judge, 1st Class at Karnal, in whose Court the suit was being tried, when on April, 25, 1965, respondent 1 made an application under section 476 of the Code of Criminal Procedure for an inquiry relating to offences under sections 193, 196, 199, 200 and 209 of the Penal Code against witness Kartar Singh, as also against the petitioner, his counsel Mr. Mehtab Singh and Mr. Chuni Lal Malhotra, and two others, named Sunder Das and Ram Lal. According to the petitioner, the last-named was to be examined by him as his witness in the suit but on account of this application he refused to appear on his side. It is

not necessary to go into the details of the allegations in that application by respondent 1. It is apparent that it was made during the pendency of the suit and while witness Kartar Singh was under examination in the trial Court. A copy of that application is annexure 'A' to the petition of the petitioner.

On June 2, 1965, respondent 1 made an application, copy Annexure 'B' to the petition, in the trial Court stating in the heading—"Petition for Enquiry and such proceedings as may be consequently necessary". With this application respondent 1 filed the original of an anonymous letter and a transliteration of it, copy of which is Annexure 'C' to the petition. It is more appropriate to reproduce first Annexure 'C'—

> "Kartar Singh, son of Raja Singh, is working in the factory of Sher Singh situate in Pahewa from several years. Being a Manager there, he is a partner. Kartar Singh himself trades in rice, and deposits money *et cetera* in the State Bank, Thanesar.
>
> Pannu Ram, son of Topan Ram, is a barbar by caste and is his servant from 14 or 15 years. He used to sell milk before and received Rs. 30 per mensem as salary and is his manager now in Kalwatri. He is illiterate but does wear a pair of pants.
>
> Sarkaria Sahib and Harbans Singh are putting pressure on the Subordinate Judge. Your well wisher."

The application, Annexure 'B', reads—

> "That on 18th May, 1965, the petitioner (respondent 1), on return from Chandigarh, perused the Annexure (meaning Annexure 'C'), being true copy of a letter received by him by post.
>
> (2) That the last paragraph of the letter reads as under:—
> 'Sarkaria Saheb *va* Harbans Singh *ki marfat* Sub-Judge par *dabav dala ja raha hai'*.
>
> (3) That the petitioner (respondent 1) is personally aware of the fact that Mr. Justice Harbans Singh is on visiting terms with the defendant and Shri Sarkaria, a previous

District Judge of Karnal, is also known to the defendant, who in turn makes himself busy socially.

(4) That the allegation, if true, reveals a most highly disconcerning state of affairs affecting even the higher echelon of the judiciary and such as to call for investigation at the highest level.

(5) That the letter being in Hindi and obviously from someone in the inner circle of the defendant or liable to getting information from the inner circle can be easily investigated in spite of its lack of signatures.

Prayer : It is prayed that in the interests of purity of administration and especially the judicial system, the vigilance department or a suitable high-powered agency be asked to enquire into the matter."

This is signed by respondent 1. On December 6, 1965, respondent 1 for himself and on behalf of respondent 2 filed what has been described as rejoinder of the respondents to the petition of the petitioner. With this rejoinder the respondents appended Annexure III, being a copy of the affidavit of Mr. Sher Singh petitioner, made by him on June 2, 1965, on the very day the application, of which the copy is Annexure 'B', was made by respondent 1 in the trial Court. In the begining of Annexure III, it is stated—"Affidavit of Sher Singh, defendant, as ordered by the Court to be filed in answer to the application of Shri R. P. Kapur, today."

Subsequently, on September 13, 1965, respondent 2, through respondent 1, made an application under section 24 of the Code of Civil Procedure in the Court of the District Judge of Karnal for transfer of the suit from the Court of the trial Judge, to which detailed reference will be made later. At this stage it may be pointed out that a copy of that transfer application is to be found with a second petition by Mr. Sher Singh deceased (Criminal Miscellaneous No. 1094 of 1965) and there is also a copy of the reply of the petitioner to that application. In paragraph 3 of that reply the petitioner then said—"Strangely on that aplication (referring to Annexure 'B') having been made, the learned Subordinate Judge immediately called upon the defendant and the other parties mentioned therein or who were present to make a reply". So the petitioner, Mr. Sher Singh, who was defendant in the

suit, under the order of the Court, made an affidavit, copy Annexure III, on the very day, that is to say, on June 2, 1965, which said this—

"I, Sher Singh, solmnly affirm and declare:—

(1) That Kartar Singh witness is not in my service and is not my partner in my business.

(2) That I do not know (that) Shri Kartar Singh ever signed pay slip on my account in the State Bank of India, Thanesar.

(3) That Hon'ble Justice Harbans Singh as well as Mr. Sarkaria, Registrar of the High Court, are known to me. But it is utterly false to say that they would approach the Court on my behalf or that they ever did so.

(4) The letter produced by Mr. Kapur today was obviously received by him on the 18th May, but he kept quiet though the case was fixed for 20th and 21st May, 1965. Obviously the application is contempt of Court."

On June 4, 1965, the trial Judge made an order on that application of respondent 1, copy Annexure IV to the rejoinder of the respondents, which reads—

"The present application has been filed by the attorney for the plaintiff-society to the effect that he was received an anonymous letter that the defendant is trying to approach me through some of his friends and, therefore, this matter may be referred to the Vigilance Department or some high-powered agency. I want to place it on the record that as far as I am concerned nobody has ever tried to approach or even talked to me on the subject and that should be sufficient for the plaintiff and its attorney to retain their confidence in the administration of justice. Under these circumstances the matter does not need any further enquiry by this Court because the case is already too old to spare any time for such things when I am trying to rush with the disposal of the case in every possible way. In case the applicant still feels that his suspicion has some basis and needs further enquiry he may apply directly to the appropriate authorities. The application is filed with these remarks."

In between June 2 and 12, 1965, there were two or three hearings in the suit between the parties, but nothing more happened so far as the matter connected with the present proceedings is concerned. But on June 12, 1965, respondent 1 made an application, copy Annexure 'D' with the petition of the petitioner, for the return of the letter, of which copy is Annexure 'B', with the cover, that had been filed in the Court. This application, copy Annexure 'D', said—

> "The petitioner (respondent 1) understands that this learned Court has held that the Court will not have an enquiry conducted through the Vigilance Department or any other agency into the very serious disclosures made in the letter, the original of which was handed over to the Court.
>
> (2) The petitioner (respondent 1), in making the above request to the learned court, was only discharging his duty to the Court. He is fully conscious of his rights in making the request direct to the Vigilance Department, which is competent to enquire into the present conduct of the various officers concerned. The petitioner (respondent 1) did not wish to make a direct reference also in view of the fact that he was likely to be incharge of that department. The petitioner (respondent 1) has no such embarrassment now and having received further information that Shri Sarkaria did actually visit Karnal, etc. etc., he proposes to press for a very comprehensive enquiry. It is, therefore, requested that the original letter with cover be returned to the petitioner (respondent 1)."

On the very day the trial Court passed this order on that application—

> "The document may be returned to the applicant after my initials on the letter and the cover. The same shall be produced by the applicant as and when required by the Court or by the appellate Court against a receipt."

Earlier, reference has already been made to the transfer application made by respondent 2, through respondent 1, to the District Judge of Karnal to obtain transfer of the suit from the trial Court and in paragraph 12 of that application it was stated—

> "That immediately after the learned Subordinate Judge moved into his chambers, Bakshi Mehtab Singh, the counsel and business partner of the defendant had the audacity to go

straight to the chambers and say something to the learned Subordinate Judge for about five minutes of which the petitioner (respondent 2) can naturally not have any knowledge beyond noting the fact that the learned Subordinate Judge had not turned the said counsel back nor cared to call the petitioner's (respondent 2's) attorney who was still in the Court Room. That such freedom of access etc. created further apprehension in the mind of the petitioner (respondent 2) and the attorney (respondent 1)."

In his reply to this application the petitioner, Mr. Sher Singh, in paragraph 3, said this—

"When Mr. Kapur did file the original anonymous letter referred to above in the Court, he also applied that the same be returned to him and the Court said that it would do so, and immediately after, the presiding Judge went to the retiring room. Both the parties were inspecting certain documents in the Court and Bakshi Mehtab Singh openly went to the Judge again protesting that the letter be not returned as it may never find light of the day thereafter. The Court closed for summer vacation on that very day and the request made by the counsel was followed by a telegram sent to the learned Judge requesting him not to return the document to Mr. Kapur and the same may remain on the record."

It is apparent that though there is divergence in the two versions about this incident, one thing emerges clear, and that is this, that the counsel for the petitioner (defendant Mr. Sher Singh) did make an effort to urge before the trial Judge that the original document be not returned on the ground that it may never see the light of the day. This is consistent with probability when it is kept in view that the petitioner, Mr. Sher Singh, in his affidavit of June 2, 1965, Annexure III, had already taken the position that the filing of that letter with the accompanying application of respondent 1 was contempt of Court. Obviously, if immediately on the filing of the same the petitioner's side was saying that that was contempt of Court, it would protest against the return of the document in case it is never found. It was in the wake of this, that after the counsel for the petitioner (defendant Mr. Sher Singh) had not succeeded with the trial Judge, that he thought it necessary in the interests of the petitioner (defendant Mr.

Sher Singh), his client, to send a telegram, of which a copy is Annexure 'E' to the petition of the petitioner, the same day saying—"Moving High Court, please do not return letter produced by Kapur, application for return contempt." This was followed by an express-delivery letter, of which copy is Annexure 'F', of the very date by Bakshi Mehtab Singh, counsel for the petitioner, in which in greater detail he explained that the production of the anonymous letter with the application was grave contempt of the trial Court as also of the High Court, and further pressed that his client and he were afraid that the letter amounting to contempt might never again see the light of the day. The letter further said that "my client has been advised and is moving the High Court as soon as the Hon'ble Court reopens even during the vacation. As no Vacation Judge is sitting, no immediate application can be made." At the hearing respondent 1 has stated that after June 4, 1965, he had gone to Madras, and from there he wrote a letter on July 2, 1965, copy Annexure V to the respondents' rejoinder of December 6, 1965, in which he pointed out that the letter that he had filed was to be available on the next day after the order of June 4, 1965, but that after that date there had been four visits and none was available. He pointed out that the very first visit was made on the very next day. He, therefore, requested that some arrangement be made to effect delivery of the documents if intimation could be sent to his phone number or by communication that the same could be taken delivery of at a fixed time. The order made by the trial Court on this on July 14, 1965, was to file it, and obviously the presiding officer of the Court would not enter into correspondence with a litigant in his Court. Apart from this it has not been explained that any other effort was made to obtain the document back from the Court.

On July 5, 1965, the petitioner filed the Contempt Petition under Section 3 of Act 32 of 1952 against the two respondents, which came before Narula J., as Vacation Judge, on July 6, 1965, when the learned Judge made this order on it—

> "Notice. All relevant records in a sealed cover. Original document and papers not to be returned till further orders. Operation of order of the Sub-Judge, dated 12th June, 1965, stayed meanwhile. Telegram at petitioner's expense. Dasti also."

On September 13, 1965, respondent 2, through respondent 1, made transfer application under section 24, read with section 151, of the

for transfer of the Civil suit from the Court of Mr. R. P. Gaind, Code of Civil Procedure, in the Court of the District Judge of Karnal Subordinate Judge, 1st Class at Karnal. Reference has already been made to this application, which is an appendix to the second petition of the petitioner (Criminal Miscellaneous No. 1098 of 1965) under section 3 of Act 32 of 1952. After making reference to the nature of the suit, the relevant paragraphs of the transfer application, necessary for the present purpose, said—

"3. That during the cross-examination of the defence witnesses, Shri R. P. Kapur, received anonymous but handwritten letters that efforts were made by the defendant, Sher Singh, to put pressure on the learned Sub-Judge (Shri R. P. Gaind, P.C.S,) through Harbans Singh and Sarkaria (Obviously meaning the Hon'ble Mr, Justice Harbans Singh and Shri R. S. Sarkaria).

(4) That in fairness to the learned Court, Shri R. P. Kapur, the attorney, placed the said letter on the record and prayed that the learned Sub-Judge may be pleased to order an enquiry either through the Vigilance Department or through any other agency of his choice: (*Vide* Annexure 'I').

(5) That the defendant, Sher Singh, admitted in his otherwise evasive reply that both these gentlemen were known to him.

(6) That that circumstance alone should have placed the learned Sub-Judge on vigilance and he should have with a view to see that justice is not only done but appears to be done, ordered enquiry, say through the Hon'ble High Court or whatever agency he was pleased to choose.

(7) That Article 235 of the Constitution of India itself places all Judges under the 'control' of the High Court and the Hon'ble Supreme Court of India has held 'control' to mean disciplinary control also.

(8) That similarly another article of the Constitution and the recent judicial and public controversy as to the rights of the Judges *versus* Legislators should also have made it clear to the learned Sub-Judge that conduct of any Judge, however highly placed, can be enquired into and there is no immunity attached as such.

(9) That to the surprise of the petitioner and his attorney, the learned Judge passed an order that he was not approached and he, therefore, did not see any need for any enquiry,—*vide* Annexure II. That this fact created a serious apprehension in the mind of the petitioner and his attorney as to the motives of the learned Sub-Judge and as to why a probe into the alleged conduct of the defendant was not being ordered.

(10) That in the circumstances the attorney of the petitioner was constrained to move the learned Sub-Judge that he may return the documents so that the petitioner could knock at other doors,—*vide* Annexure III.

(11) That faced with this reasonable request, the learned Sub-Judge ordered return of the documents but stated that he had kept them at his house and would bring them during the lunch interval.

(12) That immediately after, the learned Sub-Judge moved into his chambers, Bakshi Mehtab Singh, the counsel and business partner of the defendant (Mr. Sher Singh, petitioner) had the audacity to go straight to the chambers and say something to the learned Sub-Judge for about five minutes of which the petitioner (respondent 2) can naturally not have any knowledge beyond noting the fact that the learned Sub-Judge had not turned the said counsel back nor cared to call the petitioner's attorney (respondent 1) who was still in the Court Room. That such freedom of access etc. created further apprehension in the mind of the petitioner and the attorney (respondents 2 and 1, respectively).

(13) That in spite of the order and promise of the learned Sub-Judge, the document, though three to four efforts were made, were not returned to the petitioner (respondent 2).

(14) That much later it transpired that after nearly three to four weeks, the defendant by moving a contempt petition in the High Court got an order from the Hon'ble Mr. Justice R. S. Narula (earlier a counsel for and against the petitioner and her relatives) stopping the Court from returning the document.

(16) That this collusive act of the Sub-Judge gave security to the defendant that he had, without the knowledge of the petitioner (respondent 2), managed with the Judge that the documents will not be returned and he was thus led to file his contempt of Court petition in the High Court on his own choosing of time and forum.

(17) That subsequent enquiries revealed that a son of the Hon'ble Mr. Justice Harbans Singh is a business partner of the defendant, Sher Singh,—*vide* Annexure IV and a son of Hon'ble Mr. Justice Harbans Singh was engaged, to be married to the daughter of the Hon'ble Mr. Justice R. S. Narula and was later married only last month; that all these circumstances coupled with the actions of the learned Sub-Judge, from time to time, were bound to create and have created most serious misgivings in the mind of the petitioner and the attorney (respondents 2 and 1, respectively).

(35) That the petitioner further apprehends that as the defendant (Mr. Sher Singh, petitioner), himself claims to know the Hon'ble Mr. Justice Harbans Singh and Shri R. S. Sarkaria, Registrar of the Hon'ble Punjab High Court, that as the petitioner (respondent 2) has discovered business and marriage relationship *inter se* between the defendant (Mr. Sher Singh, petitioner) and Hon'ble. Mr. Justice Harbans Singh's son and between the son of Hon'ble Mr. Justice Harbans Singh and the daughter of Hon'ble Mr. Justice R. S. Narula and that as a contempt of Court petition has been made to hang like a sword against the petitioner (respondent 2) and her husband (respondent 1) the other Subordinate Judges may not act with the fearlessness expected of them and in any case a serious apprehension would remain in the mind of the petitioner (respondent 2), it is in the interests of justice that the suit be tried by this Hon'ble Court. (It is respectfully brought to the notice that defence evidence stands closed and disposal by this Hon'ble Court will not entail much time of this Hon'ble Court)."

There were a number of other grounds taken in the transfer application. There was obviously a reply filed by the petitioner to this transfer application and that was on September 20, 1965. A copy of it is on the record and reference to it in some respects has already

been made. On course the petitioner gave denial to the grounds for transfer. In paragraph 4 of this reply the petitioner said—"When an application is made to a Judge that he has been approached, it is expected of the Judge to clear the matter and the learned Judge trying the case appears to have done so unknown to the defendant. But this thing is correct that when the case was taken up on 25th July, 1965, after the reopening of the Court, the learned Judge said that he would not proceed with the case unless the parties had full faith in his impartiality. Mr. Kapur immediately said that he had no doubt whatever in this respect, and then only the case proceeded." The learned District Judge asked for the comments of the trial Judge on the contents of the transfer application by respondent 2. In regard to paragraphs 6 to 9 and 11 to 13 and paragraph 16, this is what the learned trial Judge said in his comments—

> "6 to 9. These paras are interconnected and can be replied together. As far as the legal propositions enunciated by the petitioner are concerned they are not disputed, but the question was that the letter was an anonymous one and even the petitioner did not believe them to be correct. The said petition was drafted in a smart way to avoid responsibility for the information. Under these circumstances I did not think it proper to make any further probe into the matter and the same was filed with the observations that the said allegations in the letter were incorrect as far as I was concerned. A copy of said order is attached hereto as annexure 'A'.
>
> It is to be noted that the parties are at daggers drawn with each other and want to use the present litigation for personal vendatta. According to the attorney for the plaintiff himself he is not interested in the suit so much as in the prosecution of the defendant and possibly it might have been a device to harass the other party by using this Court as a tool. Having failed in that attempt he seems to have been frustrated to file this transfer application.
>
> The attorney is a Government servant of a high status and he is reputed to be an able administrator, but that does not mean that he is also an authority on law. The case was being conducted by a very senior and able advocate from Ambala, but just to have a personal battle of wits

the attorney entered the field to replace the counsel. Perhaps by his personal influence he expected to dictate judicial orders of his own choice, but that is not possible in civil Courts. The status of a party is absolutely meaningless here and so are his social contacts. The basic rule of equality before law cannot be made to yield to the personal influences. The order was passed after considering all the pros and cons of the matter and the petitioner cannot challenge the same in this transfer application.

There was no occasion for any apprehension on account of this order because he was directed specially that if so desired he could move the proper authorities directly.

* * * *

11 to 13. Immediately on the receipt of the application and in spite of the persistent request by defendants' counsel to the contrary, the anonymous letter in question was ordered to be returned to the attorney against receipt and subject to the condition that the letter would be produced as and when required by this Court, or any other authority.

This order was passed on 12th June, 1965 when the case was fixed for hearing on the first day of the vacations. Earlier the letter being of much importance I had put it in a closed cover and kept it in my confidential box. The box on that day was not brought to the Court and it was never anticipated that the attorney would apply for the return of the same. After the order which was passed at about 1.30 p.m., I told the attorney that I would be sending the letter shortly to be delivered to him. Perhaps he could not afford to wait and so he himself suggested that it may be delivered the next day if possible. My staff was doing some office work and that was possible. and consequently I told him that if he so desired, it could be delivered the other day. I left the letter with my steno to be delivered. but he returned the same the next evening saying that nobody had turned up and he was not prepared to take the responsibility of keeping the same with him. It was under these circumstances that the letter remained with me during the vacations and was not taken delivery of by the attorney.

Immediately I passed the order on the above application. I left the Court Room for my retiring room to do some office work. There the counsel for the defendant again tried from the door to request that he wanted to move the High Court and so the letter should not be delivered for some time. It was not decent to be rude to the lawyers at that time. So politely I told him that after the order I do not want to listen to anything on the point and he can have his own remedies. It hardly took half a minute or so and the counsel had to return. Perhaps the counsel was anxious to make a submission because the Courts had closed for a long vacation and on that day the Court had adjourned leaving no opportunity for him to move any application for redress. It is not my habit to be so rude to the lawyers as the attorney excepts and so it may be in the ordinary way that I had to send him off politely. Even the petitioner has so many times made submissions to me in the absence of the other party and he was politely told to adopt the proper course. It is simply frivolous to attribute any motives even looking at the things through coloured glasses as the attorney seems to have been doing.

This fact is borne out by the subsequent events that took place; shortly I reached my house I received a telegram from the defendant requesting that the delivery of the letter may be withheld. It was followed by an express delivery letter on the same day. If the defendants' counsel had been successful in his attempts or I had shown any leniency towards him, there was no necessity for all these things. In fact it was the defendant, who was aggrieved by that order and I do not understand as to why and how the attorney has developed the apprehension.

(16) As stated above the allegation as against me is absolutely false and frivolous. I could not be expected to deliver the letter at the attorney's place or to wait for him throughout the vacations. If the defendant during the vacations got any advantage the attorney should thank himself for the same."

The trial Judge denied categorically that he had failed to return the document, Annexure 'B', with its cover and has clearly stated in

paragraph 15 of his comments that "the attorney himself was negligent in getting back the letter and now he has used his own omission as a ground for attack.....". In paragraph 16 he has categorised the allegation by respondent I, of any collusive act by him giving security to the petitioner, as absolutely false and frivolous. Most of the averments by respondent 2 in her application for transfer were not the basis of the order of the learned District Judge made on October 7, 1965, and in paragraph 5 of his order this is the real basis why he allowed transfer of the case—

> "Now considering these comments as a whole, I am inclined to think that though actually it may not be said that the Sub-Judge has assumed a partisan attitude towards the petitioner's attorney, Shri R. P. Kapur, but it seems that the relations between the plaintiff's attorney and Shri Sher Singh defendant in the case are strained and that had made the conduct of the case in the Court of the Sub-Judge difficult at times. The Sub-Judge now strongly feels unhappy about this and seems to think, as his comments indicate, that the plaintiff's attorney was mainly at fault in the matter."

Then in paragraph 6 of his order the learned District Judge says—

> "This state of affairs is such that the apprehension of the petitioner that the atmosphere for a calm and dispassionate consideration of the matters did not exist, appears partially warranted, particularly in view of the fact that the Sub-Judge has taken exception to certain matters and his feelings seem fully expressed when he remarked—, as already indicated:—
>
> 'In fact I have exercised restraint in spite of the imposing and unbecoming attitude of the attorney'."

It is on these considerations, as stated, that the learned District Judge transferred the case from the Court of Shri R. P. Gaind to the Court of the Senior Subordinate Judge at Karnal.

After the transfer application had been made by respondent 2, through her attorney respondent 1, and considering the averments and allegations made in it, the petitioner moved a second petition under section 3 of Act 32 of 1952, being Criminal Miscellaneous

No. 1094 of 1965, and in paragraph 3 of it, he said "that the respondents are not only not repentant for all what they have done, but have gravely aggravated the contempt by making application for the transfer of the case in the Court of the District and Sessions Judge, Karnal." He then pointed out that the contents of the application "will show that the respondents are guilty of very grave contempt of the Court and it is prayed that they be proceeded with in a suitable manner." This is dated November 19, 1965. With this, as already stated, the petitioner filed a copy of the transfer application and his reply thereto. On December 8, 1965, that petition appearing in the list of Gurdev Singh, J., the learned Judge passed an order that "the document produced be placed on the record."

Service on respondent 2 of the first contempt petition by the petitioner was effected by November 11, 1965, but respondent 1 for himself and on behalf of respondent 2 filed what has been described as rejoinder of the respondents to the first contempt petition by the petitioner on December 6, 1965. In this it has been said that the contempt petition of the petitioner itself is meant to overawe the respondents and is also calculated to overawe the Court in which the trial of the suit was proceeding. Paragraph 3 of the rejoinder reads—

> "That the respondents, in order to furnish the facts deliberately suppressed by the petitioner, submit Annexures I to VII and crave liberty to rely upon the same." Annexure 'I' is the roster for vacation of 1965 which shows that S. K. Kapur, J., sat in Single Bench between May 31 and June 4, 1965, then a Division Bench of S. K. Kapur and Narula, JJ., sat from June 21 to July 2, 1965, and there after Narula, J., sat in Single Bench from July 5 to July 9, 1965. Annexure 'II' is a sale deed to which the petitioner, his counsel Bakshi Mehtab Singh, and Mr. Lakhinder Bir Singh, son of Harbans Singh, J., were parties. Annexure 'III' is a copy of the affidavit of the petitioner, dated June 2, 1965, to which reference has already been made. Annexure 'IV' is the order of Mr. R. P. Gaind, Subordinate Judge, 1st Class at Karnal, which has already been reproduced above *in extenso*. Annexure 'V' is respondent 1's letter of July 2, 1965, addressed to the Subordinate Judge, 1st Class at Karnal, and to the relevant parts of it reference has already been made. Annexure 'VI' is some reply by the petitioner to the application of respondent 1 and made through his counsel Bakshi Mehtab

Singh. Annexure 'VII' is a transliteration of Hindi script of an anonymous letter and the transliteration reads thus—

"I have already informed you that pressure is being put through the High Court. Please take notice of it. I will inform you after the 2nd June. A few days ago Kapur (Capoor), Judge of the High Court was here along with his family. He is being approached through Sardar Harnam Singh. Sarkaria was also here."

Apart from clearly stating that pressure was being put through the High Court obviously with regard to the suit between the petitioner and the respondents' society, this document brings in a third Judge. It is, however, not quite clear whether it refers to S. B. Capoor, J., or S. K. Kapur, J., because in Hindi the name of both the learned Judges is written in the same manner. But that is of no consequence, the fact remaining that the third Judge is brought in in this letter along with the allegation of pressure through the High Court, as stated, obviously in relation to the case pending in the trial Court between the petitioner and the respondents' society at Karnal. The rejoinder then refers to the son of Harbans. J., in the sale deed, Annexure II, relationship between Harbans Singh and Narula, JJ., to the fact of Narula, J., having been counsel for or against the respondents immediately before his elevation to the Bench, some comments on Bakshi Mehtab Singh, counsel for the petitioner in the trial Court, and witnesses Kartar Singh, Pannu Ram and Ram Lal, and then paragraph 11 of it runs thus—

"That the action of the Sub-Judge (Shri R. P. Gaind) in summarily not taking action on the request to have an enquiry conducted by whatever agency the learned court thought fit was one of the grounds for the transfer petition against him; which petition the learned District Judge was pleased to accept."

There is then reference to some broker approaching Narula. J.. for the hiring of his bungalow in Defence Colony, New Delhi, which it is stated that respondent 1 did not accept. Paragraphs 16 to 19 then say—

"16. That a request for an enquiry, the result of which could well be against the respondents themselves if the allegations made by the petitioner are true, can never constitute a contempt.

(17) That in fact an enquiry, if held, would have cleared the air while its avoidance has raised many question marks especially in the light of the facts brought out above and in the annexure I to VII.

(18) That even the Constitution of India and the recent Bill before Parliament provide for enquiries against even the highest judicial officers of the realm and a salutary provision for enquiry into the conduct of the highest enhances and does not lower the prestige of such judicial dignitaries.

(19) That respondent 1 never received any instructions from respondent 2 to file the petition at Annexure 'B' or the consequential petitions."

On December 10, 1965, respondent 1 moved a petition described as 'Petition for the constitution of a Full Bench of this Hon'ble Court for hearing the petition'. In this respondent 1 said that he had put in a modest petition for enquiry in connection with the anonymous letter Annexure 'B' into the conduct of Harbans Singh, J., and the Registrar, Mr. R. S. Sarkaria, 'both reported in the letter received by the respondent as trying to influence the said Sub-Judge at Karnal', and that a demand for enquiry is never contempt of Court. He then referred to the Constitution of India contemplating enquiries into the conduct of even highest category of Judges. Again repeated the facts about the business connections of the son of Harbans Singh, J., with the petitioner and also that Harbans Singh, J., was on visiting terms with the defendant, and Mr. R. S. Sarkaria, was known to him. Then he proceeded in paragraphs 7 to 11 to say this—

"(7) That all these facts taken in their collectivity would show to any reasonable body of men that the respondent had a number of grounds to apprehend that the information communicated in the letter, be it anonymous, was not frivolous as significantly those names were mentioned out of the large number of Hon'ble Judges and officers of the High Court, whom the petitioner admits he knows. That in these circumstances demand for an enquiry and that through an agency of the choice of the court was a reasonable request to make in a suit involving a fairly large amount of consideration money.

(8) That the moderate conduct of the respondent is further borne out by the fact that even after the rejection by

the Sub-Judge of the request for an enquiry through an agency of the choice of the court, he, the respondent, kept on pursuing the suit till much later when the conduct of the Sub-Judge aroused his most serious misgivings and which led to the transfer of the suit from that court.

(9) That the petitioner, apprehensive of the consequences of his acts and with a view to stifle the enquiry which the respondent was determined to have pursued and with a view to thwart the section 476, Cr. P. C. application pending against him, has come forward with the present contempt petition.

(10) That the respondent having had enough of court proceedings during Partap Singh Kairon's time, whose associate and friend the petitioner is, would have been loathe to embark on further court proceedings but since the petitioner has dragged him into the present proceedings, the petitioner has no option but to defend himself and his wife who has also been dragged into the proceedings, though it is a matter for contemplation whether a person commits contempt *in absentia* and on the presumption of a petitioner.

(11) That as, with the filing of this, if the respondent may respectfully submit, a most ill-advised contempt petition dragging in the names of Hon'ble Judges and the Registrar of the Court, the matter has assumed grave proportion and the conduct not only of Mr. Justice Harbans Singh and Shri R. S. Sarkaria but also of Mr. Justice Narula, who having been a counsel for the respondent and who was negotiating at about the same time about the renting of his Delhi bungalow with the respondent, should have never entertained the present petition especially as it was sought to be placed before him when he happened to come to the Bench during the summer vacation while it could have been conveniently placed much earlier before the previous Benches, it will heighten respect for justice if Your Lordship is pleased to order that a Bench of Judges of this Hon'ble Court may be pleased to hear the present petition and pronounce upon the constitutional and other issues involved so that the public in dealing with courts should stand fully apprised of its rights or of the negation thereof."

Afterwards on January 4, 1966, the respondents made what has been described as 'Parawise Reply' on their part to the petition of the petitioner under section 3 of Act 32 of 1952. The first part of paragraph 4 of this reply says that "the allegations are firmly denied. Respondent 1 adopted the straight forward course of submitting the letter received by him in original in the Court and prayed that an enquiry in such manner as the Court thought fit be got conducted. The receipt of the letter was not of the respondent's choosing and he took the earliest opportunity to file the petition as also the letter in question", and the rest of the paragraph deals with witnesses Kartar Singh and Ram Lal. Leaving out the rest of four paragraphs and the last part of paragraph 5, then paragraphs 5, 6 and 7 of this reply say this—

> "5. Respondent 1 admits to having filed the petition, dated 2nd June, 1965 as also the letter and the envelope but invites the attention of the Hon'ble Court to the defamatory allegation of the petitioner that all this was 'a clever device adopted by respondent 1' to prejudice the Court.' It is submitted that if the enquiry had been held and it had been held that all this was 'a clever device of respondent 1', he would have been in inescapable peril. It is even now the submission of respondent 1 that with a view to clear the air and protect the name of the judiciary an enquiry in such manner as the Court pleases be ordered even now so that the truth may be sifted as respondent 1 has strong reasons for his belief that the present contempt petition is a clever device by the petitioner and his counsel Mehtab Singh who is his business partner to escape the consequences of the enquiry and thwart its being held. It is further significant that the petitioner is very nervous about the letter in question being returned to respondent 1 in spite of the said respondent's offer in Court that it may be duly signed or initialled by the trial Court. The petitioner fears that respondent 1 will persist in his demand for an enquiry and is most apprehensive of the same.
>
> That similarly the witness Pannu Ram was not put in court after the cross-examination the petitioner himself had to go through. That no clever device was adopted by respondent 1 about the mention of the name of Harbans Singh and Sarkaria Saheb in the letter in question; that if any clever device was contemplated and the letter was a

creation of respondent 1, he would not make specific both these names in the petition he gave to the trial Court. The argument of the petitioner is self defeating.

That respondent 1 had sound reasons for specifying the names of both the mentioned persons; that as stated in the rejoinder, dated 6th December, 1965 and the accompanying affidavit in support, respondent 1 in view of the business partnership of Mr. Justice Harbans Singh's son, the marriage alliance contemplated between Mr. Justice Harbans Singh's son and Mr. Justice Narula's daughter, etc., etc. as fully set out in the above affidavit which may be read as part of the present parawise replication, had sound reasons to hold the belief that an enquiry was called for and he still reaffirms that belief genuinely held by him. Respondent 1 again respectfully reiterates that only an enquiry can clear the air and naturally he is prepared to face the consequences if the enquiry holds him in any way responsible as insinuated.

* * * * * *

6. That the submission of application dated 12th June, 1965 is admitted; that attention is invited to the order of the trial Court dated 4th June, 1965 (Annexure IV produced by respondent 1 and kept back by the petitioner) which reads:—

'In case the applicant still feels that his suspicion has some basis and needs further enquiry, he may apply directly to the appropriate authorities. The application is filed with these remarks.'

That this observation of the trial Court itself knocks the bottom of the entire contempt petition and it is respectfully submitted that demand for an enquiry is not contempt of Court. Annexure III, another document kept back by the petitioner with the following admission of the petitioner himself further shows that the apprehension of respondent I was not ill-founded. The petitioner admitted:

'The Hon'ble Justice Harbans Singh as well as Mr. Sarkaria Registrar of the High Court are known to me.'

The rest of the para is argumentative and assumptive and calls for no reply, being not statements of fact.

7. That the petitioner requested the trial Court to take contempt proceedings but the Court was pleased to reject the request and in fact allowed respondent 1 to move for an enquiry. It is further submitted that the contempt of Court proceedings should appropriately have been initiated in the Court of the first instance, in this case the Court of the Sub-Judge of which Court contempt is primarily alleged and it would, in law, be for the trial Court to move or not to move the Hon'ble High Court. It is accordingly prayed that in the circumstances of the case fully brought out now and in view of the lacuna brought out in this para, the petition be dismissed or in the alternative the petitioner be directed to move the trial Court, if so advised."

The prayer in the reply stated is in this form:—

"It is, therefore, prayed that in the circumstances set out above and as brought out in the rejoinder dated 6th December, 1965 and an affidavit in support, the contempt petition be dismissed and if the Hon'ble Court is inclined to take further notice of it, the Hon'ble Single Judge be pleased to refer it to a Bench of three Judges as the conduct of two Judges would be involved as submitted, in the petition dated 10th December, 1965."

It is evident both from this reply by the respondents and the earlier petition of December 10, 1965, by respondent 1 that what was being prayed for was reference of the petition of contempt against the respondents to a Bench of three Judges. On January 7, 1966, Gurdev Singh, J., took into consideration the contents of the petition of the petitioner and the reply to that by the respondents and particularly considered the objection of the respondents taking exception to Narula, J., entertaining the contempt petition of the petitioner for reasons stated in paragraph 5 of the respondents' rejoinder filed on December 6, 1965, and in paragraph 11 of respondent 1's application of December 10, 1965. It was pointed out by the counsel for the petitioner that the fresh allegations made by respondent 1 during the pendency of the proceedings to that stage constituted further contempt of this Court and he said that for that action will have to be taken against respondent 1. The learned Judge was of the opinion, considering those factors, that the matter was of some importance and that it was expedient in his opinion that it should be heard by a

larger Bench. Consequently he made a reference of the matter to a larger Bench. So what was then referred was the contempt petition of the petitioner under section 3 of Act 32 of 1952 to a larger Bench.

The case then came before a Special Bench consisting of Dua, P. C. Pandit and Gurdev Singh, JJ., on September 22, 1966, on which date the counsel who had been representing the petitioner reported that the petitioner had died and he was representing nobody in the case. On that the learned Judges said in their order that "In these circumstances, we direct that notice of this case be given to the Advocate-General so that he may assist this Court in the matter." As the respondents were not present, they also issued notice to them for October 13, 1966. On October 4, 1966, respondent 1 moved Criminal Miscellaneous Application No. 1030 of 1966 referring to the death of the petitioner and the presence of some Judges of this Court at the funeral and then saying that "It is, therefore, respectfully prayed that in the circumstances aforesaid, your Lordships may be pleased either to direct the counsel of the petitioner or his legal representative to pursue the proceedings or, in the alternative, declare the proceedings as incompetent." On October 11, 1966, Gurdev Singh, J., directed that this petition by respondent 1 be placed before the Special Bench. On this petition coming before the Special Bench on October 13, 1966, the prayer was disallowed by the learned Judges, Dua, J., speaking for the Bench observing that "A contempt of Court is basically an offecne against the Court and not against the Judge personally and it is punishable because of the necessity of maintaining the dignity of and respect towards the Court. The power to punish for a contempt is exercised to vindicate the Court's dignity. Law reports are full of judicial decisions explaining the true purpose and wide scope and effect of the power of the superior Courts to punish for contempt and also the limits within which a litigant is entitled to insinuate against the Courts. This power quite clearly does not depend on the personal desire of a private party whether or not to pursue the proceedings for contempt, even though initiated by it. Proceedings for contempt, are undisputably of quasi-criminal nature. The death of the party initiating contempt proceedings would, therefore, seem to us to be of the least import. Once the proceedings get going, it quite clearly becomes a matter between contemner on the one hand, and, the Court, of which the contempt is stated to have been committed, on the other. Contempt of Court, if I may so put it, is a mysterious and indefinable offence, being as easy to commit as it is liable to

speedy and deserved punishment. Since the foundation of our present judicial system to punish for contempt is really regarded as 'of its own class' (*sui generis*), in order to keep the Courts of justice free, impartial and objective, Courts by their very creation, are vested with the inherent power, *inter alia*, to preserve themselves from the approach of pollution however, subtly designed. With the death of the person approaching this Court with the allegation of someone having committed contempt of Court, therefore, the proceedings cannot be held to cease to be competent * * * *

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If the proceedings do not become incompetent, then obviously there is no question of calling upon the legal representatives of Sher Singh to pursue the proceedings. * * * * *

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The contention that there would be no one to reply to the respondents' allegations or affidavits is wholly irrelevant, for, this Court will proceed to pronounce orders on the material placed before it, and this Court would be entitled to draw whatever inferences in law are permissible on the existing material. The further submission that there would be no one whom the respondents can hold responsible for a misconceived application is equally futile for the purpose of this Court in the present proceedings. * * *

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* * Shri Chetan Dass Dewan desires to press before us some of the averments made by the respondents in an application presented in the Court of the District and Sessions Judge, Karnal, for the transfer of the case out of which the present proceedings have arisen. The learned counsel wants to show that the respondents have not only been not repentant for what they have done but they have aggravated the contempt by making the application for transfer in the Court of the learned District and Sessions Judge. Indeed Shri Dewan submits that the subsequent acts of the respondents constitute a far clearer case of contempt and, therefore, this Court should proceed to take action on the basis of that application. I may point out that an application was presented in this Court in November, 1965 (Criminal Miscellaneous 1094 of 1965 in Criminal Original 87 of 1965) with which was attached the notice and a copy of the application served on Shri Sher Singh. In this application the only prayer the counsel seems to have pressed was that the documents produced be placed on the record and an order to that effect was made by Gurdev Singh, J., on 8th December, 1965. Obviously, the respondents had no notice

of that application and quite clearly without such a notice, it would not be proper for us to proceed to consider the question of contempt on the basis of the application for transfer. Faced with this situation, Shri Dewan asked for time to make an appropriate application in this Court on the material now available so that the respondents may be given due notice of the case sought to be pressed by Shri Dewan. In the interest of justice, we consider it proper that the position of the learned Advocate-General be crystalised and made more clear than what we find from the application dated 5th July, 1965. This would be fair to both the parties." The case was adjourned to October 18, 1966. On that date Mr. Chetan Dass Dewan, Deputy Advocate-General, made a petition which came before the Special Bench and it was marked as Criminal Original No. 184 of 1966, with the heading—"*Punjab State* v. 1. *Shri R. P. Kapur,* and 2. *Mrs. Shila Kapur, respondents.*" In this petition Mr. Dewan referred to the details of the first contempt petition by the deceased petitioner with the facts in the Court of Mr. R. P. Gaind, Subordinate Judge, 1st Class at Karnal starting from June 2, 1965, to the stage of the transfer application coming before the District Judge of Karnal. He made reference to the facts in detail. Then he referred to the second petition of the deceased petitioner made on November 19, 1965, the application of respondent 1 made on December 10, 1965, the parawise reply made by the repondents on January 3, 1966, to the original contempt petition of the deceased petitioner, also reproducing paragraphs 14, 16, 18, 20, 24, 25, 30 and 35 of the transfer application by respondent 2 through respondent 1 in the District Court, and then reproducing paragraphs 5, 6, 13 and 20 from the rejoinder of the respondents made on December 6, 1965, and the reply on January 3, 1966. He also reproduced paragraphs 1, 4, 8 and 11 of respondent 1's petition made on December 10, 1965, for having a reference of the matter to a larger Bench. On all this material the learned Deputy-Advocate-General said that contempt of Court had been committed by the respondents. As a copy of that petition had not been given to the respondents, the learned Judges allowed time to them to make a reply. However, respondent 1 urged an oral preliminary objection that "The present petition is incompetent in view of the pre-existing petition registered as Criminal Original 87 of 1965. He would like this Bench to hear oral preliminary objection now and adjudicate upon it. He has also repeated his submissions that the original petition, dated 5th July, 1965, should be heard and the petition presented today ruled out as incompetent." The learned Judges pointing out that such an objection may be taken by the respondents in their reply observed that "there is no question of splitting up the case into

two separate parts on the existing record at this stage." So the case was adjourned to October 25, 1966, for reply of the respondents with an order that arguments were to be heard 'on the entire case'. It appears that after the above order had been made by the Special Bench on October 18, 1966, respondent 1 moved a petition, Criminal Miscellaneous 1059 of 1966, under section 561-A of the Code of Criminal Procedure on that very day. Why I say that it was probably moved after the Special Bench had made an order adjourning the case is that this new petition by respondent 1 came for hearing before Dua, J., alone on the next day, that is to say on October 19, 1966, when the learned Judge directed that a notice of it be given for October 25, 1966, the date to which the case already stood adjourned directing that a copy of the petition be given to Mr. Chetan Dass Dewan who should be ready for arguments on the matter. In this Criminal Miscellaneous petition No. 1059 of 1966, respondent 1 said that "in arguments the respondent submitted that each case had to be assessed on its facts and the real distinction would be whether the facts are such that a court can, independently of the assistance of a petitioner or one who gives information to a Court, pursue the case in case the petitioner or informant disappears." In para 5 of it he said that "The Hon'ble Court was, however, pleased to give the Deputy Advocate-General an opportunity to present to the Court a petition based on the facts of the present contempt petition but making out a case for contempt and arguable without the help now of the petitioner." Then in para 7 it was said that "independently of the fresh petition of the Deputy Advocate-General, the respondent is in a position to submit that no fresh petition, based on the facts of the previous contempt petition, is arguable." The other paras which need to be reproduced here are paras 8, 9, 11, 12, 14, 15 and 16, which say—

> "8. That attention is invited to the affidavits accompanying the contempt petition as also annexure III; that the contents of the entire contempt petition have been sworn by the petitioner/deponent 'to the best of my knowledge and that nothing has been concealed or overstated'. That the same is the position with respect to the affidavit accompanying Annexure III. It is, therefore, clear that there is nothing the petitioner has sworn from any information derived from any record from which the Deputy Advocate-General can draw sustenance for his purposes.
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> 9. That it is the right of the respondents to adduce evidence; that respondent I wishes to file an affidavit and would like

to cross-examine with respect to the veracity of the knowledge as claimed in the affidavits in support of the contempt petition but in the circumstances of the case as now obtaining, the Deputy Advocate-General can be no substitute for the petitioner who swore from personal knowledge, nor would he like to submit himself for cross-examination.

11. That with the State of Punjab not having directed the Deputy Advocate-General to pursue the present petition, much less to file a fresh one, it can later be argued that the High Court and not the State are responsible for any consequences flowing from any fresh act.

12. That the case of the respondent throughout has been that the Constitution of India speaks of misbehaviour even with respect to the Hon'ble Judges of the Supreme Court,—*vide* Article 124; that misbehaviour can be established only through the processes of an enquiry and that an enquiry has to be preceded by some allegations.

14. That in any case and sense of the matter, demand for an enquiry and that too of the choice and mode of the Court, be it even in camera or in chambers, can never be contempt.

15. That if the intent of the respondent were to cause any embarrassment or to malign, this repeated request for an enquiry, in any manner considered just and expedient, would not have been made.

16. That the present reference to the Hon'ble Full Bench arises out of the prayer of the respondent for an enquiry made in his petition, dated the 10th December and said reference is not so much for the adjudication of contempt.

That fact, it is respectfully submitted, be not lost sight of." Then it was prayed that "in the circumstances aforesaid, it is respectfully prayed that the present contempt petition or the fresh petition as adopted by the Deputy Advocate-General and as based on the contempt petition be dismissed." A reply to the petition of the Deputy Advocate-General made on October 18, 1966, was made by respondent 1, dated as October 24, 1966. This was adopted by respondent 2 also by a separate application, signed by her counsel, of the same date. In that reply respondent 1 took the position that the Punjab State was erroneously mentioned by Mr. Chetan Dass Dewan, Deputy Advocate-General, in his petition of October 18, 1966, though it is not the applicant, that that petition is without an affidavit and is

not entertainable, that that petition is altogether a new petition and is contrary to the directions of the Hon'ble Full Bench on October 13, 1966, that it is necessary for the alleged contemner to know the specific charges against him, and the reply further said that "It is respectfully brought to the notice of the Hon'ble Court that the rambling petition of the Deputy Advocate-General, apart from its being untenable, is not specific in the sense required by law. * * * * * * * * * * * * * * It is prayed that the Hon'ble Court be pleased to issue a notice if any such petition is maintainable and if a notice in view of the law of Contempt is called for", that the petitioner having sworn his petition completely on his knowledge and having died, the question is whether the allegations are such that the Court can bring home the charge irrespective of the petitioner or the informant, and further that "if there are any such allegations, the Court may be pleased to specify them in its notice so that the respondents understand the nature of the contempt alleged, (and) it is respectfully submitted that the law of contempt is highly generalised and it is in the interests of justice that a respondent be called upon to answer a specific charge or charges; that even the vague allegations of scandalising the Court cannot be established without an enquiry into facts especially as no fact and no statement can, in equity and justice, be taken out of its context; that the request of the respondent for a Full Bench was, as the concluding part of petitions dated 3rd January, 1966, and 10th December, 1965, makes it clear, based on the submission that the conduct of two Judges being involved, an inquiry by a larger Bench was called for". And in this connection the reply goes on to say that "it is prayed that an immediate inquiry into facts be ordered and thereafter, in the light of the facts elicited, your Lordships be pleased to hear the arguments and decide the matter," and that "if the enquiry repeatedly prayed for by the respondents discloses that two learned Judges (Harbans Singh and Narula, JJ.), committed contempt of Court, it would be a clear answer to any allegation of contempt against the respondents." In addition, respondent 1 again referred to the affidavit of the petitioner in swearing the contents of the petition on his knowledge and the statement in the petition, dated October 18, 1966, of Deputy Advocate-General "that apprehending that Shri R. P. Kapur, respondent I had manoeuvred the letter above-mentioned and actually tried to influence the Court and impeded the dispensation of justice" the Deputy Advocate-General has shifted the very foundations of the case, and made out a case wholly imaginative, conjectural and untenable containing new material. Respondent 1 asked for permission not to be called upon

to answer that petition on merits on the ground that it was untenable in law. Then he cited a number of decided cases in support of certain propositions listed with the reply. On the very day, that is to say, on October 24, 1966, respondent 1 made another petition, Criminal Miscellaneous No. 1069 of 1966, under section 561-A of the Code of Criminal Procedure, for adoption of a known and ascertainable procedure. After referring to what happened in the Court on September 22, October 13, and October 18, 1966, respondent 1 proceeded to reiterate that the petition of the Deputy Advocate-General was without an affidavit or even a verification, and then the respondent prayed that the contents of his petition of October 18, 1966, be treated as his reply and the matter proceeded with. The Court gave time to the respondent to file a reply to the petition of the Deputy Advocate-General. Respondent 1 further said that "your Lordships' direction on 13th October, 1966, to the parties were that the contempt petition of Sher Singh is the only petition on record and that must be argued on 18th October, 1966." He then pointed out that the Deputy Advocate-General had shown States as the applicant in the heading of his petition and further said that "it is respectfully submitted that the State has no notice whatsoever of this matter; that no notice was ever ordered by your Lordships on the Chief Secretary or the Home Secretary; that the Advocate-General was summoned by your Lordships for legal assistance in view of the counsel of the petitioner having abruptly withdrawn, and that that step will not make the State a formal party as observed in the title of the Court order dated 18th October, 1966." In paragraph 15 the respondent said that "the Deputy Advocate-General does not represent any party for purposes of this case; that he has no *locus standi* and can at the most assist the Hon'ble Court by way of legal submissions and that his so-called petition, being without an affidavit, is a nullity in law and, therefore, the respondent, it is respectfully submitted, be not compelled to the processes of such a petition." He then re-stated his objection that in contempt matters show-cause notice was necessary, further pointing out that in "summary preceedings with less safeguards, there is greater need for the enforcement of principles of natural justice and for the procedure being known to the parties". In the end he prayed for dismissal of the petition filed by the Deputy Advocate-General. This petition also came before the Special Bench on October 25, 1966, when notice of it was given to the Deputy Advocate-General for November 4, 1966.

In the meantime Dua, J., having been appointed a Judge of the Delhi High Court, the Special Bench was re-constituted and then the

case has been before the present Bench. On November 4, 1966, respondent 1 said that he had already filed a reply and that certain preliminary objections raised be decided as, according to him, no reply on merits was necessary. Respondent 2 had not filed any reply. So the case was adjourned to November 8, 1966, for the respondents to file any reply that they wished to do so. Respondent 2 then filed her reply on November 6, 1966, in which most of what was stated by respondent 1 in his large number of previous petitions was reiterated. But certain parts of it, I consider, it is necessary to refer to at this stage. It is stated that "the respondent invites the attention of the Hon'ble Court as to the need for an enquiry as to the circumstances in which the aforesaid application of an unauthorised person (Shri Chetan Dass) has been numbered as Criminal Original No. 184 of 1966", that "no further fresh application, in law, is entertainable without prior orders of the dismissal of the first application of Shri Sher Singh"; that "in case of dismissal of that application, fresh rights of pleading and submissions accrue to the respondents which they cannot avail of in the present nebulous state of affairs", that "the firm contention of the petitioner Sher Singh was not one of apprehension but of knowledge that respondent 1 had deliberately manoeuvred the letter in question; that the present application (Shri Chetan Dass) that he could not himself prove this basic fact, has completely twisted the basic facts and has made himself guilty of contempt as also of offences under the Penal Code and that in the circumstances suitable action is prayed for", that "the passages said to constitute contempt have not been specified and at this stage no reply is possible", and that "the production of the second letter as also of the first does not constitute any contempt and if the enquiry prayed for had been held in such manner as the Court may think fit, it would have cleared the air".

On November 8, 1966, respondent 1 started arguments and raised certain preliminary objections, including the objection repeatedly pressed by him in his petitions that specific charges making allegations of contempt have not been supplied to the respondents. The arguments were not concluded and so when the case came up on November 9, 1966, Mr. Chetan Dass Dewan, the Deputy Advocate-General, having been taken ill, it was adjourned to November 21, 1966. On this last date Mr. Chetan Dass Dewan, the Deputy Advocate-General of Haryana, produced before the Court a statement of facts and charges with regard to either respondent. Those were considered and by an order of the same date certain minor changes were made in the same. The Deputy Advocate-General of Haryana was

assisting the Court on a notice to that effect to the Advocate-General by the Special Bench. Dua J., had already pointed out in the order of the Special Bench that the matter of contempt is not between a private party and the contemner but between the Court and the contemner. So it was the duty of the Court to look into the statements of facts and charges and to make any such changes in the same as were considered appropriate. As will appear from the order of November 21, 1966, minor changes were made. Copies of the statements of facts and charges were given to respondent 1 and also to the counsel for respondent 2. The latter wanted an opportunity to have instructions from respondent 2 for the matter of accepting service of the same. On the very day, that is to say, on November 21, 1966, respondent 1 put in another petition under section 561-A of the Code of Criminal Procedure (Criminal Miscellaneous No. 1207 of 1966) in which he reiterated that it was not possible to proceed with the case without the disposal of the preliminary matters first, that he was not aware of any subsequent directions of the Special Bench providing an occasion for the Deputy Advocate-General to come out with a fresh show-cause notice, that the many amendments suggested by me and by my learned brother, Grover, J., to the statement of facts and charges by the Deputy Advocate-General make "a Court step into 'the arena' with the consequence that a Court loses the character of a Court", that "the respectful submission of the respondents is that according to this Hon'ble Court, show-cause notice has already been served on the respondents, but it is a nullity in law as submitted by the respondents: R. P. Kapur, 21st November, 1966", that "the two previous petitions, viz., Criminal Original No. 87 of 1965 and No. 184 of 1966, two Miscellaneous petitions Nos. 1059 and 1069 of 1966, admitted as separate petitions, and the preliminary objections of the parties be disposed of first, and that the Hon'ble Court, as already prayed, be pleased to hold an inquiry into the matter on record pertaining to R. S. Narula, J., and Harbans Singh, J., as without such inquiry it cannot be ascertained whether there was fair criticism or fair belief permitted by the law of contempt or contempt of Court." The case was then adjourned to December 12, 1966, for reply of respondent 2. On December 8, 1966, respondent 2 filed her reply raising somewhat similar matters as by respondent 1 in his last-mentioned petition.

The statements of facts and charges, dated November 21, 1966, served on the respondents, are for all practical purposes exactly the same. The statements allege contempt of Court having been committed by each of the respondents on four counts. The first count refers to suit

No. 178 of 1961 between the respondents' society and the deceased petitioner, the production of the anonymous letter, Annexure 'C', on June 2, 1965, by respondent 1 in the Court of the Subordinate Judge at Karnal, with paragraphs 2 to 4 of the accompanying application, Annexure 'B', by respondent 1, and then says that "the content of the letter in so far as it states that the pressure was being exercised through Hon'ble Mr. Justice Harbans Singh and Shri R. S. Sarkaria, Registrar of this Court, upon the learned Sub-Judge obviously for the disposal of the above-mentioned suit favourable to late Shri Sher Singh, insinuates that the learned Sub-Judge was amenable to outside influence and was a reflection upon his judicial integrity and was likely to embarrass the dispensation of justice and interfere with the course thereof. In producing such a letter in the Court you committed Contempt of Court of Shri R. P. Gaind, Sub-Judge, 1st Class, Karnal, as also of Mr. Justice Harbans Singh, a Judge of this Court". As to the second count, after referring to the order of the trial Court on June 4, 1965, stating that there had been no approach to it by anybody, application by respondent 1 of June 12, 1965, for the return of the anonymous letter, Annexure 'C', with its cover, and the trial Court's order of the same date, the subsequent contempt petition, Criminal Original No. 87 of 1965, by the deceased petitioner on July 5, 1965, with the order of Narula, J., on it on July 6, 1965, and paragraphs 9 to 18 of the transfer application under section 24 of the Code of Civil Procedure made by respondent 2, through respondent 1, in the Court of the District Judge at Karnal, it says that "these allegations attribute ulterior motive and partiality to the Court of the learned Sub-Judge, 1st Class, Karnal, in the discharge of his judicial functions and scandalise it and lower its prestige and dignity in the eyes of public and further shake their confidence in the administration of justice dispensed by the said Court. In associating yourself with these allegations as an attorney of Shrimati Sheela Kapur you have thus committed contempt of the said Sub-Judge." Under count 3 there is reference to respondents' rejoinder of December 6, 1965, with Annexures I to VII, with particular reference to paras 4 to 6 of it, then to part 3 of paragraph 5 of respondents' parawise reply, dated January 4, 1966, to the same petition, para 11 of respondent 1's petition, dated December 10, 1965, for constitution of a Full Bench for hearing the petition and paras 14 and 16 of the transfer application of September 13, 1965, filed by respondent 2, through respondent 1, in the Court of the District Judge at Karnal, and then it says that "by making these allegations, taken with or without those made in the aforementioned application for transfer of the suit, you have accused or in any case sufficiently insinuated against Hon'ble Mr. Justice R. S. Narula, a Judge of this

Court, of having made the order directing issue of a notice of contempt to you on considerations extraneous to the merits of the contempt petition lodged by late Shri Sher Singh and have thus attacked and scandalised the judicial integrity of the Hon'ble Judge and thereby committed contempt of Court." Count 4 refers to the second anonymous letter, Annexure VII with the respondents' rejoinder of December 6, 1965, and then says that "the contents of this letter are a reflection upon the judicial integrity of the High Court and impair the prestige and dignity of the Court and further shake the confidence of the public in its administration of justice. By producing this letter in the Court and making it public you have committed contempt of this Court." These are the details of the statement of facts and charges on the four counts so far as respondent 1 is concerned. As stated, a similar notice with slight modification, omitting the part with which respondent 2 has not been concerned, was also served on respondent 2. After some adjournments allowed at the request of the respondents for an approach to the Supreme Court in matters arising out of those proceedings, respondent 1 filed his reply on February 13, 1967, to the statement of facts and charges incorporating four counts of his having committed contempt of Court and respondent 2 by an application of the same date adopted the stand taken by respondent 1 in his reply.

In his reply respondent 1 said that there were three show-cause notices at present on the record and that as the third show-cause notice culled out only certain parts from a series of petitions, the portions so culled out be real not only as textual part of the petition in question, but also an integral part of the entire case as it has developed from time to time in the Court of the Subordinate Judge at Karnal, in the Court of the District and Sessions Judge at Karnal, before Gurdev Singh, J., and before the Special Bench. He further pointed out that a parawise reply in view of the above was not possible, but proceeded to make his submissions on the four counts on which contempt has been alleged against him. On the first count he said that in law the dominant purpose or the intention has to be seen. The anonymous letter, Annexure 'C', was accompanied by a specific petition of June 2, 1965, in which a specific request for an inquiry was made and that any demand for an inquiry has to be supported by some reasonable grounds and further that he was possessed of several other facts, but the very fact that he chose to exercise restraint would show that he had no ulterior motive. Then he refers to the concluding part of the order, dated June 4, 1965, of the learned Subordinate Judge, and the suggestion that he may get an inquiry

conducted through other agency if he so desired, and both the Subordinate Judge and the District Judge declined to go into the matter of inquiry. On count 2 he said that the whole of the transfer application should be read and not only a few paragraphs reproduced in the statements of facts and charges, that no objection could be taken to the contents of paras 9 to 18 in the transfer application on a proper examination of the same, because in such a petition justification for grave or serious apprehension is necessary, that a transfer is always sought on allegations personal to the presiding officer and that has to be done per force, that "in spite of a very spirited and vindictive reply of the learned Sub-Judge, as is clear from a bare perusal of his reply, all the cases and not only this case pending in his Court were transferred, which would show that the learned District and Sessions Judge found force and strength in the statement of facts adduced and submissions of the then petitioner," that while no defamatory statements were made in the transfer application, any defamatory statements about the conduct of a Judge even in respect of his judicial duties do not necessarily constitute contempt of Court, and that respondent 2 and her attorney respondent 1 continued pursuing the suit in the Court of the Subordinate Judge at Karnal in spite of his having refused to make an inquiry into the contents of the letter (Annexure 'C'). With regard to count 3 he said that "the real statement, to which exception is sought to be taken, merely stated that Hon'ble Mr. Justice Narula, having been a counsel for and against the respondent, and due to other circumstances of the case, should not have entertained the contempt petition. That this statement, which is every now and then corroborated by their Lordships of the High Court, as quite a number of the Judges hail from the judiciary, and in open Court they have declined to hear cases in which they have been earlier counsel for one of the clients." He further pointed out that in spite of a telegram and an express letter by the deceased petitioner to the Subordinate Judge at Karnal that he would move the High Court immediately during the vacation, "no such step was taken till the Hon'ble Mr. Justice Narula came to the Bench as a Vacation Judge and the said contempt petition was moved immediately after that." Referring to the contents of his rejoinder petition of December 6, 1965, and parawise reply of January 4, 1966, he said that the same "would show that again there was a demand for an inquiry and an inquiry cannot be justified without a comprehensive statement of facts and allegations sought to be enquired." On the last count the stand taken by respondent 1 was that an inquiry was requested especially as the second letter (Annexure VII) gave further information and could throw light on

the first letter (Annexure 'C'), and that there was no motive in this demand for an inquiry to cast any 'reflection upon the judicial integrity of the High Court', which, as a collective body is distinct from the integrity of a Single Judge. In sub-paragraph (c) of para III of this reply the respondent said that "it is further submitted that an inquiry in its scope was not calculated to be against a Judge, but could equally be against the actions of Sher Singh, the defendant in the suit, or even the petitioner thereon." He pointed out that the request for inquiry was reasonable.

The matter was then argued by respondent 1 on his own behalf as also on behalf of respondent 2. On February 14, 1967, he made an application for summoning of witnesses, and in paragraph 4 of it he said, after referring to *Bathina Ramakrishna Reddy* v. *The State of Madras* (1) at page 434, and *Brahma Prakash* v. *State of Uttar Pradesh* (2), at page 13, that "that being the state of law, an inquiry is essential to find out whether the allegations or imputations were true or not and were for public good or not." In paragraph 6 of this application he listed these witnesses for being summoned—

(a) Hon'ble Mr. Justice R. S. Narula,

(b) Hon'ble Mr. Justice Harbans Singh,

(c) Shri R. P. Gaind, Subordinate Judge of Karnal,

(d) Shri Chetan Dass Dewan, Deputy Advocate-General, Haryana,

(e) Shri Mehtab Singh Bakhshi, an Advocate of Delhi,

(f) Shri Kartar Singh,

(g) Shri Ram Lal, and

(h) Shri Pannu Ram.

It will be seen that of the last three, the first was a witness for the deceased petitioner in the suit between the parties in the Court of the Subordinate Judge, 1st class at Karnal, about the second, the

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(1) (1952) 3 S.C.R. 425.

(2) A.I.R. 1954 S.C. 10.

deceased petitioner said that after an application under section 476 of the Code of Criminal Procedure by respondent 1, he refused to appear for him in the suit, and in fact there is a copy of his statement on the record which shows that later he appeared for the respondents' society in that suit, and the third was also a witness, but it is not quite clear whether he was or was not examined in the suit. The first two witnesses are two Judges of this Court, the third is a Subordinate Judge at Karnal who was trying the suit between the deceased petitioner and the respondents' society and the fifth was a counsel for the deceased petitioner in that suit. The fourth witness is the Deputy Advocate-General of Haryana who has been assisting this Court in these proceedings under an order of the Court to that effect addressed to the Advocate-General. The application apparently does not disclose in what connection each one of those witnesses was sought to be summoned in these proceedings. On February 17, 1967, respondent 1 then on the matter of the production of evidence in these proceedings made this application—

> "The proposed evidence on behalf of the respondents will be on the following aspects:—
>
> 1. That the maintenance of public confidence in the integrity of Courts being the primary purpose of contempt proceedings, the respondents wish to lead evidence by putting in responsible public men whether the acts impaired that confidence or were calculated to impair it;
>
> 2. That the second ingredient of contempt being substantial interference or substantial tendency to interfere with the course of justice, which are questions of fact, the respondents wish to prove that there was no such effect or tendency; and
>
> 3. That each ingredient of the four charges in the show-cause notice is contested and will be proved false by concrete evidence."

There are a number of preliminary objections raised by respondent 1 on behalf of the respondents and those may be considered first. The first objection is that arguments in these proceedings cannot possibly fruitfully proceed when the original petitioner, Sher Singh, is dead, but a complete answer to this was given by Dua, J., in the Special Bench order of October 13, 1966. In this respect what

has been pressed by respondent 1 is that while in his first contempt petition (Criminal Original No. 87 of 1965) the deceased petitioner had said, in reference to the production of the anonymous letter Annexure 'C', that "this application was a clever device adopted by respondent 1 personally and also as representing the society with a view to prejudice the Court against the petitioner", Mr. Chetan Das Dewan, Deputy Advocate-General of Haryana, in his compendious application has given a twist to this by saying in paragraph 7 that "apprehending that Shri R. P. Kapur, respondent 1, had manoeuvred the letter above-mentioned and actually tried to influence the Court and impede the dispensation of justice, Shri Sher Singh filed an application, dated 5th July, 1965, Criminal Original No. 87 of 1965, for contempt of Court against the respondents ..". It has been said that what was previously based on the knowledge of the deceased petitioner is no longer so and as the petitioner has died and his knowledge in that respect cannot be established, the whole basis of the original petition has gone. The learned Deputy Advocate-General has pointed out that the question who wrote the letter to respondent 1 is entirely immaterial. What is material, according to him, is the production of that letter by respondent 1 in Court. In this I consider that the approach of the learned Deputy Advocate-General is correct. So, there is no substance in this contention on the side of the respondents. Respondent 1 takes the consequences of producing the anonymous letter in the Court and he cannot shield himself behind this that somebody else, unknown, wrote this letter to him. In *in re. Subrahmanyan* (3), it was held by a Full Bench of the Lahore High Court that in contempt of Court proceedings the fact that the item alleged to be contempt merely consists of quotations from other source would afford no defence if the article amounted to contempt because a person may be as much guilty of contempt by quoting from some source as writing the matter himself. In this respect it has further been urged by respondent 1 that the fresh compendious petition by the learned Deputy Advocate-General is not arguable, but it is not quite clear how that is so. That petition merely brings together at one place all the allegations spread over the record of the case connected with and arising out of the two petitions made by the deceased petitioner under section 3 of Act 32 of 1952. There is nothing new in that petition.

The second objection urged by respondent 1 has been that since the death of the original petitioner there is nobody who can take the

(3) A.I.R. 1943 Lah. 329 (F.B.).

consequences flowing from the fresh compendious petition filed by the learned Deputy Advocate-General or the show-cause notice served on the respondents thereafter, but this argument was urged before the previous Special Bench and was negatived in its order of October 13, 1966.

Another objection of respondent 1 has been that the compendious petition filed by Mr. Chetan Dass Dewan, the Deputy Advocate-General, is not supported by any affidavit, but, in the circumstances of the case, since that petition proceeds only to collate the facts already available on the record from the documents also already available, no affidavit is necessary. Same view prevailed with a Division Bench of the Allahabad High Court in *M. G. Qadir* v. *Kesri Narain Jaitly* (4). In this connection it has also been argued by respondent 1 that Mr. Chetan Dass Dewan, Deputy Advocate-General, has no *locus standi* to make that compendious petition filed on October 18, 1966, because he had no authority to make that petition. The argument is misconceived because on a notice issued to the Advocate-General to assist the Court, the learned Deputy Advocate-General has been assisting the Court and he made this application in those circumstances. It is the Court thtt has directed him to assist it and he was not required to have any authority for that from anybody else.

The fourth objection by respondent 1 has been that at the last stage when this Special Bench started hearing the case it could not proceed against the respondents *suo moto*. This again is misconceived because Dua, J., in the Special Bench order of October 13, 1966, pointed out that in contempt proceedings it is a matter between the Court and the contemner. So it is the Court which has to proceed with the present proceedings and to see if there is any material which establishes a charge of contempt against any of the two respondents. Respondent 1 has pressed that on the first contempt petition by the deceased petitioner, the respondents were asked to explain their position and so they had a show-cause notice of that petition, afterwards when the second contempt petition was filed by the deceased respondent, Gurdev Singh, J., merely filed the papers, and so by that order of Gurdev Singh, J., the matter is concluded and nothing connected with the second contempt petition by the deceased petitioner can now be considered. The Special Bench on October 13, 1966, had this whole matter before it and, on the learned Deputy Advocate-General

(4) A.I.R. 1945 Allah. 67.

pointing out that in connection with the documents filed with the second contempt petition by the deceased petitioner the respondents had committed further contempt of the Court, it permitted him to state the case at one place by making an application and that is how he made the application of October 18, 1966. After that respondent I has repeatedly in his various petitions and applications and during the arguments pressed that definite and specific statement of charges must be given to the respondents to enable them to take proper defence. It was in the wake of that that what is in full detail stated in the compendious petition of the learned Deputy Advocate-General filed on October 18, 1966, that was reduced to the form of statements of facts and charges on November 21, 1966, and each such statement was given to each one of the two respondents. There is no new case. What is stated in the compendious petition of the learned Deputy Advocate-General and the statements of facts and charges on November 21, 1966, is exactly the same thing, and it emerges out of the two contempt petitions filed by the deceased petitioner and the replies given to the same by the respondents at various times. The whole thing is based on documents available on the record. It has been said by respondent 1 that the statement of facts and charges of November 21, 1966, is a third show-cause notice to the respondents. But this is not the correct way of looking at that. The whole material has existed on the record before the learned Deputy Advocate-General on the asking of the Court came to assist it. He put it together in the petition filed on October 18, 1966. On the insistence of respondent 1 that has been reduced to the formal form of statement of facts and charges on November 21, 1966, and given to each one of the respondents.

There has been a fifth objection by respondent 1 that the preliminary matters or rather the first contempt petition of the deceased petitioner should be disposed of first and later it was said that the compendious petition by the learned Deputy Advocate-General filed on October 18, 1966, should also be disposed of first. This the earlier Special Bench refused by its order of October 13, 1966, and we also refused by subsequent orders. Then respondent 1 has pressed that by the decision in that manner a question of res-judicata might have arisen to favour the respondents. He considers that if the first contempt petition of the deceased petitioner and the compendious petition by the learned Deputy Advocate-General filed on October 18, 1966, were dismissed any further proceedings will give the respondents a defence of res-judicata that no further proceedings in contempt can be taken against them. It has already been explained

that the whole thing is one matter based on the two original contempt petitions filed by the deceased petitioner, the documents with the same, the replies of the respondents and the documents produced by them, and while in the beginning all those documents were lying unarranged on the file, the compendious petition of the learned Deputy Advocate-General has merely stated them in an arranged form and the subsequent statements of facts and charges of November 21, 1966, merely give the same material a formal shape. So no question of res-judicata could possibly arise in a matter like this. The Special Bench had, on October 13, 1966, dismissed the argument on the side of the respondents that the first contempt petition of the deceased petitioner should fail because of his death. So this argument is no longer open to the respondents. In this respect it has also been pointed out by respondent 1 that in the midst of proceedings this Court cannot issue a fresh show-cause notice to the respondents, but, as explained, this is not so. The whole material has been available on the record to the knowledge of the respondents, it was placed before the Court in an arranged form in the compendious petition of the Deputy Advocate-General, and it has been reduced to a formal form in the statements of facts and charges on November 21, 1966.

The sixth objection of respondent 1 was that the respondents should be given specific charges alleging contempt of Court so hat they may have proper defence and that was exactly done on November 21, 1966, whereupon respondent 1 has turned round and contended that that is a third show-cause notice which the Court could not serve on the respondents in the midst of the proceedings. It has already been shown that this argument is entirely without basis.

The seventh objection by respondent 1 has been that the present Special Bench has been constituted, or for that matter even the previous Special Bench was constituted, not for the disposal of the contempt proceedings against the respondents arising out of the two contempt proceedings filed by the deceased respondent but to decide respondent 1's claim for some kind of an inquiry which he has been pressing in this respect, he says, from the very beginning starting from the Court of the Subordinate Judge, 1st Class at Karnal, into what are the contents of the anonymous letter Annexure 'C'. Respondent 1 in his petition of December 10, 1965, prayed for reference of the matter to a larger Bench and in the respondents' parawise reply of January 4, 1966, it is stated at the end that "the contempt petition be dismissed and if the Hon'ble Court is inclined to take further notice of it, the Hon'ble Single Judge be pleased to refer it to

a Bench of three Judges as the conduct of two Judges would be involved as submitted in the petition, dated 10th December, 1965." It is on these petitions that the learned Judge made reference to a larger Bench and it has already been stated that the reference is of the contempt proceedings against the respondents to a larger Bench and not of anything else as respondent 1 seems to think. So nothing turns on this objection.

The last preliminary objection by respondent 1 is that the learned Deputy Advocate-General could only exhibit information as in his compendious petition of October 18, 1966, with the sanction of the State Government according to section 194(2) (a) of the Code of Criminal Procedure, and that no such sanction has been obtained by him in this case. But it was held by their Lordships of the Supreme Court *in Sukhdev Singh Sodhi* v. *The Chief Justice and Judges of the Pepsu High Court* (5) that the Code of Criminal Procedure does not apply to contempt proceedings, Respondent 1 has said that that is so, but section 194 of the Code of Criminal Procedure applies to the learned Deputy Advocate-General. It has already been stated that the Deputy Advocate-General has been appearing in this case to assist the Court and there is no question of application of section 194 of the Code of Criminal Procedure to him in these proceedings.

There is then the argument of respondent 1 that the summary procedure provided in contempt matters in this Court is discriminatory inasmuch as it is a procedure entirely different from the procedure for the trial of a criminal offence under the Code of Criminal Procedure and thus it is violative of Article 14 of the Constitution. He has referred to section 3(1) of Act 32 of 1952 that the High Court has to follow 'the same procedure and practice' in the matter of contempt proceedings, which, as has been pointed out by their Lordships in *Sukhdev Singh Sodhi's case,* is a summary procedure and has been followed under the law throughout and continues to be so under Act 32 of 1952. Article 215 of the Constitution provides that "Every High Court shall be a Court of Record and shall have all the powers of such a Court including the power to punish for contempt of itself. In a way even the Constitution has recognised the powers of a Court of record to punish for contempt of Court summarily as has always been the case. It is a peculiar type of an offence which is a class by itself and, therefore, it has a procedure for itself. The classification is intelligible as also the classification has rational relation to the object in that in the matter

(5) (1954) 5 S.C.R. 454.

of contempt the punishment is awarded summarily for that is done not with the object of providing protection to individual Judges but in the interest of administration of justice so that the public confidence in the impartiality of the Judges be not shaken. It is this object with which the proceedings in contempt of Court have been classified as proceedings of a class by themselves with a procedure of their own. So the procedure provided for the summary trial of the contempt of Court is not violative of Article 14.

Another argument that has been urged by respondent 1 is that that procedure is violative of Article 19 (1) (a) as affecting the fundamental right of freedom of speech and expression, but there is sub-article (2) of Article 19 which says that "Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause ..... in relation to contempt of Court". Respondent 1 has urged that the summary procedure for the offence of contempt of Court is not a reasonable restriction because it deprives the contemner of effective right to defend himself as is available in the case of other offences, but it has already been pointed out that this is an offence of a class by itself and the procedure for it is provided in the public interest for the protection of the public so that they may not lose confidence in the Courts. On this consideration it cannot be said that the procedure provided for the trial of contempt of Court in a summary way is an unreasonable restriction, as has been urged by respondent 1. In *State* v. *Brahma Prakash* (6), a similar argument was negatived by the learned Judges. This case went in appeal to the Supreme Court and is reported as *Brahma Prakash Sharma* v. *The State of Uttar Pradesh* (7) but the appellant in that case did not even urge this argument before their Lordships. Same view has prevailed in *Bijoyananda Patnaik* v. *Balakrushna Kar* (8), *Rai Harnarain Singh Sheoji Singh* v. *Gumani Ram Arya* (9), *The Advocate-General, Andhra Pradesh* v. *Shri D. Seshagiri Rao* (10), *and in the matter of Basanta Chandra Ghosh, Advocate, Patna* (11). Thus there is no force in this argument of respondent 1 either.

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(6) A.I.R. 1950 Allah. 556.
(7) A.I.R. 1954 S.C. 10.
(8) A.I.R. 1953 Orissa 249.
(9) I.L.R. 1958 Punj. 1272=A.I.R. 1958 Punj. 273.
(10) (1959) Andh Prad. 1282.
(11) A.I.R. 1960 Pat. 430.

It has then been contended by respondent 1 that this Court is not competent to proceed with these contempt proceedings. The reason given is that in section 2 of Act 32 of 1952 'High Court' is defined to mean 'the High Court for a State', and the common High Court of Punjab and Haryana is not a High Court for the State of Haryana, in which the court of the Subordinate Judge, 1st Class at Karnal is situate, or for that matter not a High Court for the Union Territory of Chandigarh. In this respect reference has been made to section 89 of the Punjab Reorganisation Act, 1966 (Act 31 of 1966), which gives power to the State of Punjab or Haryana or to the Union Territory of Chandigarh to make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and it has been said by the respondents that no such adaptation has been made in relation to section 2 of Act 32 of 1952, which is correct. However, no such adaptation has really been necessary because this High Court is a High Court for the State of Punjab, it is a High Court for the State of Haryana, and it is a High Court for the Union Territory of Chandigarh, and thus it is within the definition of the expression 'High Court' in section 2 of Act 32 of 1952. And, in any case, in view of section 13(2) of the General Clauses Act, 1897 (Act 10 of 1897), saying that 'the words in the singular shall include the plural, and *vice versa*', the words 'a State' in section 2 of Act 32 of 1952 shall be read as 'States'. So this argument is without substance.

Of the four counts in regard to which contempt of Court is alleged to have been committed by the respondents, count 2 refers to paras 9 to 18 of the transfer application made on September 13, 1965, by respondent 2 through respondent 1, in the Court of the District Judge at Karnal to obtain transfer of the case between the respondents' society and the deceased petitioner to some other Court. Briefly, the substance of what is stated in those paragraphs, which is objectionable, is that the Subordinate Judge (Mr. R. P. Gaind) by his order of June 4, 1965, Annexure IV to the rejoinder of the respondents, in saying that no approach had been made to him by anybody in the case between the parties and by refusing to hold inquiry into the anonymous letter, Annexure 'C', created serious apprehension in the minds of the respondents as to his motive in not ordering probe into the alleged conduct of the petitioner (defendant), and that the return of the anonymous letter, Annexure 'C', was delayed for nearly three to four weeks, thus, according to the respondents, giving security to the petitioner (defendant) by what has been

described by them as a collusive act of the Subordinate Judge which enabled him (the petitioner) to file his first contempt petition in the High Court on his own choosing of time and form. The contempt of Court imputed to the respondents in this respect, so far as the Court of the Subordinate Judge, Mr. R. P. Gaind, is concerned, is broadly on the basis of imputation of motive to him in not ordering probe into the contents of Annexure 'C' and in the delay of the return of that letter, and the alleged collusive act by him in this respect to enable the petitioner to file the contempt petition. These allegations were made by the respondents in the transfer application under section 24 of the Code of Civil Procedure as stated. The respondents have explained that in such an application, in the nature of things, allegations personal to a presiding judicial officer have to be alleged so as to be a ground for transfer. And it is said that the same were made by the respondents in good faith having regard to the circumstances, though it becomes clear from the comments of Mr. R. P. Gaind, Subordinate Judge, given on the transfer application, a substantial part of which has already been reproduced above, that he was not responsible for the delay and had no motive in not ordering the inquiry as he was not approached, and that it was respondent 1, who was responsible for delay. In *State of Madhya Pradesh* v. *Ravashankar* (12), at pages 1382 and 1383, there is reference to the matter of a transfer application and allegations therein against a judicial officer and the intention with which the allegations may have been made. But the consideration is in relation to the question of intention to offer insult under section 228 of the Penal Code and the discussion is confined to that aspect only. So those observations are of no assistance in the present case. Although the facts in *M. Y. Shareef* v. *Hon'ble Judges of the High Court of Nagpur* (13) are not parallel to the facts of the present case, but in that case their Lordships did take into consideration the mistaken view of the contemners of their rights and duties in subscribing to the transfer application by their client making aspersions against the judges, which were said to amount to contempt of Court. The respondents have obviously taken a mistaken and a misconceived view of the facts on the basis of which they have drawn unjustified inferences, as appears clear from the comments of the learned trial Judge on the state of facts in this behalf, in regard to the manner in which the learned Subordinate Judge handled the question of the application of respondent 1, accompanying the anonymous letter, Annexure 'C'. So that

(12) (1959) S.C.R. 1367.
(13) (1955) 1 S.C.R. 757.

it becomes doubtful whether with such mistaken and misconceived approach the offence of contempt of Court in this respect can be said to have been committed by the respondents substantially and, in any case, it amounts to no more than a technical contempt of which the Court does not take notice. This, however, does not mean that merely because allegations amounting to contempt of Court have been made in a transfer petition no action will be taken in a proper case. It depends upon the facts and circumstances of a case whether action is called for and an instance of such a case is *Ravashankar's case*. The substance of the charge under count 3 is an indirect imputation of extraneous consideration on which Narula, J. made the order of July 6, 1965, on the first contempt petition of the petitioner, but this is shrouded in a jumble of facts and does not come out very clearly. Respondent 1 in his replies of December 6, 1965, and January 3, 1966, refers to relationship between Harbans Singh, J., and Narula, J., the fact of Harbans Singh, J.'s son having business connections with the petitioner and also the fact of Narula, J., before his coming to the Bench, having been counsel for or against the respondents. In his application of December 10, 1965, respondent 1, in addition, refers to some kind of negotiations said to have been carried on for the letting of the Delhi house of Narula, J., which respondent 1, alleges that he refused to take on rent. After referring to all these allegations respondent 1 has said that Narula, J. should not have entertained the contempt petition of the petitioner on July 6, 1965. There is then reference to paragraphs 14 and 16 from the transfer application of the respondents made on September 13, 1965, in which the respondents said that the deceased petitioner (defendant) got an order from Narula, J., on his contempt petition, and then there is reference to the delay in the return of the anonymous letter, Annexure 'C', by the trial Judge with an allegation of his thus being a party to a collusive act to enable the deceased petitioner to file the contempt petition in the High Court on his own choosing of time and form. The respondents have explained that by what is stated in those applications all that they were pressing was that in the circumstances Narula, J. should not have passed an order on the contempt petition of the petitioner. The contents of those applications largely touch upon the conduct of the deceased petitioner (defendant) and it can only be said in an indirect way that by saying that the petitioner got an order on his contempt petition in the High Court on his own choosing of time and form, they have in some way hinted upon Narula, J., having made the order on an extraneous consideration, which does not mean that the learned Judge did so. This, however, does not quite clearly come out, as has been stated, and

as the contempt proceedings are quasi-criminal proceedings, so in this respect the respondents are entitled to the benefit of doubt. So the contempt proceedings against both the respondents on counts 2 and 3 are, in the circumstances, dropped.

In regard to count 1 referring to the anonymous letter, Annexure 'C', with the application, Annexure, 'B', by respondent 1, it has been clearly stated by respondent 1, in paragraph 19 of the respondents' rejoinder, dated December 6, 1965, that he "never received any instructions from respondent 2 to file the petition at Annexure 'B' or the consequential petitions". So respondent 2 has no responsibility for that act of respondent 1. Similarly Annexure VII, a copy of the second anonymous letter, was filed with the same rejoinder of the respondents, but the rejoinder is signed by respondent 1, for himself and for respondent 2. It follows that the responsibility of filing of Annexure VII in this Court cannot directly be referred to respondent 2. In the circumstances, the contempt proceedings are dropped against respondent 2, even in regard to counts 1 and 4.

On count 1, the learned Deputy Advocate-General having regard to the observations of their Lordships of the Supreme Court in the cases of *Bathina Ramakrishna Reddy and Brahma Prakash Sharma* has said that so far as that count refers to Harbans Singh, J., it cannot be supported. There is under this count, however, the question of the contempt of Court of the Court of Mr. R. P. Gaind, Subordinate Judge, 1st Class at Karnal, having been committed by the production of the anonymous letter, Annexure 'C', with the application, Annexure 'B' by respondent 1 on June 2, 1965. In the anonymous letter, Annexure 'C', after reference to two witnesses named, Kartar Singh and Pannu Ram as being interested in the deceased petitioner, the letter says that Sarkaria Sahib and Harbans Singh were putting pressure on the Subordinate Judge, and the contents of the accompanying application, Annexure 'B', make it clear, according to respondent 1, that the reference to those names in the anonymous letter is to Harbans Singh, J., and the Registrar of this Court, Mr. Ranjit Singh Sarkaria. When the contents of the anonymous letter and the accompanying application are considered together, it is apparent on the face of those documents that the production of the same was calculated to embarrass the trial Judge and also to affect his mind and to deflect him from the strict performance of his duties in the trial of the suit between the respondents' society and the deceased petitioner. There is a clear allegation in the documents that the Subordinate Judge was being approached by one Judge

of this Court and the Registrar in connection with the case between the respondents' society and the deceased petitioner. This apparently was bound to affect the mind of the Subordinate Judge because he is an officer subordinate to the High Court and then if in this manner an imputation is made in regard to a Judge of the High Court as interfering with the administration of justice in a Subordinate Court, the Subordinate Judge would not know what he was to expect next even so far as he himself was concerned. It is thus patent that by the production of that anonymous letter with the application not only was the mind of the Subordinate Judge likely to be affected by it, the production of those documents was calculated to embarrass him and was an attempt to influence him as a Judge in the cause between the respondents' society and the deceased petitioner. It created an atmosphere calculated to make it difficult for the trial Judge to proceed with the trial of the case. It is settled that so far as the offence of contempt of Court is concerned, the essence of the matter is the tendency to interfere with the due course of justice. Any act or publication calculated to create an atmosphere in which administration of justice would be difficult [*In re Subrahmanyan* (3) at page 335], or which is an attempt to influence a Judge [*Carl-Zeiss-Stiftung* v. *Rayner and Keeler Ltd.* (14) at page 293]; or which might impede the due administration of justice [*Arthur Reginald Perera* v. *The King* (15) at page 488], or which is an attempt to impair the administration of justice [*Andre Paul Terence Ambard* v. The *Attorney-General of Trinidad and Tobago* (16) at page 146], or which is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties (*Brahma Prakash Sharma's case* at page 14) or which would affect the mind of the Judge and would deflect him from the strict performance of his duties as such (*Brahma Parkash Sharma's case* at page 15, and *In re. Hira Lal Dixit* (17) at page 685) is contempt of Court. In the present case the production of the anonymous letter with the application by respondent 1 was not only an attempt to influence the Judge in the trial of the suit before him but it was calculated to embarrass him in and deflect him from the strict performance of his duties as a Judge in the cause. It has been contended by respondent 1 that the fact is that the Subordinate Judge was not at all embarrassed or affected by

(14) (1960) 3 All. E.R. 289.
(15) (1951) A.C. 482.
(16) A.I.R. 1936 P.C. 141.
(17) (1955) 1 S.C.R. 677.

the production of those documents, a consideration which is irrelevant in these proceedings, because what has to be seen is whether what is done is likely or has tendency or is calculated to interfere with the due course of administration of justice, and that is to maintain the public confidence in the administration of justice so that the impartiality of the Judges is not impaired. The production of those documents, as stated, created an atmosphere in the Court of the trial Judge in which due and proper administration of justice was rendered difficult. It has further been urged by respondent 1 that all the surrounding facts and circumstances under which those documents were produced have to be taken into consideration as held by their Lordships in *Brahma Prakash Sharma's case*, at page 15. What then are the circumstances in which those documents were produced in Court ? In the transfer application of September 13, 1965, respondent 2, through respondent 1, said that the suit between the respondents' society and the deceased petitioner had been instituted in June, 1961, but it had not reached any conclusive stage, so tired of the prevaricating attitude (which possibly may refer to the deceased petitioner, but the matter is not clear), the respondents' society decided to appoint respondent 1, a director of it, as its attorney to conduct the suit. The trial Judge in his comments on the allegations in the transfer application, the details of which have already been reproduced above, said that the parties were at daggers drawn and wanted to use the litigation between them for personal vendetta, that the attorney for the plaintiff society said that he was not interested in the suit so much as in the prosecution of the defendant (deceased petitioner), that the case was being conducted by a very senior and able Advocate from Ambala but just to have a personal battle of wits, the attorney, respondent 1, entered the field to replace the counsel, and that perhaps by his personal influence respondent 1 expected to dictate judicial orders of his own choice but that was not possible in civil courts. In his reply to the transfer application, the deceased petitioner in paragraph 2 said that "the applicant (respondent 1) has mentioned various facts which are absolutely false and others are prevaricated. Although the petitioner, Mr. R. P. Kapur, is a very high I.C.S. officer, he assumes the role of a practising lawyer, which unfortunately he is not, and thereby he assumes things not permitted by law." The reply further goes on to say that "Mr. Kapur came in first in the role of a counsel and submitted the so-called memo of appearance on 22nd April, 1965, couched in language unworthy of an officer and which itself was a contempt of Court. When he could not be permitted to appear like that he brought in the power of attorney

signed by his wife. * * * * * *
The result of Mr. Kapur's entry on the scene has only been the innate prolongation of the proceedings resulting only from the fact that he could not judge the relevancy or irrelevancy of his questions." After referring to the filing of the documents now under consideration the reply goes on, at another place, to say—"Mr. Kapur had done this only to overawe the Sub-Judge and the counsel and the witnesses which he had previously done by making an application under section 476, Criminal Procedure Code, on 25th April, 1962, alleging fabrication of documents, the genuineness of which he himself proved by producing confirmatory document from his own possession and putting the same to Shri Kartar Singh witness in his cross-examination", and at a later stage in the reply this is what was said—"Mr. Kapur was repeating various questions to which answers had already been given and the clarification of which was on the record. As he was not a practising lawyer, Mr. Kapur could not realise that there is a certain procedure only in examination and cross-examination of witnesses." The only other matter that may be added to this is that the learned District Judge of Karnal, considering the transfer application, said in his order that "it seems that the relations between the plaintiff's attorney (respondent 1) and Shri Sher Singh defendant (deceased petitioner) in the case are strained and that had made the conduct of the case in the Court of the Sub-Judge difficult at times. The Sub-Judge now strongly feels unhappy about this and seems to think, as his comments indicate, that the plaintiff's attorney was mainly at fault in the matter." When all these matters are taken into consideration together, it becomes clear that the entry of respondent 1 on the scene on the side of the respondents' society, as an attorney for the society to conduct the case of the plaintiff, not only created a tense atmosphere in the trial but the learned trial Judge was left in no doubt that what respondent 1 wanted was the prosecution of the deceased petitioner with not so much interest in the suit itself. It also comes out from the comments of the trial Judge that he did not succumb to the overbearing attitude of respondent 1 during the trial of the suit. It was in that atmosphere that the anonymous letter with the application was produced in the trial Court. These are the surrounding facts and circumstances in which those documents were produced, and, if anything, they support the conclusion that the object in the production of those documents was to influence the Judge and to impede the course of justice and it was calculated to embarrass the Judge. The fact that the Judge did not succumb to this attempt is, as I have already said, entirely besides the point. From the day those

documents were produced by respondent 1 to the last day of his arguments in these proceedings there has been one theme which has run persistently and constantly and that is the position taken by respondent 1 that his main and dominant object in the production of the anonymous letter in the Court of the trial Judge was to have an inquiry and not to interfere with the due course of justice. In paragraph 10 of his application of December 10, 1965, he refers to his having had enough of Court proceedings in earlier cases in which he had been involved. With his experience he could not thus reach a conclusion that a trial Judge, as the First Class Subordinate Judge at Karnal, could order an inquiry into the allegations in regard to the conduct of a Judge of this Court. He says in his application for the return of those documents, which he made on June 12, 1965, that he was conscious of his right to approach the Vigilance Commission direct, but he should know very well that the Vigilance Commission can have no possible jurisdiction in so far as a Judge of this Court is concerned, for in his various petitions he has repeatedly referred to the provisions of the Constitution on the question of action that can be taken against a Judge on account of misbehaviour, and in fact in his application of October 18, 1966, he even refers to Article 124 of the Constitution in this respect. The Vigiliance Commissioner would have no jurisdiction to enter upon any such inquiry. At the hearing in these proceedings respondent 1 said that the Subordinate Judge could well have forwarded the matter of inquiry to the Registrar of this Court, who, being himself named in the anonymous letter, would have put up the matter before either the Administration Judge or the Chief Justice, but he seems to forget that no Judge of this Court, including the Chief Justice, can enter upon any inquiry in so far as a Judge of this Court is concerned. The reference to the provisions of the Constitution in his various petitions leaves no manner of doubt that respondent 1 would not have been unaware of this position and he has not been. In the circumstances, inference is irresistible that he produced those documents deliberately in the trial Court not with the object of having any inquiry but with the object of influencing the trial Judge in the course of the trial of the cause. Respondent 1 has kept this smoke screen of an inquiry as a shield before him throughout and he feels that with that shield in front of him he can commit contempt of Court with impunity in the manner of producing a document of the type as the anonymous letter, Annexure 'C', in this case with the accompanying application, Annexure 'B', during the trial of the suit in which he was an attorney for the plaintiff-society of which the obvious and the patent tendency is what has already been described in detail above. Having

produced the anonymous letter, Annexure 'C' in the Court, in the prayer paragraph of his application, Annexure 'B' respondent 1 said that "in the interest of purity of administration and especially the judicial system, the Vigilance Department or a suitable high-powered agency may be asked to inquire into the matter." The trial Judge could not inquire into a matter in which a Judge of this Court had been brought in, nor could he order an inquiry by any other agency. This is apart from this that the prayer has been worded in a vague and a general way and not in a specific manner. Why this was done has to be considered in the circumstances in which the documents were produced. If in fact the object was an inquiry into the contents of the anonymous letter, respondent 1 having received that letter on May 18, would not have waited for its production till June 2, 1965, when according to the deceased petitioner, in between, there were two hearings of the suit. It has not been explained why the production was delayed in this manner, except on this clear inference that respondent 1 produced it when he thought the atmosphere in the Court would be more suitable to his approach in the matter. When the trial Judge made an order on June 4, 1965, saying that he had not been approached, respondent 1 applied for the return of the document and while respondent 1 says it was the Subordinate Judge who delayed the return of the document, it is clear from the comments of the Subordinate Judge on the transfer application that he was not to blame for that. But what is more significant is that in the transfer application respondent 1, for respondent 2, has said that he was surprised by the trial Judge refusing to hold an inquiry. This is an extraordinary statement because once the Judge had categorically said that he had not been approached, there was nothing more to be done in the matter so far as he was concerned. Respondent 1 has tried to emphasise the last part of the order of the trial Judge that the latter said that respondent 1 can have further inquiry from the proper authority if he was not satisfied, but nothing turns on this because even if no such thing was stated by the trial Judge, nothing stopped respondent 1 to proceed in his own way. After that respondent 1 made every effort to get the document back and in fact in the transfer application insinuated collusion by the trial Judge with the deceased petitioner in delaying the return of the document to enable the petitioner to file the contempt petition, and this is clear indication that respondent 1 realised the importance of the document and, not only that, also the importance of getting the document back. And that was why the deceased petitioner's counsel was making frantic efforts to stop the return of the document because he thought that the same might never see the light of the day. If the main object of

respondent 1 was an inquiry into the contents of the anonymous letter, what stopped him to approach the proper authority under the Constitution for an inquiry ? At the hearing the respondent said that he had not the original with him, but surely he cannot say so with his experience for he could have made the application with a copy and a note on the application that the original was in a Court of law. In paragraph 9 of the transfer application the reference was to a probe into the alleged conduct of the defendant, that is to say, the deceased petitioner. In the prayer clause of their parawise reply of January 4, 1966, the respondent said that the conduct of two Judges was involved. Respondent 1 in para 9 of his reply of October 24, 1966, again referred to this matter of inquiry and said that the conduct of two Judges was involved and an inquiry by a larger Bench was called for, and, not only this, in paragraph 10, he said that "two learned Judges (Harbans Singh and Narula, JJ.) committed contempt of Court". In paragraph 13 of his application of November 21, 1966, under section 561-A of the Code of Criminal Procedure (Criminal Miscellanous No. 1,207 of 1966), respondent 1 said that this Court "be pleased to hold an inquiry into the material on the record pertaining to Narula, J. and Harbans Singh, J. as without such inquiry it cannot be ascertained whether there was fair criticism or fair belief permitted by the law of contempt of Court". However, in his final reply of February 13, 1967, in paragraph 3(c) with regard to merits he said that "It is further submitted that an inquiry in its scope was not calculated to be against a Judge but could equally be against the actions of Sher Singh, the defendant in the suit or even the petitioner therein". These are the various stands that respondent 1 has been taking in regard to the nature and scope of the inquiry upon which he has been basing his defence throughout, obviously in anticipation of proceedings of the type as these. During the arguments in these proceedings respondent 1 said that he wanted investigation into the conduct of the deceased petitioner but not only that he also wanted an inquiry into the ramification of the anonymous letter and into the conduct of the deceased petitioner, the Judge named, the Registrar, respondent 1, himself and the author of the letter. Apparently it seems that respondent 1 is not quite clear what he wants. He wants to have some kind of a rambling inquiry into the anonymous letter, Annexure 'C', but, as has been shown, at least the circumstances make it cear that as a Judge of this Court was involved, respondent 1 cannot be heard to say that he did not know that the trial Judge could do nothing in the matter except to make his own position clear, which he in fact did. It is evident that the main and dominant purpose of the production of this document in the trial Court on June 2, 1965, was not any

kind of inquiry but to influence and embarrass the Judge in the trial of the cause and to affect and deflect his mind from due performance of his duties, and to interfere with due course of justice. The act of the respondent was calculated to have those effects.

In this respect respondent 1 has stressed that he is entitled to an opportunity to produce evidence obviously in justification of his conduct in the production of the document in the trial Court. In paragraph 9 of his Criminal Miscellaneous Petition No. 1059 of 1966, made under section 561-A of the Code of Criminal Procedure, on October 18, 1966, respondent 1, said that he had a right to adduce evidence and to file an affidavit and that he would like to cross-examine the deceased petitioner with respect to the veracity of his knowledge as claimed in the affidavit in support of the contempt petition. a claim for evidence at that stage was limited in this manner. During the hearing of the arguments respondent 1 made an application for summoning of eight witnesses, two of whom are Judges of this Court, the third and the fourth are respectively, the trial Judge and the Deputy Advocate-General, the fifth was a counsel for the deceased petitioner in the trial Court, and the remaining three were witnesses or were intended to be witnesses at the trial. It has not been explained in what manner any one of those persons could throw any light in regard to the conduct and the object of respondent 1 in producing the anonymous letter with the accompanying application in the trial Court on June 2, 1965. On the last day of the hearing, on February 17, 1967, respondent 1 made an application which has already been reproduced above in full. The substance of the application has been that the respondent wanted to lead evidence to show whether or not the production of the anonymous letter, Annexure 'C', with the application, Annexure 'B', was calculated or likely to impair confidence in the trial Court. He said in the application that he wanted to examine responsible public men to prove whether those documents were calculated to interfere with the course of justice in a substantial manner. During the arguments he said he wanted to examine some Advocates of Karnal that the production of those documents had not the tendency or was not calculated to interfere with the course of justice in embarrassing the trial Judge in the trial of the cause between the respondents' society and the deceased petitioner or influencing him in that or impeding the course of justice. This obviously is again misconceived because it is for the Court to decide whether the documents produced in the trial Court are of that nature and character and it is not the opinion of those outside the Court in a case like this that has any meaning. Respondent 1, also said that that

application was merely a start and that he wanted to make a further application giving further names of respectables and Advocates of Karnal to prove what has been stated above. That evidence apparently would be irrelevant in these proceedings. He also said during the arguments that the Court was bound to examine witnesses, whether necessary or not, and it had no power to stop the production of such witnesses. Then he reiterated that the defence could neither be shut out nor anticipated and that a Court cannot ask a person what is going to be his defence and what he wishes to establish in defence. None of these propositions can obviously be accepted. Of course where a contemner wishes to defend himself, he is to be given every opportunity having regard to the nature of summary proceedings in the trial of contempt matters, but the type of evidence which respondent 1 said he wanted to produce was quite irrelevant and besides the point. In this respect one of his arguments has been that why it was necessary to produce respectables and Advocates of Karnal to prove the tendency or likelihood of interference in the course of justice by the production of anonymous letter in the trial Court was that an objective conclusion could be arrived at in this respect and that the Court could not reach a subjective conclusion on this. When a Court in proceedings like these considers a matter of this type having regard to the contents of the document, like the one in question produced in a Court during the pendency of a trial, it is utterly wrong to say that the Court reaches a conclusion subjectively and that it can only reach a conclusion objectively by the opinion of some outsiders. What the Court does in reaching its conclusion is to consider the document objectively and its likely effect or its tendency to affect the course of justice and the mind of the trial Judge before whom it is produced.

Another argument of respondent 1 has been that the production of the letter, Annexure 'C', with the application, Annexure 'B', was insult to the trial Judge, and, having said this, he then immediately said that he was not prepared to say so, but the other side, although they did not say that, really meant that. It has been nobody's case that the production of the letter in the trial Court was an insult to the trial Judge and hence the act of respondent 1 comes under section 228 of the Penal Code. It was more than an insult as has already been shown above. Respondent 1 has further pressed that in a case of this type defamation as such, as defined in section 499 of the Penal Code, has to be established first, with an opportunity to take all defence available in defending that offence, and even after that it is to be seen whether what is alleged is also contempt or not. A complete answer to this whole argument is provided by this

observation of their Lordships in *Bathina Ramakrishna Reddy's case*— "What is said is, that if a libel is published against a judge in respect of his judicial functions, that also is defamation within the meaning of section 499 of the Indian Penal Code and as such libel constitutes a contempt of court, it may be said with perfect propriety that libel on a judge is punishable as contempt under the Indian Penal Code. We do not think that this contention can be accepted as sound. A libellous reflection upon the conduct of a judge in respect of his judicial duties may certainly come under section 499 of the Indian Penal Code and it may be open to the judge to take steps against the libeller in the ordinary way for vindication of his character and personal dignity as a judge; but such libel may or may not amount to contempt of court. As the Privy Council observed in *Surendra Nath Banerjee* v. *The Chief Justice and Judges of the High Court* (18), at page 131, 'although contempt may include defamation, yet an offence of contempt is something more than mere defamation and is of a different character'. When the act of defaming a judge is calculated to obstruct or interfere with the due course of justice or proper administration of law, it would certainly amount to contempt. The offence of contempt is really a wrong done to the public by weakening the authority and influence of courts of law which exist for their good. As was said by Willmot, C.J.—

> 'attacks upon the judges excite in the minds of the people a general dissatisfaction with all judicial determinations .... and whenever man's allegiance to the laws is so fundamentally shaken it is the most fatal and dangerous obstruction of justice and in my opinion calls out for a more rapid and immediate redress than any other obstruction whatsoever ; not for the sake of the judges as private individuals but because they are the channels by which the King's justice is conveyed to the people.'

What is made punishable in the Indian Penal Code is the offence of defamation as defamation and not as contempt of Court. If the defamation of a subordinate court amounts to contempt of court, proceedings can certainly be taken under section 3 of the Contempt of Courts Act, quite apart from the fact that other remedy may be open to the aggrieved officer under section 499 of the Indian Penal Code".

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(18) I.L.R. 10 Cal. 109.

There remains one other argument of respondent 1 to notice in this respect so far as this count is concerned, though same argument has been also advanced in relation to count 4. It is an attempt at plea of justification, although in *Brahma Prakash Sharma's case,* paragraph 19 of the judgment, their Lardships observed that "It may be that pleas of justification or privilege are not strictly speaking available to the defendant in contempt proceedings." In spite of this it has been argued by respondent 1 that intention is material in such cases *Homi Rustomji Pardivala* v. *Sub-Inspector Baig* (19), the contemner should have acted with untruth or malice *Andre Paul Terence Ambard* v. *The Attorney-General of Trinidad and Tabago* (16) *Bathina Ramakrishna Reddy* v. *The State of Madras* (1), and *Revashankar's case* (12), or with improper motive (*Brahma Prakash Sharma's case*), or in absence of *bona fides* (again *Brahma Prakash Sharma's case*) or without prejudice *Rizwan-Ul-Hasan* v. *State of Utter Pradesh* (20), or without reasonable care and caution (*Bathina Ramakrishna Reddy's case*), or in an unwarranted manner (*Brhama Prakash Sharma's case, and Revashankar's case*), or without a *prima facie* ground (again *Revashankar's case*). Respondent 1 has further urged that what he has done has been in public good and thus cannot be contempt according to *Brahma Prakash Sharma's case.* It has already been shown that it is not correct that the main and the dominant purpose of respondent 1 introducing the document in the trial Court was a demand for a genuine inquiry, but the purpose was to embarrass the trial Judge, to impede and interrupt the course of justice, and to affect the mind of the trial Judge and to deflect him from the right course in the administration of justice in the trial of the cause between the respondents' society and the deceased petitioner. In the circumstances how can respondent 1 urge that he had intention other than what is apparent from the circumstances of the case, or how was his conduct warranted, or done with reasonable care and caution, or in public interest. Although the facts of all the cases cited above are entirely different from those of the present case and the observations of their Lordships have to be understood having regard to the facts of each case, but even so none of these factors is, in the circumstances of this case in favour of respondent 1 or supports his cause in any way. He has contended that he is entitled to lead evidence to prove all these matters to justify his conduct and in this respect relies upon some reported

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(19) A.I.R. 1944 Lah. 196.

(20) A.I.R. 1953 S.C. 185.

cases. The first case is *Debi Prasad Sharma* v. *Emperor* (21), in which certain statement made by a District Judge about a circular issued by the Chief Justice of Allahabad led to contempt proceedings, and evidence was adduced to prove whether or not the District Judge made the statement. The second such case was of *Homi Rustomji Pardivala,* in which the evidence was directed to whether the petition given by the petitioner in that case had or had not been received by a certain date, because it was said that by the time it was received the petitioner had already been released or was immediately due to be released. In *Bathina Ramakrishna Reddy's case* the contemner was found not to have been able to substantiate allegations against a magistrate based on hearsay. In *In re Hira Lal Dixit* (17), the only question of evidence that arose was whether or not a pamphlet had been published and circulated in the premises of the Supreme Court. And lastly in *Revashankar's case* their Lordships observing that *prima facie* what was stated in the transfer application amounted to contempt, did not say anything in regard to the truth or otherwise of the allegations and sent the case back to the High Court for decision on merits in accordance with law. In not one of these cases was evidence allowed to be introduced in justification on the matters listed above on which respondent 1 has said that evidence should have been allowed. It has already been shown that the list of witnesses filed by him and the subsequent application saying what he wanted to establish, referred to none of these matters.

So in so far as count 1 is concerned, there is no manner of doubt that the anonymous letter, Annexure 'C', with the application, Annexure 'B', was calculated to embarrass the judge and influence him in the trial of the suit between the respondents' society and the deceased petitioner. It was likely to impede the due course of justice and affect the mind of the trial Judge as also to deflect him from pursuit of his duty as a Judicial officer. So on this count respondent 1 committed contempt of Court of the Court of Mr. R. P. Gaind, Subordinate Judge, 1st Class at Karnal.

As to count 4, respondent 1 produced Annexure VII, copy of another anonymous letter with the respondents' rejoinder of December 6, 1965. In this the clear statement is that "I have already informed you that pressure is being put through the High Court", and the name of a third Judge is brought in as has already been stated above.

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(21) A.I.R. 1943 P.C. 202.

This is a statement alleging interference by the High Court with the administration of justice in a subordinate court and this is patently calculated to impair the administration of justice by creating an impression that the High Court whose duty it is to uphold and administer justice is itself interfering with the due course of justice. It is likely immediately to bring this Court and the administration of justice into disrepute. The attack is on the Court as a whole and it is calculated to undermine the confidence of the public in the integrity of this Court. It scandalises it in such a way as to create distrust in regard to its integrity and capacity not only to administer justice in a fair and impartial way but imputes to it interference with the impartial administration of justice in the courts below. That this amounts to contempt of Court admits of not the least possible doubt. In *Rex* v. *Editor of the New Statesman* (22), at page 302, Lord Hewart, C.J., referred to this observation of Lord Russell in *Reg.* v. *Gray* (23), "Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt, or to lower his authority, is a contempt of Court"; in *Andre Paul Terence Ambard* v. *The Attorney-General of Trinidad and Tobago* (16), a case approved by their Lordships of the Supreme Court in *Brahma Prakash Sharma's case*, the Privy Council held that an attempt to impair the administration of justice was contempt of Court; in *Brahma Prakash Sharma's* case their Lordships observed that scandalising the Court might manifest itself in various ways but, in substance, it is an attack on the Court as a whole with or without reference to particular cases casting unwarranted and defamatory aspersions upon the character and ability of the judges; in *In re Hira Lal Dixit's case* their Lordships held that what was calculated to undermine the confidence of the people in the integrity of the judges was contempt of Court; and in *Revashankar's case* it was observed that aspersions which scandalise the Court in such a way as to create distrust in the popular mind and impair the confidence of the people in the Court is contempt of Court. The contents of Annexure VII answer the description of the contempt of Court as in each one of the above cases. It has already been stated that respondent 1 cannot shield himself behind this that it is an anonymous letter for which he is not responsible, because not knowing who had sent the letter to him he should never have produced that in Court. What respondent 1 has said is that he has produced not only this anonymous letter but also the first one in Court

(22) (1928) 44 Times Law Reports 301.
(23) (1900) 2 Q.B. 36.

and not in the bazar and with the dominant purpose of asking for an inquiry. But even the production of a letter like this in Court is calculated to create distrust in the public so far as this Court is concerned and to shake their confidence in its integrity, which brings it into disrepute and lowers its authority in the estimation of the public who have resort for justice to it.

The contentions of respondent 1 on other matters raised have been fully considered under count 1 and the position under this count is the same on those aspects of his arguments.

So respondent 1 has committed contempt of Court of this Court under count 4.

In consequence, the two respondents are discharged in these proceedings so far as counts 2 and 3 are concerned, and respondent 2 is also discharged so far as counts 1 and 4 are concerned. But respondent 1 is held guilty of contempt of Court of the Court of Mr. R. P. Gaind, Subordinate Judge, 1st Class at Karnal, on count 1, and of this Court on count 4.

No apology has been tendered by respondent 1 for his conduct, rather he has persistently held on to what he has done. Consequently, in the matter of sentence, under count 1, for contempt of Court of the Court of Mr. R. P. Gaind, Subordinate Judge, 1st Class at Karnal, respondent 1, is ordered to pay a fine of Rs 150 or in default to undergo simple imprisonment for ten days, and on count 4, for contempt of Court of this Court, he is ordered to pay a fine of Rs 200 or in default to undergo simple imprisonment for fifteen days, but he is given thirty days from to-day within which to make payment of the two amounts of fine.

A. N. GROVER, J—.I agree.

PREM CHAND PANDIT, J.—I also agree.

B. R. T.