

**IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION**

CrI.M.P. NO. _____ OF 2020

IN

SUO MOTU CONTEMPT PETITION (CRL.) NO. 1 OF 2020

IN THE MATTER OF:

IN RE PRASHANT BHUSHAN & ANR. ...

Petitioner(s)

VERSUS

... Respondent(s)

AND

IN THE MATTER OF:

1. Aruna Roy

R/o Mazdoor Kisan Shakti Sanghatan

Village Devdungri,

Post Barar, District Rajsamand-313341

Rajasthan

2. Wajahat Habibullah

R/o 529 Mt. Kailash Tower III

East of Kailash

New Delhi

3. Arundhati Roy

R/o 233, Jorbagh
Second Floor
New Delhi – 110003

4. Harsh Mander
R/o C 6 6233
Vasant Kunj
New Delhi - 110070

5. Jayati Ghosh
R/o 52 Dakshinapuram
Jawaharlal Nehru University
New Delhi - 110067

6. Prabhat Patnaik
R/o 124 National Media Centre Campus
Shankar Chowk
NH8
Gurgaon – 122002
Haryana

7. Indu Prakash Singh
R/o 18 A, MIG Flats
Sheikh Sarai, Phase 1
New Delhi - 110017

8. Shailesh Gandhi

R/o B 2 Gokul Apartment

Podar Road

Santacruz (west)

Mumbai 400054

9. Bezwada Wilson

R/o 36/13, Ground Floor

East Patel Nagar

Delhi - 110008

10. Nikhil Dey

R/o Mazdoor Kisan Shakti Sanghatan

Village Devdungri,

Post Barar, District Rajsamand-313341

Rajasthan

...Applicants/Respondents

**APPLICATION FOR IMPLEADMENT OF PARTIES AS
RESPONDENTS IN THE INSTANT SUO MOTU CONTEMPT (CRL.)
PETITION WITH SUPPORTING AFFIDAVIT**

To,

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF
THE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF THE APPLICANTS ABOVEMENTIONED

MOST RESPECTFULLY SHOWETH:

1. The Applicants are citizens of India. The people of India declared in the Preamble of the Constitution, which they gave unto themselves, their resolve to secure to all the citizens liberty of thought and expression. This resolve is reflected as a fundamental right of a citizen in Article 19(1)(a) found in part III of the Constitution. 'Freedom of Speech' is the freedom to speak freely, without fear, without censorship or limitation. The synonymous term freedom of expression is sometimes used to indicate not only freedom of verbal speech but any act of seeking, receiving and imparting information or ideas, regardless of the medium used.
2. That the applicants have provided a brief introduction in the subsequent paragraphs, and are concerned about initiation of the present contempt proceedings against the Respondent-Mr. Prashant Bhushan for exercising his 'freedom of speech' on the functioning of the Courts – to maintain the rule-of-law; to assure that the government runs according to law; and most importantly protecting and enforcing the Fundamental Rights of the people

guaranteed under our Constitution. Introductions of the applicants are as following:

********The relevant details of the applicants may be retained here, and modify as per the applicant's list herein********

- i. Aruna Roy is a social & democratic activist. She was a part of the Indian Administrative Services from 1968 to 1975. She resigned to work directly with people not merely for their rights to access services, but to claim the constitutional rights of equality and justice. Led by Aruna Roy in 1987, after two intense local struggles for land and minimum wages, the workers and peasants formed the Mazdoor Kisan Shakti Sangathan in 1990. The MKSS and its collective campaigning helped ensure the passage of the Right to Information (RTI) Law and National Rural Employment Guarantee Act (NREGA, now MGNREGA) by the Indian Parliament in 2005. From 2004 – 2006, she was a member of the National Advisory Council (NAC), set up by the UPA Government, chaired by Sonia Gandhi. She joined the second NAC set up in 2010, as a member from 2010-2013. Apart from her involvement with campaigns for the rights to information and work she has spoken out against attacks on religious minorities and the right to free speech and expression. She was a member of the ‘Concerned Citizens Tribunal’, which investigated the organized violence and killing of innocent people in the state of Gujarat, India in

2002. She has published extensively on the rights to information, right to work, civil liberties, minority rights, free speech and the right to dissent.

- ii. Wajahat Habibullah was the chairperson of the National Commission for Minorities. He held the position of the first Chief Information Commissioner of India. He was an officer of the Indian Administrative Service (IAS) from 1968 until his retirement in September 2005. He was also Secretary to the Government of India in the Ministry of Panchayati Raj and Textiles and Consumer Affairs. He was appointed as a member of the World Bank's Info Appeals Board in July 2010. He was a Member of Advisory Council, Brookings Doha Center, International Advisory Council, Doha, Qatar, Member, Advisory Council, USIP Education and Training Center, Washington DC. Chairman, Board of Governors, National Institute of Technology, Srinagar(J&K). He is the recipient of Rajiv Gandhi Award for Excellence in Secularism-1994, Gold Medal for Distinguished Service; Governor of Jammu & Kashmir-1996 and Lala Ram Mohan History Award; Delhi University-1967.
- iii. Arundhati Roy is the author of two novels - The Ministry of Utmost Happiness and The God of Small Things which won The Booker Prize in 1997. She has written several books of collected non-fiction.
- iv. Dr. Harsh Mander is human rights and peace worker, author, columnist, researcher and teacher. He works with survivors of mass violence, hunger, homeless persons and street children. He is the Director, Centre for Equity Studies, and founder of the campaigns Aman Biradari, for secularism,

peace and justice; Nyayagrah, for legal justice and reconciliation for the survivors of communal violence; Dil Se, for street children, and 'Hausla' for urban homeless people, for homeless shelters, recovery shelters and street medicine. He was Special Commissioner to the Supreme Court of India in the Right to Food case for twelve years from 2005-17. He is Special Monitor of the statutory National Human Rights Commission for Minority Rights. He convenes and edits the annual India Exclusion Report. He worked formerly in the Indian Administrative Service in Madhya Pradesh and Chhatisgarh for almost two decades. Among his awards are the Rajiv Gandhi National Sadbhavana Award for peace work, the M.A. Thomas National Human Rights Award 2002, the South Asian Minority Lawyers Harmony Award 2012 and the Chisthi Harmony Award 2012.

- v. Jayati Ghosh is Professor of Economics at Jawaharlal Nehru University, New Delhi. Her research interests include globalisation, international trade and finance, employment patterns, macroeconomic policy, gender issues, poverty and inequality. She has authored and/or edited a dozen books and more than 180 scholarly articles, most recently *Demonetisation Decoded: A critique of India's monetary experiment* (with CP Chandrasekhar and Prabhat Patnaik, Routledge 2017), the *Elgar Handbook of Alternative Theories of Economic Development* (co-edited with Erik Reinert and Rainer Kattel, Edward Elgar 2016) and *India and the International Economy*, (Oxford University Press 2015). Her research output has been recognised through several national and international

prizes, including the M. Adisheshaiah Award for distinguished contributions to the social sciences in India in 2015; the International Labour Organisation's Decent Work Research Prize for 2010; the NordSud Prize for Social Sciences 2010 of the Fondazione Pescarabruzzo, Italy; and the Ava Maiti Award and the Satyendranath Sen Prize from the Asiatic Society, Kolkata. She has advised governments in India and other countries at different levels. She was the Chairperson of the Andhra Pradesh Commission on Farmers' Welfare in 2004, and Member of the National Knowledge Commission reporting to the Prime Minister of India (2005-09). She has consulted for several international organisations including ILO, UNDP, UNCTAD, UN-DESA, UNRISD and UN Women. She writes regularly for popular media like newspapers, journals and blogs.

- vi. Prabhat Patnaik is currently Professor Emeritus at the Jawaharlal Nehru University where he held the Sukhamoy Chakravarty Chair at the Centre for Economic Studies and Planning at the time of his retirement. Earlier he was a member of the Faculty of Economics and Politics of the University of Cambridge and a Fellow of Clare College, He holds a D.Phil in Economics from the University of Oxford, having joined Balliol College and later Nuffield College as a Rhodes Scholar. He has an Honorary Doctorate from the University of London (School of Oriental and African Studies). He was the Vice-Chairman of the Kerala State Planning Board between 2006 and 2011 and a member of the interactive panel of experts set up by the President of the UN General Assembly after the economic crisis of 2008. He is the author of several books and articles in Economics.

vii. Indu Prakash Singh is a human rights defender, poet, author, a feminist and a PRA/ PLA practitioner / facilitator and is currently Consultant with large number of development-organizations. He was recently made a member of the Monitoring Committee for Progress of Shelter for Urban Homeless in Delhi. In 2010 he and his team in IGSSS had a National CityMakers Caravan (nCMc) that travelled most of India demanding more shelters for the homeless (that time W P (C) 196 of 2001 was active in the Supreme Court of India, and had orders for shelters across the country) and also preparing everyone to ensure that Census enumerates the homeless to their exact numbers. Indu has been a leading voice in the country on issues of urban homelessness. Indu is also one of the Petitioners in the W.P. (C) 572/ 2003 in the Supreme Court of India, on the issue of homelessness. Indu also assisted the Hon'ble High Court of Delhi in its suo moto matter, W P (C) 29 / 2010 (which came about due to the advocacy done by the network, Shahri Adhikar Manch: Begharon Ke Saath (SAM:BKS) of which he too was one of the Executive Committee Members) by filing relevant affidavits and redressing the situation for the homeless. He is also the Facilitator, CityMakers Mission International. He has worked in the social sector, on range of issues: Children, Youth, Women, Destitute, Chemical Dependents, Elderly, health: leprosy/ TB/ HIV-AIDS/ Mental Health/ Community Health, rural and urban deprivations/ human rights violations, environment & biodiversity, food security for over 30 years.

- viii. Shailesh Gandhi is a first-generation entrepreneur and a Distinguished Alumnus awardee of IIT Bombay. Shailesh was part of the National RTI movement which was involved in drafting the National Act. He was convener of the National Campaign for People's Right To Information (NCPRI). The only RTI activist to have been chosen as a Central Information Commissioner, he disposed a record of over 20000 cases in 3 years and 9 months, ensuring most cases were decided in less than 90 days. He gave many landmark decisions on RTI, apart from organizing the first digital paper-less office in the Commission. He is passionately pursuing the cause of evolving ways for a time bound justice delivery system, and improving governance systems apart from conducting RTI workshops and advocating active citizenship. He has published a book: RTI Act- authentic interpretation of the Statute and a paper critiquing Supreme Court judgment on RTI.
- ix. Bezwada Wilson is an Indian activist and one of the founders and National Convenor of the Safai Karmachari Andolan (SKA), an Indian human rights organization that has been campaigning for the eradication of manual scavenging, the construction, operation and employment of manual scavengers which has been illegal in India since 1993. His work at SKA, a community-driven movement, has been recognized by the Ashoka Foundation which has nominated him a Senior Fellow. On 27 July 2016, he was honoured with the Ramon Magsaysay Award. In 1994, Bezwada helped found Safai Karmachari Andolan (SKA) along with S. R. Sankaran and Paul Diwakar. SKA's goal is to end the practice of manual scavenging

and help those engaged in it find dignified work. In 2003 Bezwada and four other team members moved to Delhi to launch the Safai Karmachari Andolan nationwide. In 2003, Bezwada and the SKA initiated the filing of a PIL in the Supreme Court of India. SKA and 18 other civil society organizations, manual scavengers and individuals signed the affidavit as litigants naming all states and government departments of Railways, Defence, Judiciary and Education as violators of the Manual Scavenging Prohibition Act. The PIL was a major step in the efforts to abolish manual scavenging. All the states and central ministries were forced to address the issue of manual scavenging. The Planning Commission of India constituted a sub-group on safai karmacharis with Bezwada as its convenor.

- x. Nikhil Dey is a social activist. He, along with many others helped found the Mazdoor Kisan Shakti Sangathan (MKSS). Since 1990, he has been a full-time worker of the MKSS, and has been involved in struggles of the poor for justice, including grass root struggles for land and the payment of minimum wages. He has been a founding member of people's platforms like National Campaign for People's Right to Information (NCPRI), and the Soochana Evam Rozgaar Adhikar Abhiyan (SR Abhiyan) who put together "peoples drafts" of the Right to Information and Employment Guarantee Bills, and have consistently worked for their effective implementation. Nikhil Dey is also part of the effort by peoples movements to build institutions of participatory democracy. He has been integrally involved in large state wide campaigns for peoples monitoring

of education (Shiksha Ka Sawaal) in Rajasthan in 2016, and the SR Abhiyan is currently planning a Swasthya Ka Sawaal Campaign in Rajasthan. To make progress in the journey from transparency to accountability, the MKSS and SR Abhiyan are currently in the midst of a campaign for the enactment of a “social accountability” legislation at the State and National level. He has been a member of the Central Employment Guarantee Council (CEGC) and of the State Employment Guarantee Council of Rajasthan. He is a Co-convener of the NCPRI, and is currently a member of the Rajasthan State Audit Advisory Board. He was a member of the Steering Committee of the Multilateral Open Government Partnership (OGP) from 2011 to 2014. He is currently an OGP Envoy.

The applicants herein make following submissions regarding the two tweets by Mr. Prashant Bhushan and its context, which are the subject matter in issue:

3. That the applicants are concerned about the initiation of the present contempt proceedings against the respondent - Mr. Prashant Bhushan for exercising his ‘freedom of speech’, without fear, without censorship in raising issues pertaining to the restricted access to justice, denying the same for many of the disadvantaged and underprivileged sections of our society, owing to the Covid-19 pandemic situation. Mr. Bhushan has been a relentless crusader for the rights of the weakest sections of our society and has spent his career in pro bono legal service to those who do not have ready access to justice. He has fought cases in this Hon'ble Court on issues ranging from environmental

protection, human rights, civil liberties, corruption in high places and has been an outspoken champion for judicial accountability and reforms, especially in the higher judiciary. It appears that the initiation of present contempt proceedings is an assault on the freedom of speech and expression of the citizen of this country, and an attempt to stifle this right by the power of contempt.

The order of this Hon'ble Court dated 22.07.2020, issuing notice on the Suo Motu Contempt proceedings to the Attorney General for India and to Mr. Prashant Bhushan is annexed as **Annexure _____** at **Page _____** to _____.

4. That the two tweets are as stated below:

- i. dated 29.06.2020 *“CJI rides a 50 Lakh motorcycle belonging to a BJP leader at Raj Bhavan Nagpur, without a mask or helmet, at a time when he keeps the SC in Lockdown mode denying citizens their fundamental right to access Justice!”*; and
- ii. dated 27.06.2020 *“When historians in future look back at the last 6 years to see how democracy has been destroyed in India even without a formal Emergency, they will particularly mark the role of the Supreme Court in this destruction, & more particularly the role of the last 4 CJIs”*

5. Furthermore, that these tweets are currently being withheld by Twitter Inc. – an intermediary social media platform, even without any formal order to that extent by this Hon'ble Court after its initial hearing of the instant petition on 22.07.2020.

6. That in the past few years, serious questions have been raised about the reluctance of this Hon'ble Court to play its constitutionally mandated role as a check on governmental excesses and violations of fundamental rights of people by the state. These questions have been raised by all sections of society- media, academics, civil society organizations, members of the legal fraternity and even by sitting and retired judges of this Hon'ble Court itself. It is most pertinent to reproduce the observations made by the Hon'ble Justice Untwala, former Judge of this Hon'ble Court, in *Union of India vs. Sankalchand Himatlal Sheth* reported in (1977) 4 SCC 193, regarding the functioning of our Judiciary as:

“129. In a democratic set-up of our country, as enshrined in the Constitution, the judiciary, in one sense is not a structure of a very big magnitude, but surely it is like a watching tower above all the big structures of the other limbs of State. From the top of its respective towers, the highest judiciary either be it in the State or in the Centre keeps a watch like a sentinel on the functions of the other limbs of the State as to whether they are working in accordance with the law and the Constitution, the Constitution being supreme. History of the world in some countries is not wanting in examples to illustrate and indicate that those wishing to deviate from democracy do not always like and relish the watching of their actions by the sentinels; calculated and designed attempts were made to erode the structure of the tower bit by bit. There have been and may be several methods to do so. One of them may be, if there is any truth in it, to transfer Judges who do not toe the line of the Government in power or fall in the current of their philosophy. How dangerous will it be to permit such a thing by granting of a bald and unbridled power to the Central Government to achieve such an object? I may add that the safety valve of the effective consultation with the Chief Justice of India may not prove to be sufficiently effective to

check up this tendency of the executive. There may be several methods of setting at naught the check of the safety valve. It needs no elaboration.”

7. That the statements made by the respondent in his tweets are to be considered as an honest opinion in light of the given circumstances, and many including the applicants reflect the views made by the respondent, and urge this Hon'ble Court to consider such criticism as a way to revisit and restore the credibility in the higher Judiciary. Most recently, the incident of this Hon'ble Court's reluctance to intervene in a timely manner to avert the crisis of many migrant workers during the lockdown came under intense public scrutiny. Concerns have also been raised regarding the decision of this Hon'ble Court to not restart physical hearings, even in a limited manner, despite passage of five months since the onset of the COVID pandemic.
8. That this Hon'ble Court as an institution, rightly compared to a watching tower above all the big structures of our democratic society, must be open to public discussion without the fear of retribution or action of criminal contempt. The most distinguished lawyer David Pannick, Queen's Counsel, leading barrister in the United Kingdom had aptly commented on contempt law, in *Judges, 1987*, as *“In the absence of an allegation of bias, or other improper motive, the offence of scandalizing the judiciary is obsolete in England”*. Consequently, on 10.12.2012, the House of Lords has abolished this offence of contempt by way of an amendment to the Crime and Courts Bill, and accepted by the House of Commons on 31.01.2013, which now forms section 33 of the Contempt and Courts Act 2013.

9. However, we are still following the law of contempt based on the English law, which is now obsolete and regarded as outdated. Similarly, this offence has been circumscribed and made redundant in most functioning democracies. In the landmark U.S. Supreme Court judgement in *New York Times v. L.B. Sullivan* 11 L'ed (2nd) 686, with respect to contempt of court and the freedom of speech and expression it was held: *“Injury to official reputation affords no more warrant for repressing speech that would otherwise be free than does factual error. Where judicial officers are involved, this Court has held that concern for the dignity and reputation of the courts does not justify the punishment as criminal contempt of criticism of the judge or his decision. This is true even though the utterance contains “half-truth” and misinformation”*.
10. That even in our country, India, the principle that criticism of the judiciary should not be stifled by the indiscriminate use of the power of contempt has been recognized by this Hon'ble Court as well as by academics and advocates of repute, such as the late Senior Advocate Shri Vinod A. Bobde, who in *Scandals and Scandalising*, (2003) 8 SCC Jour 32, stated that *“We cannot countenance a situation where citizens live in fear of the Court's arbitrary power to punish for contempt for words of criticism on the conduct of judges, in or out of court.”*
11. That the initiation of contempt proceedings against the respondent - Mr. Bhushan who had articulated some of these concerns in his tweets, appears to be an attempt at stifling such criticism, not just by the respondent but by

all stakeholders in the Indian democratic and constitutional setup and has a “chilling effect” on the citizens’ right to free speech.

12. Therefore, in the interest of justice and fairness and to maintain the dignity of this Hon’ble Court, we urge the Court to withdraw the current contempt proceedings against the respondent, and are of the considered view that what Prashant Bhushan said in his tweets were not unreasonable given the circumstances. In any case, the applicants would like to be intervened in the present contempt petition and face the consequence of this contempt if any, along with the Respondent- Mr. Prashant Bhushan.

PRAYER

In view of the above, it is most respectfully prayed that this Hon’ble Court may be pleased to:

- a) Allow the present application and implead the Applicants as respondents in the SUO MOTU CONTEMPT (CRL.) PETITION NO. 1 OF 2020.
- b) Pass any other or further order/s as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE APPLICANTS AS IN DUTY BOUND SHALL EVER BE GRATEFUL.

Applicants

Through