

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
CONTEMPT PETITION (CRIMINAL) NO. 10 OF 2009
IN
I.A. NO. 1324, 1474, 2134 of 2007
IN
WRIT PETITION (C) NO. 202 OF 1995

IN THE MATTER OF:

AMICUS CURIAE

..Applicant

AND

1. SHRI PRASHANT BHUSAN, Advocate.
RESIDING AT:
C-67, SECTOR-14,
NOIDA,
UTTAR PRADESH-201301.

2. TARUN J. TEJPAL
EDITOR-IN-CHIEF,
TEHELKA,
M-76, 2ND FLOOR,
M-BLOCK MARKET,
GREATER KAILASH-II,
NEW DELHI - 110048.

....Respondents

**AN APPLICATION DRAWING ATTENTION OF THIS HON'BLE
COURT TO CONTEMPTUOUS STATEMENTS REPORTED IN THE
TEHELKA MAGAZINE.**

To
The Hon'ble Chief Justice of India
And his other companion Judges
Of the Hon'ble Supreme Court of India

The applicant abovenamed

MOST RESPECTFULLY SHEWETH:

- 1) The Applicant seeks to bring to the notice of this Hon'ble Court the attack on the integrity of this Hon'ble Court by the Respondents.
- 2) The Applicant submits that allegations attributing corruption to sitting Judges of this Hon'ble court is clearly an attempt to undermine the public confidence in the Court as an institution. These scandalous statements were made by Respondent No. 1 and carried out in Issue No. 35, Dated September 05, 2009 in Volume 6 of the Tehelka Magazine i.e. Respondent No. 2 herein.
- 3) The Respondent No.1 in an interview to the Tehelka magazine has not only attributed corruption to the Hon'ble judges of this Hon'ble Court admittedly without any evidence but also suppressed vital material information while narrating the facts of a particular case which has shaken the confidence of the public in the justice delivery system and tarnished the image of this Hon'ble Court in eyes of the public.
- 4) The portion of the interview to which the Applicant seeks to draw attention is extracted as below:

"....."

You've been at the forefront of the judicial accountability campaign. Why?

*I have been witness to judicial corruption in the courts for a very long time. I know decisions are passed for extraneous considerations, but it's difficult to get hard evidence of this. There have been highprofile impeachment attempts, for instance, on Justice Ramaswamy, Justice Punchi and Justice Anand. Yet, they all went on to become chief justices. **In my view, out of the last 16 to 17 chief justices, half have been corrupt. I can't prove this, though we had evidence against Punchi, Anand and Sabharwal on the basis of which we sought their impeachment.***

.....

Are there other ways in which judicial corruption manifests itself?

*There are so many. **There is Justice Kapadia who decided on the Niyamgiri mining lease case in Orissa. He said Vedanta can't be given the lease because it's been blacklisted by the Norwegian government; but its subsidiary company Sterlite can get the lease because it is a publicly listed company. Justice Kapadia said it's publicly listed because he had shares in it and yet he passed an order in favour of Sterlite! There is a law against judges hearing cases where there is a conflict of interest, but they just bypass it and you can't complain because that would be contempt.***

.....

- 5) The Applicant submits that the question whether or not judges should hear cases, as a matter of propriety, on the principle that justice should not only be done but appear to be done, is not relevant for the present. The allegations made aforesaid suggest that Mr. Justice Kapadia hearing the case manifested an act of corruption.
- 6) These statements severely erode the public confidence in the judiciary and are contemptuous per se. The statement alleging corruption in respect of past chief justices smacks of irresponsible maligning of the Institution - creating a doubt of who all would be the "guilty" - thereby tarnishing the institution itself. Respondent No.1 admits that he does not have evidence to back his statements and cannot prove the same but nevertheless goes on to make the unsubstantiated allegations.
- 7) In relation to the allegations against the Hon'ble Justice Kapadia it is submitted that the Respondent has indulged in half truths. What has not been revealed is that during the course of hearing of that particular case, Justice Kapadia had in fact disclosed his holding of shares and offered to recuse from the matter. He only proceeded in the matter after all the parties assured that they had complete confidence in him and had no objection to his hearing the case.

8) It is submitted that ascribing corruption to an act which was undertaken with the consent of the advocates appearing in the matter is a deliberate attack on the judiciary only with a view to undermine the public confidence in the institution.

9) In this context it would be relevant to extract the following passages from the the judgement of this Hon'ble Court in Haridas Das v. Usha Rani Banik, (2007) 14 SCC 1 :

1. "Judge bashing" and using derogatory and contemptuous language against Judges has become a favourite pastime of some people. These statements tend to scandalise and lower the authority of the courts and cannot be permitted because, for functioning of democracy, an independent judiciary to dispense justice without fear and favour is paramount. Its strength is the faith and confidence of the people in that institution. That cannot be permitted to be undermined because that will be against the public interest.

.....

30. Majesty of law continues to hold its head high notwithstanding such scurrilous attacks made by persons who feel that the law courts will absorb anything and everything, including attacks on their honesty, integrity and impartiality. But it has to be borne in mind that such divinity and magnanimity is not its weakness but its strength. It generally ignores irresponsible statements which are anything but legitimate criticism. It is to be noted that what is permissible is legitimate criticism and not illegitimate insinuation. No court can brook with equanimity something which may have tendency to interfere with the administration of justice. Some people find judiciary a soft target because it has neither the power of the purse nor the sword, which other wings of democracy possess. It needs no reiteration that on judiciary millions pin their hopes, for protecting their life, liberty, property and the like. Judges do not have an easy job. They repeatedly do what rest of us (the people) seek to avoid, make decisions, said David Pannick in his book *Judges*. Judges are mere mortals, but they are asked to perform a function which is truly divine.