

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

THURSDAY, THE 13TH DAY OF JULY 2023/22ND ASHADHA, 1945

CONT.CASE (CRL.)NO.4 OF 2022

PETITIONER:

SUO MOTU
CONTEMPT CASE (CRIMINAL) UNDER SECTION 2(C) OF THE
CONTEMPT OF COURTS ACT, 1971 READ WITH RULE 7 OF THE
CONTEMPT OF COURT (HIGH COURT OF KERALA) RULES

BY SRI.DHEERENDRAKRISHNAN K.K., PROSECUTOR

RESPONDENT:

SRI. NIPUN CHERIAN
PRESIDENT, V-4 PEOPLE, KOCHI, MARIAM COMPLEX,
THOPPUMPADY, KOCHI
EMAIL:NIPUNCM@GMAIL.COM

BY SRI.NIPUN CHERIAN (PARTY-IN-PERSON)

THIS CONTEMPT OF COURT CASE (CRIMINAL) HAVING BEEN
FINALLY HEARD ON 19.06.2023, THE COURT ON 13.07.2023
DELIVERED THE FOLLOWING:

J U D G M E N T

A.K. Jayasankaran Nambiar, J.

The facts in brief:

This *suo motu* contempt case was taken against the respondent contemnor pursuant to information laid before us by the Registrar of this Court that the respondent had made a public speech casting aspersions on the honesty and integrity of a learned Judge of this Court whom he publicly accused of being corrupt. The specific charge levelled against the respondent, and to which he pleaded not guilty, reads as under:

CHARGE

We, Justice A.K.Jayasankaran Nambiar and Justice Mohammed Nias C.P., do hereby charge you,

“That you Sri.Nipun Cherian, the sole respondent in Cont. Case (Crl.).No.4 of 2022, have made a speech that was uploaded and published in the facebook page of 'V4 Kochi' on 25/10/2022 under the link - <https://fb.watch/gp6uFahaSz>, making serious allegations of corruption against Honourable Mr. Justice N.Nagaresh, Judge, High Court of Kerala with regard to a judgment passed by His Lordship. The said speech is contumacious and made with an intention to tarnish the integrity of the Honourable Judge. Your speech amounts to scandalizing the authority of the Court and interference in the due course of judicial proceedings. Such behaviour is

intended to lower the authority of this Honourable court among the general public and you have thus committed Criminal Contempt of Court and liable to be prosecuted and punished under Section 12 of the Contempt of Courts Act, 1971.”

and we hereby direct that you be tried by this Court on the said charge.

2. Before embarking on a narrative of the conduct of the respondent during the proceedings before this Court, we deem it apposite to enumerate the principles that guide us in the exercise of the contempt jurisdiction so that the conduct of the respondent that led to the framing of charges against him, as well as his conduct during the proceedings before us, can be analysed in the backdrop of the settled law on the subject.

The Contempt Jurisdiction:

3. The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or tends to impede its course or tends to shake public confidence in the judicial institutions. The jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts and the purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law.¹ It is an unusual type of jurisdiction combining “the jury, the judge and the hangman” and it is so because the court is not adjudicating upon any claim between litigating parties and the jurisdiction is not exercised to protect the dignity of an

¹ Dr. Prodip Kumar Biswas v. Subrata Das & Ors. – (2004) 4 SCC 573

individual Judge but to protect the administration of justice from being maligned.² Viewed against the backdrop of our Constitution, which guarantees all citizens the freedom of speech and expression, the contempt jurisdiction of the courts can be seen as a reasonable restriction imposed on the said fundamental freedom enuring to citizens. This is not to say that the court enjoys complete immunity from any criticism. As a matter of fact, no court can claim to be always right although it does not spare any effort to be right according to the best of the ability, knowledge and judgment of the Judges.³ However, while fair and temperate criticism of the court, even if strong, may not be actionable, the attributing of improper motives or actions that tend to bring Judges or courts into hatred and contempt, and thereby erode public confidence in the judicial institution, will certainly lead to the invocation of the jurisdiction so as to uphold the majesty and dignity of the courts of law. This is because, if an impression is created in the minds of the public that the Judges in the highest court of this State act on extraneous considerations in deciding cases, the confidence of the whole community in the administration of justice is bound to be undermined, and we cannot remain mute spectators in such situations. ‘The law should not be seen to sit by limply while those who defy it go free, and those who seek its protection lose hope.’⁴ So also, ‘if the court considers the attack on the Judge or Judges scurrilous, offensive, intimidatory or malicious beyond

² Supreme Court Bar Association v. UOI – (1998) 4 SCC 409

³ Haridas Das v. Smt. Usha Rani Banik & Ors. – JT (2007) 9 SC 231

⁴ Jennison v. Baker – 1972 (1) All.ER 997 @ p.1006

condonable limits, the strong arm of the law must, in the name of public interest and public justice strike a blow on him who challenges the supremacy of the rule of law by fouling its source and stream.’⁵

The proceedings in court:

4. Notice was issued to the respondent contemnor on 23.11.2022 and in response to the same, he appeared before us on 14.12.2022 and sought time to file a response. An affidavit dated 14.12.2022 dealing with the averments in the contempt petition was then filed by the respondent on 22.12.2022 wherein he denied the charges against him, admitted to the making of the speech, and then sought to justify his statements by describing them as the truth. On perusing the said affidavit, and with a view to clarifying the legal position as regards the law of contempt to the respondent who was appearing in person and did not seem to be one who was trained in law, we ventured to explain to him the difference between statements that would be viewed as fair comment, and statements that would be seen as contemptuous by the court, so that he could avail the opportunity that we granted to him to introspect on the averments in the affidavit filed by him and file a fresh affidavit containing an unconditional apology for making those statements that were prima facie contemptuous and scandalous. For reasons best known to the respondent contemnor,

⁵ Re. S. Mulgaokar – (1978) 3 SCC 339 per Krishna Iyer, J

however, he chose to re-iterate his original stand in the subsequent affidavit filed before this court on 17.01.2023. That apart, he took to unauthorisedly posting video clippings of the proceedings before this court on social media, through a friend's account, and issued a press release glorifying himself for not having succumbed to the alleged pressures exerted by this court to tender an apology.

5. Since the respondent maintained his stand that the allegations he had made against the Judge of this court was backed by truth, and that he had material with him to substantiate the same, we recorded a short order on 18.01.2023 finding a prima facie case to proceed against him for contempt of court. The case was then posted to 25.01.2023 for framing charges against the respondent and recording his plea.

6. On 25.01.2023, the charges framed against the respondent were read out to him and he was asked to state his plea. After listening to the charges, he pleaded "Not Guilty" to the charges. The case was accordingly posted to 08.02.2023, and the respondent was asked to come and collect the copy of the proceedings recording his plea of 'Not Guilty' from the court officer in the afternoon. We thereafter appointed Sri. Dheerendrkrishnan K. K. as the prosecutor to conduct the trial against the respondent.

7. It would appear that the respondent, who had appeared alone in

court that morning, insisted that his party men/friends accompany him to court in the afternoon to collect the copy of the proceedings from the court officer. When the Registrar of this court, informed him that on account of security reasons, his friends/party men could not be permitted to enter the court building, he began recording the altercation with the Registrar on his mobile phone so as to live stream the same on social media. This led to the Registrar summoning the security personnel, who led the respondent and his friends outside the court premises. The respondent is then alleged to have said that he will not come to court to collect a copy of the proceedings unless his friends are also permitted to enter the building with him.

8. On the next date of posting i.e. 08.02.2023 the respondent again insisted on his friends/party men being permitted to accompany him to court. When the Registrar refused the permission sought for, the respondent stated that he was concerned about his personal safety and it was for this purpose that he wanted his friends to accompany him to court. The Registrar then offered to send the security personnel attached to this court, along with the respondent, to ensure his security within the court premises. This offer was not acceptable to the respondent who left the court premises without appearing before the court. Noticing his absence, and irked by the same, we passed the following order on 08.02.2023:

"When this case was taken up today, the respondent contemnor

Sri.Nipun Cherian is not present in Court. Sri.Dheerendrakrishnan K.K., the Advocate appointed by us to appear in Contempt proceedings against the respondent contemnor is present, and seeks time to file the list of witnesses who he proposes to examine in this proceedings. Post on 21.2.2023 for further proceedings in the trial.

2. On an enquiry made by us regarding the absence of the respondent contemnor in Court today, we are informed by the Registrar General that the respondent contemnor Sri.Nipun Cherian had come to the High Court premises this morning, and insisted on entering the building with few of his party colleagues. The Security Officer of the High Court then informed him that permission could not be granted to his party colleagues to enter the building for security reasons, and that, if he apprehended any danger to his person while he was in the building, the security personnel from the Court would accompany him to the Court Hall and provide him the necessary protection. Apparently, the said response was not acceptable to Sri.Nipun Cherian and he left the Court premises without entering appearance before the Court.

3. Sri.Nipun Cherian will do well to appreciate and understand that he is an accused facing trial in a very serious case of Criminal Contempt, and his absence on any of the dates fixed for trial before this Court will not be taken lightly by this Court. As an accused facing trial, Sri.Nipun Cherian does not have any right, either moral or legal, to direct the manner in which the trial has to be conducted. He cannot also choose the time and date of his appearance before this Court and the companions or the coterie that must accompany him on those occasions. We therefore direct him to be personally present before this Court at 10.15 a.m. on 21.2.2023, failing which, we will be constrained to enforce his presence here using the powers at our command."

9. Despite the warning that was issued to him, the respondent failed to appear before the court on 21.02.2023. We were therefore constrained to pass the following order directing the issuance of a non-bailable warrant to the District Police Chief Ernakulam, for the arrest and production of the respondent before the court on 28.02.2023.

"Sri.Dheerendrakrishnan K.K., the Prosecutor is present and has submitted a preliminary witness schedule on behalf of the Prosecution. The respondent contemnor Sri.Nipun Cherian is not present before us today.

2. There can be nothing more annoying to a court trying a

contempt case than the wilful and continued absence of the respondent contemnor before it. Notwithstanding the stern warning that we had issued through our last order dated 8.2.2023, the respondent contemnor Sri.Nipun Cherian is not present before us today. We therefore direct the issuance of a non-bailable warrant, to the District Police Chief, Ernakulam, for the arrest and production of the respondent contemnor Sri.Nipun Cherian before this Court at 10.15 a.m on 28.2.2023, the next date of hearing.

3. We might observe in this regard that the conduct of Sri.Nipun Cherian, against whom we had found a *prima facie* case for proceeding under Article 215 of the Constitution of India read with the provisions of the Contempt of Courts Act, and who is facing trial in that regard, has been far from satisfactory. While we do not wish to speculate on the possible motives that may have informed his irresponsible conduct, we are given to understand, through the reports furnished by the Registry, that he has been repeatedly insisting that some of his party colleagues be allowed to accompany him to the hearings before this Court, and when denied that permission, he resorted to heated arguments with the security staff and other members of the Registry of this Court. All of this was notwithstanding the fact that he was permitted to appear before us either in person, or along with his lawyer and was also offered sufficient personal security in that regard. Such conduct on the part of litigants entering the premises of this hallowed institution, and especially from one who is already facing trial for criminal contempt of this Court, is wholly unacceptable and will not be countenanced under any circumstances.

4. The courts in our country are overly burdened with litigation and its Judges do not have the time to pander to such idiosyncratic behaviour of litigants. Our citizenry must realize that Judges in this country work under enormous pressure owing to the mounting pendency of cases in our courts, and the infrastructural and other constraints that affect the justice delivery system. Despite that, and on account of their discipline and training as judicial officers, they do not react to uncharitable, and often unjustified, comments from the public about their judicial performance. Their restraint stems from the nobility that they possess. It is only when confronted with comments or remarks that go well beyond personal attacks, and have the propensity to defame or lower the esteem of the judicial institution itself, that they respond swiftly with the only weapon in their judicial armoury - the proceedings for contempt of court. Even on such occasions, their efforts are directed solely at preserving the majesty of the judicial institution and ensuring that the misconceived actions of some do not destroy the faith of the majority in an institution that has for long remained the last bastion of hope against rights infringement for our citizens.

5. While cautioning the respondent contemnor in this case, as also his colleagues and followers, against any ill-advised action during the pursuit of litigation, we might also clarify that it is not with any sense of pride or megalomania, but with a heavy heart and a feeling of exasperation, that we have ordered for the arrest and production of the respondent contemnor before this Court on the next date of hearing. We do hope that the occasions will be rare, where we are constrained to pass such orders.

Post on 28.2.2023."

10. The respondent was thereafter produced before the court on 27.01.2023, on which date we passed the following order while enlarging the respondent on bail against a self-bond for his continued attendance:

"Although by our earlier order dated 21.2.2023, we had posted this case on 28.2.2023 for the production of the respondent contemnor before this Court, we are constrained to take up the matter today since the respondent contemnor had been produced before us by the police authorities acting on a remand order of the Judicial First Class Magistrate Court - II, Kochi that inadvertently authorised his detention in police custody only till today [27.2.2023]. While we could have extended the police custody of the respondent contemnor till tomorrow by passing a judicial order to that effect, we felt that since the respondent has been produced in Court today, we could consider granting him bail and allow him to undergo trial in this Contempt Case without being incarcerated in jail. We therefore enquired with the respondent as to whether he was ready to file an affidavit before this Court undertaking that he would not default in the matter of appearing before this Court on all days when the case is posted for trial, and further that he would not insist on his party workers and others accompanying him into the Court premises and that he would refrain him from giving press conferences on any topic touching upon the issues involved in this Contempt of Court Case or on the conduct of any particular Judge or other Officer/staff of this Court during the pendency of the Contempt of Court Case before this Court.

2. By an affidavit filed by the respondent contemnor, he has averred as follows:

- "1. I Nipun Cherian, respondent in this case, is submitting this affidavit on this day on 27 February 2023, in police custody as per order of the High Court of Kerala.
2. Today, as I was produced before the High Court of Kerala, the court ordered that I shall enter the High Court of Kerala Complex and appear before this court alone, during the proceedings of the case.
3. I submit that I shall follow the order of the high court of Kerala mentioned above in para 2 of this affidavit on all days on which the case is posted by the High Court of Kerala.
4. Today, the High Court also ordered that no unnecessary press conference shall be held by me during the period of time this case is pending before the High Court of Kerala.

5. I shall follow the order of the high court of Kerala as mentioned above in para 4 and shall not conduct any unnecessary press conference.

I solemnly affirm to the above and state that I am competent to file this affidavit and all the facts mentioned in paragraphs 1 to 5 are true.”

3. The respondent contemnor had also submitted this morning that he had been handcuffed while he was being transported to the General Hospital after his arrest pursuant to our last order. We therefore asked the learned Public Prosecutor to obtain a report from the Assistant Commissioner of Police, Mattancherry in this matter. A report has now been laid before us by the said Police Officer, and paragraphs 5 to 7 of the said report read as under:

“5. While producing Sri. Nipun Cherian before the Hon'ble High Court today, he complained that the police persons handcuffed him while they took him to General Hospital Ernakulam on 26.02.2023. The Hon'ble Court directed to file a report in this allegation.

6. In obedience to the Hon'ble Court's order, I have enquired the matter. As earlier submitted, the respondent was arrested by the Inspector of Police, Thoppumpady on 24.02.2023 at 6.30 PM and after complying with the procedural formalities, he was produced before the Jurisdictional Magistrate at her residence at 8.42 PM in the police vehicle without being handcuffed and subsequently on detention order by the learned Magistrate, he was taken to jail in the police vehicle that too also without being handcuffed. As per the message dated 25.02.2023 of Superintendent of Sub Jail, Mattanchery before Commandant A.R.Camp, Kochi City for escorting a prisoner for medical aid at General Hospital, Ernakulam, Commandant deputed SCPO Shine and CPO. Nidhish Chandran from A.R. Camp, Kochi City for escorting Sri. Nipun Cherian for medical examination. I have contacted SCPO Shine over phone to verify the authenticity of the allegation made by Sri. Nipun Cherian. He disclosed me that, he along with CPO. Nidhish Chandran were deputed for prisoner's medical escort duty on 26.02.2023 at 10.00 A.M. As department vehicle was not available at that time in the Camp, they proceeded to Mattancherry Sub jail by Private bus. When they reached Sub Jail the Jail officials told them about the detenu that he is a leader of a political party namely V4 Kochi and his party workers may intrude during his way to hospital. It was apprehended that there might be some untoward incident because of the involvement of the followers of the respondent. Accordingly so as to ensure his security and to prevent any untoward incidents that might be caused by his followers, he was handcuffed. The apprehension of the police officers who accompanied the respondent came to be true later, when they reached Thoppumpady, his supporters gathered there and Nipun Cherian started shouting slogans. Then the police party entered in the bus with Nipun Cherian, the same time two of his supporters also entered into that bus. Then Nipun Cherian started raising slogans inside the bus and the supporters took videograph by using their mobile. Then the police personnel informed the matter to A.R.Camp and they sent striker force to Government Hospital Ernakulam for averting any untoward incidents. After the medical check up he was brought back to Sub Jail Mattanchery on a Control Room Vehicle without any handcuff and they reached back Sub Jail by 12.30 P.M. He also told that in order to ensure his protection and for avoiding any type of untoward incidents during the way to hospital they handcuffed Sri. Nipun Cherian. The police officer who accompanied the respondent also told me that they have handcuffed the respondent with good faith without there being any malicious

intention.

7. It is also respectfully submitted that, on 24.02.2023 during his arrest, while he was taken to Magistrate Court and to Jail police party had not handcuffed him. It is also submitted that today while he was taken to the Hon'ble High Court of Kerala I had not handcuffed him."

4. Going by our own experience while interacting with the respondent contemnor, and noticing his demeanour during the course of these proceedings, we are inclined to accept the explanation offered by the Assistant Commissioner of Police, Mattancherry, as regards the circumstances that led to the handcuffing of the respondent contemnor during the course of his transportation to the General Hospital, after arrest.

5. Since the respondent contemnor has now agreed to appear before this Court to defend the Contempt of Court proceedings against him, we deem it appropriate to enlarge him on bail, by treating his affidavit as a self-bond for his attendance as provided in Rule 11(v) of the Contempt of Courts (High Court of Kerala) Rules under the Contempt of Courts Act, 1971, but subject to the following conditions:

- (i) He shall appear before this Court on all days when the case is posted, unless otherwise exempted by this Court, and shall not cause any disturbance in the premises of this Court, either by himself or through his party workers and others.
- (ii) Should he require the assistance of any person while conducting his case before this Court, he shall seek permission of this Court to do so and shall avail such assistance only after obtaining such permission.
- (iii) He shall refrain from holding any agitation, demonstration, protest, press conference etc. and/or issuing statements with regard to the conduct of any Judge or other Officer/staff of this Court particularly with regard to the subject matter of this Contempt of Court Case, on any platform, private or public, including the print, electronic and social media, during the pendency of these proceedings.
- (iv) If the respondent contemnor defaults on any of the above conditions, the bail granted to him by this order will be recalled/cancelled without any further notice to him.

Post this case on 7.3.2023, for further steps."

11. The trial in the matter commenced on 07.03.2023. Two witnesses were examined on behalf of the prosecution and three witnesses were examined on behalf of the respondent. The witnesses were subjected to cross-examination by either side and the statement of respondent in terms of Section 313 of the Code of Criminal Procedure was also recorded. After the closure of evidence, the prosecutor and the respondent were heard.

Discussions and Findings:

12. We might at the outset observe that the Prosecution did not really have to adduce any evidence to prove the charge against the respondent because the respondent has, in the affidavits filed by him and during the course of his testimony at the stage of examination under Section 313 of the Cr.PC, clearly admitted to making the public speech casting aspersions on the honesty and integrity of a learned Judge of this Court whom he publicly accused of being corrupt. The evidence led by the respondent was primarily to try and establish that he had merely stated the truth and was therefore justified in making those statements in public. Towards that end it is his case that the aspersions cast on the honesty and integrity of the Judge were in relation to the executive actions of the Judge and not his judicial actions; that when the court carries out and supervises an executive task that forms part of the lis between two parties, it loses its character as an adjudicating authority and, consequently, the statements made against the Judge in that capacity cannot constitute a contempt of court.

13. The speech of the respondent was one that was made in the context of a judgment dated 22.10.2021 of the learned Judge while disposing W.P(C).No.24586/2020. That was a writ petition filed by the owner of a small paddy field that formed part of the Maruvakkad Padashekham, which over the years, had come to be used alternatively for pokkali paddy cultivation

and prawn farming during a calendar year. It was the case of the writ petitioner that with the arrival of persons interested in prawn aquaculture, the paddy fields were being permitted to be used for aquacultural activities throughout the year, against the wishes of the pokkali paddy cultivators. The petitioners alleged that the regulatory authorities had turned a blind eye to their grievances and it was therefore that they were approaching the court for relief. By the judgment aforementioned, the learned Judge disposed the writ petition by constituting a committee comprising of (i) the Advocate Commissioner (ii) the Agricultural Officer, (iii) the Superintending Engineer, Irrigation Department, (iv) the Fisheries Extension Officer, (v) The jurisdictional Circle Inspector of Police and (vi) the President of the Maruvakkad Padashekhara Karshaka Union to supervise the de-watering process from 1st March every year till the de-watering process is satisfactorily completed. The committee was to have a tenure of two years and was directed to file bi-weekly reports before the court from 1st March of the ensuing year till the de-watering process was completed and concluded. It is significant that no appeal was carried by the writ petitioner against the aforesaid directions of the learned Single Judge and it has hence become final.

14. The oral evidence adduced by the respondent through three witnesses (DW1-DW3) was to try and establish that while by the judgment dated 22.10.2021 in W.P(C).No.24586/2020, the learned Judge had created a

committee to supervise and carry out de-watering of the padasekharam for a period of two years, the display boards placed at the site by the Advocate Commissioner appointed by the court in those proceedings clearly indicated to the public that pokkali cultivation was ongoing under the control of the High Court of Kerala, and that those entering the padasekharam without permission and those trespassing will be prosecuted; that the said declaration and warning did not mention any judgment or order of the High Court and hence there was no indication of the power that was exercised by the Judge or the Advocate Commissioner while issuing the said declaration/warning. Further, as the declaration and warning on the display board was with the knowledge of the Judge before whom reports were filed by the Advocate Commissioner, the Judge and the Advocate Commissioner were equally responsible “for using the reputation and fear among the public, of the powers of the High Court of Kerala, to mislead the public and to take control of the property, the Maruvakkad Padashekharam.” He also attempted to establish that since the actual facts at the site were not as reported by the Advocate Commissioner in his reports filed before the Judge, and the Judge had refused to consider the facts stated in the affidavit of the petitioner in the writ petition, he had effectively helped the prawn contractors to carry out illegal prawn aquaculture and filtration activities in Maruvakkad Padashekharam that has multi-crore revenue potential. Apart from the above, in response to the direction issued from this Court to file a preliminary witness schedule on behalf of the respondent, he chose to file a

list of ten witnesses that included the learned Judge, against whom he had made the disparaging remarks, and our Court Officer over and above the party witnesses that he sought to examine. By our order dated 29.3.2023, we found as follows:

“In such circumstances, we do not think it necessary to permit the respondent to examine the witnesses shown in the list of witnesses produced by him, as the only question now emerging for consideration is whether the speech made by the respondent amounts to criminal contempt of court. In other words, the enquiry is now limited to examining whether the respondent was justified in making those statements in his speech. The witnesses cited by the respondent are not competent to speak on the above aspect. In such circumstances, we do not intend to allow the request of the respondent to examine the persons mentioned in the witness list.”

Thereafter, the respondent furnished a fresh list of three witnesses which we accepted and permitted him to examine.

15. In essence, the oral evidence adduced on behalf of the respondent, far from establishing any truth in the statements made by him in his speech that was the subject matter of the contempt proceedings against him, merely introduced more damning allegations against the learned Judge based purely on hearsay evidence. Thereafter, by relying on the deposition of his witnesses, the respondent went on to contend that the ingredients of Section 13 (1)(a) of the Prevention of Corruption Act, 1988 stood established in this case. He further contends that the learned Judge had connections with the Kochi Thirumala Devaswom, which has 44 acres of paddy land in Maruvakkad Padashekham making it the largest

non-resident landowner in the said Padashekharam, who is hand in glove with the prawn contractors. The said contention was also not based on any evidence adduced during these proceedings.

16. On a consideration of the pleadings in this case as also the evidence adduced on behalf of the prosecution and the respondent, and after hearing the prosecutor and the respondent *in extenso*, we are of the view that the charge against the respondent stands established primarily on account of his admission regarding the making of the speech as also on account of the lack of any material that would inspire confidence in this court regarding the truth of the offending statements made in that speech. We may hasten to add that there were many occasions during the course of these proceedings when we informed the respondent of the burden that he had to discharge, after having admitted to the making of the speech, if he were to obtain immunity from conviction through the defence of justification by truth. We also offered to take a lenient view against him if he were to repent for his actions and tender an unconditional public apology. The respondent however, for reasons best known to him, chose to ignore our advice and continue to contest the matter, *inter alia* by maintaining that he stood by every utterance that he made against the learned Judge. As we have already observed earlier, while fair and temperate criticism of the court, even if strong, may not be actionable, the attributing of improper motives or actions that tend to bring Judges or courts into hatred and

contempt, and thereby erode public confidence in the judicial institution, will certainly lead to the invocation of the contempt jurisdiction so as to uphold the majesty and dignity of the courts of law. This is because, if an impression is created in the minds of the public that the Judges in the highest court of this State act on extraneous considerations in deciding cases, the confidence of the whole community in the administration of justice is bound to be undermined, and we cannot remain mute spectators in such situations. On the facts of the instant case, we find that the respondent has unambiguously admitted to making the speech and has also not succeeded in establishing a defence of justification by truth. The entire evidence relied upon by him is hearsay and does not inspire confidence in this court. As regards the contention of the respondent that the learned Judge was carrying out and supervising executive tasks and therefore lacking the character of an adjudication, the same has to be rejected outright as the learned Judge had passed the judgment with directions as part of his judicial duty. We are therefore of the view that the charges against the respondent stand established and he is liable to be punished for contempt of court.

17. We pronounced the judgment finding the respondent guilty of the charges alleged against him at 11.15 a.m. today [13.07.2023] and then sought the response of the respondent on the aspect of any mitigating circumstances for reduction of the sentence. The respondent then

categorically said that he had no submission to make with regard to the sentence. Section 12 of the Contempt of Courts Act, 1971 provides for punishment for contempt of court and states that “save as otherwise expressly provided in the Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both. The Proviso to the said Section makes it clear that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court. An explanation to the said proviso makes it further clear that an apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it *bona fide*. In the instant case, the respondent not only did not offer any apology but went on to reiterate the allegations made against the learned Judge at every stage of the proceedings and even during the final hearing. He maintained that he was justified in making those allegations based on the hearsay evidence that he relied upon and sought to establish through the witnesses brought by him. Even when we afforded him an opportunity of expressing his remorse and filing an unconditional apology, after the conclusion of the final arguments, he refused to apologise. We cannot also lose sight of the fact that the allegations in question were levelled against the learned Judge without the litigant having explored the option of preferring an appeal against the judgment of the learned Judge on merits. Faced with such conduct on the part of the litigant, we cannot remain silent spectators to

such frontal attacks on the majesty of the judicial institution which is often seen as the last bastion of hope for the litigants in the country. Under such circumstances, and more so since the conduct of the respondent throughout the proceedings has been that of an obstinate and arrogant litigant whose actions are intended to lower the public faith in the judicial institution through the baseless allegations made against a learned Judge of this Court, we are of the view that he does not deserve any lenient view in the matter of punishment. However, taking note of the fact that the respondent is a Graduate Engineer, aged 36 years, who will possibly understand the gravity of his misconduct through sufferance of a lesser punishment, and will hopefully desist from resorting to such actions in future, we sentence the respondent/accused Sri.Nipun Cherian to undergo simple imprisonment for a term of four months. The sentence shall commence forthwith. We also direct that any period of imprisonment already undergone by the respondent during these proceedings be set-off against the aforementioned term of four months. There will be a further direction to the Station House Officer, Cyber Cell, Ernakulam to take all steps necessary for removing the video containing the offending speech of the respondent, which was the trigger for these proceedings, from all electronic media platforms forthwith.

18. Having regard to the above, the Registrar General is directed to make out a warrant to ensure detention of the respondent/accused Sri.Nipun Cherian in terms of the sentence awarded in this case. Besides the

sentence, we also impose the respondent/accused a fine of Rs.2,000/- [Rupees Two thousand only] and this amount should be paid within one month from the date of receipt of a copy of this judgment, and on default thereof, he shall suffer simple imprisonment for a further period of one month.

The Contempt of Court Case (Criminal) is closed.

**Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE**

**Sd/-
MOHAMMED NIAS C.P.
JUDGE**

prp/

APPENDIX OF CONT. CASE (CRL.).NO.4/2022

PETITIONER'S EXHIBITS:

Exhibit C2: Certificate issued under S.65B of Evidence Act.

RESPONDENT'S EXHIBITS:

Annexure A	Transcription of the speech uploaded in Facebook.
Exhibit1	Video of the speech by Sri. Nipun Cherian recorded in DVD
Exhibit R1	Photograph of the board placed at Maruvakkad
Exhibit R1(a)	True copy of order dated 18th October 2022 in WP(C) No.24586/2020.
Exhibit R1(b)	True copy of Report No.2 dated 18/4/2022 submitted by Adv. Commissioner in WP(C) No.24586/2020.
Exhibit R1(c)	True copy of Drone images of Maruvakkad Padashekharam from September 2022
Exhibit R1(d)	True copy of Report of Advocate Commissioner in O.S.No.303 of 2022, Munsiff's Court, Kochi
Exhibit R1(e)	True copy of Drone image of the paddyland of Mr.Chanthu Manchadiparambil from September 2022
Annexure 1	Letter Issued by Registrar General on 09.02.2023
Exhibit C1	Certified Copy of the common judgment dated 22.10.2021 in WP(C) No.33046/2019 and WP(C) No.24586/2020 along with connected cases.
Exhibit X1	Compact Disc containing the speech downloaded from the facebook page of the V4

Kochi link "<https://fb.watch/gp6uFahaSz>".

//TRUE COPY//

P.S. TO JUDGE