In the International Crimes (Tribunal-1), Dhaka

ICT-BD Misc. Case No. 04 OF 2013

In the matter of:

A petition for contempt under section 11(4) of the International Crimes (Tribunals) Act, 1973, read with rule 45 of the International Crimes (Tribunal-1) Rules of Procedure, 2010.

And

Present:

Mr. Justice M Enayetur Rahim, Chairman
Mr. Justice Jahangir Hossain, Member
Mr. Justice Anwarul Haque, Member

In the matter of:

The Chief Prosecutor
…. Petitioner

Versus

Khandakar Mahabub Hossain, Senior Advocate,

Bangladesh Supreme Court.
…. Opposite Party

Mr. Zead-Al-Malum
with
Mr. Sultan Mahmud, Prosecutors
…. For the petitioner

Mr. Zainal Abedin
with
Mr. Tajul Islam
Mr. Humaiun Kabir Monju
Ms. Jahanara Sarker
Mr. M. Masud Rana, and
Mr. Neaz Md. Mahboob, Advocates
…. For the opposite party

Date of order: 22.06.2014

ORDER

Today is fixed for passing an order in the above noted miscellaneous case.

Facts narrated in the contempt petition by the petitioner are summarized as below:

The Chief Prosecutor of the International Crimes Tribunals [BD] as petitioner filed a contempt petition annexed with some original and photocopies of different daily newspapers before this Tribunal against the opposite party on the allegation that on 1st October, 2013 the opposite party Mr. Khandakar Mahabub Hossain, a Senior Advocate of the Supreme Court gave a contemptuous speech in a press-conference at Hall Room No. 2 of the Supreme Court Bar Association Building arranged by Jatiotabadi Ainjibi Forum which was telecast in most of the television channels and also reported next day on 2nd October, 2013 in most of the daily newspapers.

On perusal of the contempt petition along with the above mentioned speech reported in some daily newspapers on 2nd October, 2013, the Tribunal was convinced by order dated 06.10.2013 to issue notice upon the opposite party to show cause within 21.10.2013 as to why contempt proceedings under section 11(4) of International Crimes (Tribunals) Act, 1973 would not be initiated against him.

On getting the show-cause notice the opposite party appeared before the Tribunal through his counsel by submitting a written reply to the show cause notice.

Mr. Zead-Al-Malum, the learned Prosecutor in support of the contempt petition submitted that on 1st October, 2013, the opposite party , Mr. Khandakar Mahabub Hossain, a Senior Advocate of the Supreme Court of

Bangladesh and a leader of Bangladesh Nationalist Party (BNP) along with other lawyers and BNP leaders organized a Press Conference under the banner of Jatiotabadi Ainjibi Forum in the Hall Room of the Supreme Court Bar Association, which was being telecast in most of the Television Channels and reported next day in most of the daily newspapers. He again placed the speech in question made by the opposite party which is quoted as under:

“ S¡a£ua¡h¡c£ n¢J² k¢c rja¡u B-p, p¢aÉL¡l A-bÑ k¡l¡ k¤Ü¡fl¡d£, a¡-cl ¢hQ¡l q-hz fË¢a¢qwp¡l SeÉ k¡-cl ¢hQ¡l Ll¡ q-u-R, L¡Òf¢eL NÒf ¢c-u j¡jm¡ ®~al£ Ll¡ q-u-R, AhnÉC ®pV¡ Q-m k¡-hz Bl k¡l¡ HC fËqp-el ¢hQ¡-l pÇfªJ² ¢Rm, Cen¡Bõ¡q h¡wm¡l j¡¢V-a a¡-clJ ¢hQ¡l q-hz”

Mr. Malum further submitted that the statements made by the opposite party in the said conference were biased, baseless, utterly false and fabricated, ill-motivated, and were not made in good faith. Such statements were made only to scandalize this Hon’ble Tribunal and its process and to undermine the confidence of the people in the integrity of this Tribunal, and also to threaten the security of all the related Judges of the Supreme Court and the Tribunals and all other stake-holders. He also submitted that the opposite party should be punished for his said contemptuous speech under section 11(4) of the International Crimes (Tribunals) Act, 1973 read with rule 45 of the International Crimes (Tribunal-1) Rules of Procedure, 2010.

Per contra, Mr. Zainal Abedin along with Mr. Tajul Islam, the learned counsels by placing the written reply to the show cause notice contended,

inter alia, that the opposite party addressed a Press Conference on 01.10.2013 at Shaheed Shafiur Rahman Auditorium of the Supreme Court Bar Association Building arranged by Jatiotabadi Ainjibi Forum which was telecast in Television Channels and also reported next day on 02.10.2013 in the daily newspapers. It was submitted that the opposite party made the said speech, but his speech has been misinterpreted by the petitioner without understanding the Role of the Judiciary and Hon'ble Judges and an Hon'ble judge is not a party in a case and in no way he is connected in the case. He simply adjudicates a case before him on the basis of evidence produced by the prosecution and the defence who are parties to a case. If anybody considers an Hon'ble Judge is a party or connected in a particular case tried by him, the very high image of his impartiality will vanish, the constitutional guarantee as embodied in our Constitution that " all citizens are equal before the law and are entitled to equal protection of law" will fall to the ground if an Hon'ble Judge is treated as a party or connected in a case.

The learned defence counsels further contended that when the opposite party came to know that some body due to their shallow perception about the solemn function of an Hon'ble Judge in dispensation of justice having golden scale in the hand are trying to portrait an Hon'ble Judge as a party or connected in the case tried by him in his Court, the opposite party at the very outset clarified the matter by calling a Press Conference where he categorically explained the position of an Hon'ble Judge in a case tried by

him, which was telecast widely and published in national dailies. The contents of the same as stated in the reply to the show cause notice are as under:

“ **Bj¡l hJ²hÉ ¢hQ¡lL-cl pÇf-LÑ ¢LR¤ hm¡ qu¢ez**

------M¾cL¡l j¡qh¤h ®q¡-pez

Bc¡ma Ahj¡ee¡l A¢i-k¡N ¢ho-u M¾cL¡l j¡qh¤h ®q¡-pe h-m-Re, Bj¡l hJ²-hÉ ¢hQ¡lL-cl pÇf-LÑ ¢LR¤ ¢Rm e¡z ®Lee¡ ¢hQ¡lL ®L¡e j¡jm¡l p¡-b pÇfªJ² b¡-Le e¡z ¢a¢e b¡-Le ¢el-frz

a¡l ¢hl²-Ü VÊ¡Ch¤Ée¡m La«ÑL Bc¡ma Ahj¡ee¡ ®e¡¢Vn S¡¢ll fl NaL¡m c¤f¤-l h¡wm¡-cn h¡l L¡E¢¾pm ih-e B-u¡¢Sa pwh¡c p-Çjm-e ¢a¢e H Lb¡ h-mez ¢m¢Ma hJ²-hÉ M¾cL¡l j¡qh¤h ®q¡-pe h-me, j¡jm¡l

h¡c£ , ¢hh¡c£ Hhw k¡l¡ p¡rÉ ®ce a¡l¡C j¡jm¡l p¡-b pÇfªJ² b¡-Lez

¢hQ¡lL j¡jm¡l p¡rÉ-fËj¡e n¤-e a¡ fkÑ¡-m¡Qe¡ L-l l¡u ®cez a¡l l¡u h¡c£ fr La«ÑL fËcš p¡rÉ-fËj¡-el Efl ¢eiÑl L-l q-u b¡-Lz Bj¡-cl cä¢h¢d BC-eJ Bc¡m-a ¢jbÉ¡ j¡jm¡ J ¢jbÉ¡ p¡rÉ ®cu¡ cäe£u Afl¡dz i¢hoÉ-a k¢c ®cM¡ k¡u ¢jbÉ¡ j¡jm¡ ®~al£ L-l Hhw ¢jbÉ¡ p¡rÉ ¢c-u

VÊ¡ChÉ¤e¡-m L¡E-L p¡S¡ ®cu¡ q-u-R a-h AhnÉC a¡-cl ¢hQ¡-ll pÇj¤M£e q-a q-hz

M¾cL¡l j¡qh¤h ®q¡-pe h-m, B¢j VÊ¡ChÉ¤e¡m J ¢hQ¡lL-cl pÇf-LÑ ®L¡e j¿¹hÉ L¢l e¡Cz Bj¡l hJ²hÉ ¢hL«a L-l hÉ¡MÉ¡ Ll¡ q-u-Rz k¢c Bc¡m-a ¢jbÉ¡ j¡jm¡ Ll¡ qu h¡ ¢jbÉ¡ p¡rÉ ®cu¡ q-m¡ a-h Hl SeÉ k¡l¡ c¡u£ a¡-cl ¢hQ¡l qJu¡ X~¢Qaz ®Lee¡ a¡ e¡ q-m ®c-n BC-el n¡pe

b¡L-h e¡ Hhw p¡w¢hd¡¢eLi¡-h L¡-l¡ ¢el¡fš¡ b¡L-h e¡z

¢a¢e h-me, Bj¡l hJ²hÉ L¡-l¡ fË¢a ýj¢L eu hlw H¢V HL¢V l¡-øÊÊl p¡w¢hd¡¢eL J BCeNa h¡dÉh¡dLa¡z

¢m¢Ma hJ²hÉ ®n-o p¡wh¡¢cL-cl HL fË-nÀl Sh¡-h M¾cL¡l j¡qh¤h ®q¡-pe h-me, Bj¡-L ®qu fÊ¢afæ Ll-a fË¢p¢LEne H A¢i-k¡N L-l-Rz

(p§œx eu¡ ¢cN¿¹z 7/10/2013 Cw a¡¢l-M fËL¡¢na)"

The learned defence counsels lastly submitted that the opposite party categorically explained that his speech in question in no way comes under the mischief of section 11(4) of the Act of 1973 and as such his explanation may kindly be accepted.

Be that as it may, we have heard the learned Prosecutor and the learned defence counsels of both the parties at length and considered their submissions. We have also carefully scrutinized the contempt petition, written reply to the show cause notice, the alleged speech, subsequent speech made by the opposite party in a Press Conference and other connected papers appended to them.

The moot question that falls for consideration by this Tribunal in the instant proceeding is that whether the alleged speech is contemptuous which comes under the mischief of section 11(4) of the International Crimes (Tribunals), Act, 1973, read with rule 45 of the International Crimes (Tribunal-1) Rules of Procedure, 2010.

Before going into the gamut of the case let us first see what are the redeeming features governing the contempt of proceeding as a whole. At the very outset we would like to mention here that the contempt of Court Act,

1926 has not given any definition as such to explain what constitutes an offence of contempt. But it has been defined in sub-section (4) of section 11 of the International Crimes (Tribunals) Act, 1973 which is quoted below:

> *" A Tribunal may punish any person, who obstructs or abuses its process or disobeys any of its orders or directions, or does anything which tends to prejudice the case of a party before it, or tends to bring it or any of its members into hatred or contempt , or does anything which constitutes contempt of the Tribunal, with simple imprisonment which may extend to one year, or with fine which may extend to Taka five thousand, or with both."*

Rule 45 of the International Crimes (Tribunal-1) Rules of Procedure, 2010, made by this Tribunal exercising the power conferred upon it under section 22 of the Act of 1973, has also given a similar definion of contempt of court as mentioned above which is quoted below:

> *" In pursuance of section 11(4) of the Act, the Tribunal may draw a proceeding against any person who obstructs or abuses the process of the Tribunal, or disobeys any order or direction of the Tribunal, or who does anything which tends to prejudice the case of a party before the Tribunal, or tends to bring the Tribunal or any of its Members into hatred or contempt, or does anything which constitutes contempt of the Tribunal."*

It is needless to mention that contempt proceeding is a quasi-criminal proceeding and in such a proceeding, heavy burden has been thrust upon the contempt petitioner to prove beyond all reasonable doubt that the contemner has deliberately violated or flouted the court's direction. There are three categories of contempt of court, (i) scandalisation of court, (ii) disobedience to the order of the court or breach of undertaking given to the court, and (iii) interference with the course of justice. In the instant case we are involved with first and third categories i.e. scandalisation of court and interference with the course of justice.

In the decision of **Moazzam Husain vs. The State reported in 35 DLR (AD)290** Mr. Justice Shahabuddin Ahmed made an observation regarding contempt of Court in the following manner:-

> *" Contempt of court has nowhere been defined in statutes. It has been conveniently described by referring to its ingredients and citing examples. 'Contempt' may be constituted by any conduct that brings authority of the court into disrespect or disregard or undermines its dignity and prestige . Scandalising the court is a worst kind of contempt. Making imputations touching the impartiality and integrity of a Judge or making sarcastic remarks about his judicial competence is also a contempt. Conduct or action causing obstruction or interfering with the course of justice is contempt. To prejudice the general public against a party to an action before it is heard in another form of contempt. "*

Further in the decision of **Mahbubur Rahman Sikder Vs. Mojibur Rahman reported in 35 DLR (AD) 203** after giving a thorough deliberation on the issue, Mr. Justice Badrul Haider Chowdhury observed:

> *" Contempt of Court means civil contempt or criminal contempt and civil contempt is defined as wilful disobedience to any judgment, decree, direction, order, writ or other process of Court or Wilful breach of an undertaking given to the Court.*
>
> *If our order and direction are disobeyed wilfully certainly that would amount to contempt.*
>
> *The distinction between criminal contempt and civil contempt is narrow and it will be profitless to embark upon such an inquiry. It was held in Catmur Vs. Knatchbull that non-performance of an award was a contempt of the court and might be regarded technically an offence. But as it related simply to a civil matter, and was rather in the nature of process to compel the performance of a specific act, the matter was in substance not criminal but civil.*
>
> *The object of the contempt proceeding is to protect the dignity of the court and not to satisfy the grudge of any private individuals. "*

Lord Justice Lindley in O'shea vs O'shea and Parnell observed regarding contempt of Court as under:

> *" Of course there are many contempts of court that are not of a criminal nature, for instance, when a man does not obey an order of the court made in some civil proceeding to do or abstain from doing something as where an injunction is granted in an action against a defendant, and he does not perform what he is ordered to perform, and then a motion is made to commit him for contempt, that is really only a procedure to get*

something done in the action, and has nothing of a criminal nature in it."

In the case of **PC Sen, reported in AIR 1970 (SC)** took the view that technical contempt should not give rise to any initiation of proceeding. The well established principle is that the court shall not impose a sentence for contempt of court unless it is satisfied that the contempt is of such a nature that it interferes or tends substantially to interfere with the due course of justice.

The Privy Council repeatedly emphasized that this summary power of punishing for contempt should be used sparingly and only in serious cases **[Parashura Debaran vs. King-Sup reported in 45 CWN 733]. The same caution echoed in Adam Ali vs. Emp. reported in AIR 1945 PC 147.**

Our Appellate Division considered several decisions of home and abroad in the decisions as referred to above. *Ratio decidendi* of those decisions is that to bring home an action within the mischief of contempt in the absence of any definition available in the Contempt of Court Act itself, it can be inferred that only the Wilful and deliberate disobedience of the Court's order can be considered to be the main ingredient to constitute a contempt of Court in a given situation.

In the case of **SAM Iqbal vs. State and another reported in 3 BLC (AD) 125,** Mr. Justice Latifur Rahman observed as follows:

" The jurisdiction of contempt must be taken with utmost care that it is not used on occasions or in a case to which it is not appropriate. In the case of Md. Samiulla Khan and another vs.

State , 15 DLR 150 it has been held that the power of contempt should be used sparingly and only in serious cases and the court should not be either unduly touchy and on the wisdom and restraint with which it is exercised. ”

The essence of contempt is an action or inaction amounting to an interference with or obstruction to or having a tendency to interfere with or to obstruct due administration of justice. This is the essence of the definition that has been in the civil contempt or criminal contempt. It has been laid down by our Appellate Division in 35 DLR’s case that confidence in the court’s of justice which the public possesses must in no way be tarnished, diminished or wiped out by contumacious behaviour of any person.

A fair criticism of the conduct of a Judge may not amount to contempt if it is made in good faith and in public interest. The Courts are required to see the surrounding circumstances to ascertain a good faith and the public interest including the person who is responsible for the comments, has knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved. If one having sufficient knowledge on the subject, such as a lawyer, a retired Judge, a teacher of law and an academician may make fair criticism and the Court in such case will be able to ascertain a good faith with the comments, but if a scurrilous comment is made by one who is totally foreign on the subject, arm of the law must strike a blow on him who challenges the supremecy of the rule of law in the general interest of the litigant public. In the instant case the opposite party is not only a senior

member of the Supreme Court Bar Association, but also the sitting Vice-Chairman of Bangladesh Bar Council, and as such we have to ascertain a good faith with the alleged comments passed by him in a Press Conference.

Of contempts committed in the face of the Court the most gross are those which involve actual or threatened violence to the person of the presiding Judge, or the officers of the Court in attendance. No one is above the law notwithstanding of his power, and for achieving the establishment of the rule of law, the Constitution has assigned the task to the judiciary in the country.

Chinappa Reddy, J speaking for the Court in Advocate- General's case **[Advocate-General, Bihar vs. MP Khair Industries AIR 1980 SC 946], citing the cases of Offut vs. US, [1954] 348 US 11 and Jennison vs. Baker, [1972] 1 ALL ER 997** stated thus:

> *" …….. it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, because, unless justice is so administered, there is the peril of all rights and liberties perishing. The Court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted*

with the power to commit for Contempt of Court, not in order to protect the dignity of the Court against insult or injury as the expression " Contempt of Court" may seem to suggest, but to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, observed or interfered with."

Krishna Iyer, J in his separate judgment in re S Mulgaokar [**In re: S. Mulgao Kar, AIR 1978 SC 727],** while giving the broad guidelines in taking punitive action in the matter of contempt of Court has stated:

" …… *if the Court considers the attack on the judge or judges scurrilous, offensive, intimidatory or malicious beyond 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.*"

To speak generally, contempt of Court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties litigant or their witnesses during the litigation. Thus, there is no doubt that the superior Court enjoyed the jurisdiction before coming into operation of any law under the common law of England. It was an inherent jurisdiction authorizing the Courts of Record to deal with effectively with all that had a tendency to hinder the normal course of justice or affect the dignity of the Court. The

reason for the existence of this jurisdiction was that unless Courts were armed with such a jurisdiction they could not function properly. Proceedings for contempt of Court are an exception to the general rule that a Judge should not hear any matter in which he has interest in the decision on it. There are large number of precedents where the same Judge whose contempt was committed heard and decided the matter.

In Bathina Ramkrishan Reddy **[Bathina Ramkrishan Reddy vs. State of Madras, AIR 1952 SC 149], BK Mukherjea, J** speaking for the Court stated:

> " W*hen 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. "*

The expression 'law' is to be understood from the definition given in Article 152 read with Article 111 of our Constitution. One should know that the law of the land has also been regarded to be that which is declared by the Appellate Division to be the law. Thus, where a provision, in the law, relating to contempt imposes reasonable restrictions, no person can take the liberty of scandalizing the authority of the Court of law. Freedom of expression does not mean that every person is free from not only scandalizing the authority of the Court of law and interference with the course of justice but also

challenging its authority. Freedom of expression, so far as they do not contravene the limits sanctioned by law, are to prevail without any hindrance or restriction. If the dignity of the law is not sustained, its sun is set, never to be lighted up again.

The Court/ Tribunal has a duty of protecting the interest of public in due administration of justice and protect the dignity of the Court/Tribunal against insult and injury. The Court/Tribunal should not hesitate to use its arm of contempt of Court when the use of such arm is necessary in order to protect and vindicate the right of the public. It has been argued that " It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage. 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". So we approach the question not from the point of view of the Judge whose honour and dignity was vindicated, but from the point of view of the public who have entrusted us the task of due administration of justice.

In Morris vs. Crown Office [1970] 2 QB 114, 129 Salmon LJ observed as under:

> " *The sole purpose of proceedings for contempt is to give our Courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented.* "

Lord Diplock in Attorney –General vs. Leveller Magazine Ltd. [1979] AC 440, 449F thus summarized the position:

> "……*although criminal contempt of Court may take a variety of forms they all share a common characteristic; they involve an interference with the due administration of justice either in a particular case or more generally as a continuing process. It is justice itself that is flouted by contempt of Court…….. "*

The Court must fetch the constitutional values of free speech and expression of the commentators. The balance should be struck between such values vis-à-vis the rights of the people in their lives and properties as guaranteed by the Constitution for strengthening the confidence in respect, dignity and honour of the judiciary.

As stated earlier, the question precisely is whether the statements of the opposite party Mr. Khandakar Mahabub Hossain, a Senior Advocate of Bangladesh Supreme Court made in a Press Conference amounted to contempt of Court / Tribunal, essentially criminal contempt or, in other words, such statements have the effect of bringing Court/Tribunal into disrepute or, the confidence of the people in the Court/Tribunal or interfering with the administration of justice.

In view of the above mentioned authorities, let us now consider the statements of the opposite party. We have gone through the statements in between the lines many times. The opposite party admittedly said amongst others in the said Pres Conference that if Nationalist Force comes to the power, the actual war criminals would be tried, and those who have been tried

out of revenge and those cases which have been made out of imaginary stories that must go out. But the persons who were connected with those farce trials, they must be tried in future in the earth of Bangla, Insha Allah.

Mr. Zead-Al-Malum, the learned Prosecutor submitted that such statements were made by the opposite party only to scandalize this Hon'ble Tribunal and its process and to undermine the confidence of the people in the integrity of this Tribunal and also to threaten the security of all the related Judges of the Supreme Court and the Tribunals and all other stake-holders. Per contra, Mr. Tajul Islam, the learned counsel admitting the said statements made by the opposite party in a Press Conference on 1st October , 2013 contended inter alia that said statements have been misinterpreted by the petitioner without understanding the Role of the Judiciary and Hon'ble Judge and an Hon'ble Judge is not a party in a case and in no way he is connected in the case. He simply adjudicates a case before him on the basis of evidence produced by the parties. Mr. Islam further contended that when the opposite party came to know that some body due to their shallow perception about the solemn function of an Hon'ble Judge in dispensation of justice having golden balance in the hand are trying to portrait an Hon'ble Judge as a party, the opposite party at the very outset clarified the matter by calling a Press Conference where he categorically explained the position of an Hon'ble Judge in a case tried by him, which was telecast widely and published in national dailies. We have also read the said subsequent statements made by the opposite party which we have already quoted in this order.

The alleged statement is no doubt critical, in general, of the Courts and also of lawyers. The statement in question may be interpreted/misinterpreted in many ways. The alleged statement is not so simple and plain as interpreted by the learned counsel. If it is so simple, then the petitioner could not get chance to misinterprete the same. So, this statement is nothing but an ambiguous one i.e. it may be interpreted in various ways. On a plain reading of the statement, without considering the interpretation given by the learned counsel, it appears to us to be contemptuous. But if we consider the explanation given by the opposite party regarding the statement in question, it may be doubtful whether the statement is contemptuous or not. Since the opposite party is a Senior Advocate of Bangladesh Supreme Court and the sitting Vice-Chairman of Bangladesh Bar Council, he should not have made such a statement which could be misinterpreted as alleged by himself.

It may be mentioned here that the perpetrators of war crimes and crimes against humanity are being tried in the Court of law long after 42 years and it was the aspiration of the nation as a whole. Whether a case of this nature is false or concocted, it could be only ascertained by Tribunal after taking evidence and hearing both the parties and by the Appellate authority if any appeal is filed against the verdict of a Tribunal. So, about the subjudice matter no one should make any comment which may cause prejudice to a party.

In the case of **Md. Riazuddin Khan, Advocate and another vs. Mahmudur Rahman and others, reported in 63 DLR(AD) 29**, our Appellate Division have observed as under:

> *" As regards criticism of judiciary, it is to be looked into whether an attack is malicious or ill intention which is always difficult to determine. But the language in which it is made, the fairness, the factual accuracy, the logical soundness of it, the care taken in justly and properly analyzing the materials before the maker of it are important consideration. The Court is not concerned more which reasonable and probable effects of what is said or written than with the motives lying behind what is done. V.R. Krishna Iyer, J in S. Mulgaokr formulated some rules. It is opined, the first rule in this branch of contempt power is a wise economy of use by the Court of this branch of its jurisdiction. The Court will act with seriousness and severity where justice is jeopardized by a gross and/ or unfounded attack on the Judges, where the attack is calculated to obstruct or destroy the judicial process. The Court is willing to ignore, by a majestic liberalism, trifling and venial offences- the dogs may bark, the caravan will pass. The Court will not be prompted to act as a result of an easy irritability. Much rather it shall take a neotic look at the conspectus of feature and be guided by a*

constellation of constitutional and other considerations when it chooses to use, or desist from using, its power of contempt."

In the case of **Md. Abdul Halim vs. Dr. Md. Tareque and others reported in 63 DLR 465** it has been observed:

" Proceedings for contempt of Court are of a quasi-criminal in nature and where there is any reasonable doubt, the person charged with Contempt is entitled to benefit of doubt. "

It may be borne in mind that though a contempt proceeding is quasi-criminal in nature, the contemner is not like an accused in a criminal case since he may file affidavit or make statements on oath in refutation of the allegation against him. The charge must be proved to the hilt otherwise the contemner is entitled to benefit of doubt. **[Moazzem Hossain vs. State, 35 DLR(AD) 290 and Mahbubur Rahman Sikder vs. Mojibur Rahman Sikder, 35 DLR(AD) 203].**

A mere so-called contemptuous comment /statement of a person is not enough to punish him for contempt of Court unless there is intention or ill-motive behind it to bring down the prestige and authority of Courts. The learned defence counsel submitted that the opposite party had no intention at all in making the alleged statement to flout the mandate of law or the authority of the Court, rather he made the same on good faith and in public interest. In the absence of any such intention, no body can be held responsible for contempt for any comments on the working of the Court, though harsh and generally unexpected. In other words, in the absence of

mens rea, no contempt is established. It is for the Court to strike the balance in between the right to free speech and expression and the independence and sovereignty of the judiciary.

The opposite party is not an ordinary man. He is a Senior Advocate of Bangladesh Supreme Court and the sitting Vice-Chairman of Bangladesh Bar Council as well as the President of the Supreme Court Bar Association, and as such, more responsibility lies with him than any other professionals to uphold the dignity and prestige of the judiciary and the rule of law for the sake of the society and also for his own sake. The opposite party having been in such a position he should not make any comment/statement that may be tantamount to contempt of Court, either directly or indirectly. However, on perusal of the subsequent statement made by the opposite party in a press conference, we believe that the opposite party did not mean in the alleged statement that a Judge of the Court/Tribunal is connected with any case which he tries. In the premises, we profitably quote from the observation of the Appellate Division in the case of **Abdul Hoque vs. District Judgeship, reported in 51 DLR(AD) 15** which is follow:

> " *Not only government officials high or low; but everybody should try to uphold the image of the Court, not for the sake of the Court but for the sake of the Society, for their own sake."*

It may be reiterated that the opposite party belongs to the lawyer community, and as such, in order to prevent the Judiciary and the lawyer community from coming each other at loggerheads and also to maintain and

preserve harmonious co-operation in between these two institutions, we are of the view that for ends of justice we may dispose of the instant petition of contempt.

In view of the facts, circumstances and laws as mentioned above, the instant petition of contempt is disposed of with a note of desire that the opposite party Mr. Khandakar Mahabub Hossain shall be more careful and respectful in making an statement or comment with regard to the Judiciary or the Judges or the Courts of Bangladesh in future.

(M. Enayetur Rahim, Chairman)

(Jahangir Hossain, Member)

(Anwarul Haque, Member)