

## **International Crimes Tribunal-2 [ICT-2]**

[Tribunal constituted under section 6 (1) of the Act No. XIX of 1973]

**Old High Court Building, Dhaka, Bangladesh**

### **ICT-BD [ICT-2] Miscellaneous Case No. 05 of 2015**

[Proceeding under section 11(4) of the Act No. XIX of 1973]

**Before**

**Justice Obaidul Hassan, Chairman**

**Justice Md. Mozibur Rahman Miah, Member**

**Justice Md. Shahinur Islam, Member**

Monoronjon Ghoshal and four others

**Vs**

Dr. Zafrullah Chowdhury [Contemnor]

#### **For the Petitioners:**

1. Mr. Morshed Ahmed Khan, Advocate, Bangladesh Supreme Court
2. Mr. Khan Mohammad Shamim Aziz, Advocate, Bangladesh Supreme Court

#### **For Contemnor:**

1. Mr. Abdul Baset Majumdar, Senior Advocate, Bangladesh Supreme Court
2. Mr. Sayed Ahmed, Advocate, Bangladesh Supreme Court

**Date of delivery of Order: 01 September 2015**

## **ORDER**

**Justice Obaidul Hassan, Chairman**

**Justice Md. Shahinur Islam, Member**

### **Background of the contempt proceeding**

1. This has been a proceedings under section 11(4) of the International Crimes (Tribunals) Act,1973 initiated on an application brought on 06 July 2015 by one **Mr. Monoronjon Ghoshal** and four others [first three

are freedom fighters] against **Dr. Zafrullah Chowdhury**, founder of the Gono Sasthya Kendro on the grounds stated in the application.

2. The applicants contend that on 10 June 2015 Dr. Zafrullah Chowdhury the contemnor herein after serving one hour sentence in the dock awarded to him by this Tribunal [ICT-2] in a contempt proceeding [ICT-BD Miscellaneous Case No. **04 of 2014** ] briefed the journalists at the Tribunal premises commenting that –

‘today’s [10 June 2015] order convicting him for contempt is an evidence of ‘mental illness’ of three judges [of the Tribunal-2] Here the judges cannot tolerate criticism. Where the judges cannot tolerate criticism, there cannot be justice’ [০৮/৬/১৫  
আইসিটিবি জাজদের বিরুদ্ধে তীব্র সমালোচনা করেছেন ড. জাফরুল্লাহ চৌধুরী।  
তিনি বলেন, ‘যদি বিচারকরা সমালোচনা সহ্য করতে পারেন না, তবে  
বিচার হবে না।’]

3. The above comment and reaction of the opposite party have been published in most of national dailies, both print and online, such as *banglanews24.com* ,*bdnews24.com* ,*jamunanews24.com*, *amarbangladesh-online.com*, daily Janakantha, daily Manabkantha etc. [copies of said reports have been attached with the application as Annexure-A,B,C,D,E and F]. A copy of the video statement of the opposite party [Annexure-G] has also been submitted, in support of contention of the applicants.

4. The petitioners allege that such ill-motivated statement made by the opposite party before the media was not in good faith and it rather intended to scandalize the Tribunal and its judicial process and also intending to undermine the confidence of the people in the integrity of the Tribunal and its judicial process. The application further contended that Dr. Zafrullah Chowdhury illegally intervened in the judicial process of Bangladesh and attempted to assassinate the image of the entire process of trial of war criminals in the ICT-BD and the judicial system of Bangladesh

5. The Tribunal[ICT-2] having considered the materials placed together with the application found *prima facie* that in addition to the comment of the contemnor as has been highlighted in the application he [the

contemnor] had reacted by making derogatory comments and demonstrated disparaging conduct inside the court room, instantly after pronouncement of order convicting him for contempt.

6. Therefore, taking the above conduct and actions of Zafrullah and others into cognizance proceeding for the offence of contempt under section 11(4) of the Act of 1973 has been drawn and accordingly Dr. Zafrullah Chowdhury was directed to show cause within 07 days from the date [12.7.2015] as to why he shall not be punished for his conduct constituting the offence of scandalizing the Tribunal.

### **Affidavit of reply submitted by the contemnor**

7. The contemnor made his appearance on 22.7.2015 through engaging Mr. Abdul Baset Majumder, senior counsel who prayed time for submitting reply. On the next date fixed, further time was sought. Allowing the prayer, Tribunal fixed 09 August for reply.

8. On 09 August 2015, the contemnor by filing an affidavit of reply tendered unconditional apology for the wrongs he committed by making alleged comments on 10 June 2015 expressing sincere regret. Tribunal fixed 10 August 2015 for hearing the matter.

### **Hearing the matter**

9. At the outset of the hearing, the CD [Annexure-G] containing the briefing made by the contemnor before the electronic media in the Tribunal premises just coming out from court room serving one hour sentence awarded to him in the ICT-BD Miscellaneous Case No. **04 of 2014** was played in open court and in presence of the learned counsels of both sides, as ordered by the Tribunal to let both sides realize what the contemnor commented.

10. The learned senior counsel Mr. Abdul Baset Majumder, without justifying the statement of the contemnor allegedly made instantly after he served out one hour sentence in the dock on 10 June 2015 pursuant to order rendered in a contempt proceeding [ICT-BD Miscellaneous Case No. **04 of 2014**] by this Tribunal [ICT-2] simply prayed for exoneration

accepting the unconditional and sincere apology tendered by the contemnor.

**11.** On contrary, the learned counsels for the petitioners submitted that the contemnor habitually committed contemptible actions calculated to demean the Tribunals; that the alleged comments and conduct of the contemnor were not in good faith and in public interest; that the comments he made attacking the judges of the Tribunal and their lawful authority are gravely scandalizing the Tribunal; that the apology tendered by him is not sincere and he has come up now with this weapon simply to escape.

### **Deliberation and Finding with Reasoning**

**12.** We have meticulously perused the reports published in the online news media, such as *banglanews24.com*, *bdnews24.com*, *jamunanews24.com*, *amarbangaldesh-online.com*, and print media, such as daily Janakantha, daily Manabkantha [ submitted as Annexure A,B,C,D,E,F ] and also witnessed the CD [Annexure-G] containing briefing made by the OP to electronic media.. We have also gone too through the transcript of the briefing as contained in the CD. Additionally, the CD [Annexure-G] containing briefing made by the contemnor to electronic media has been played in open courtroom to let both sides realize what the contemnor commented.

**13.** It is to be noted that 10 June 2015 was fixed for delivery of decision on contempt proceeding [ICT-BD Miscellaneous Case No. **04 of 2014**] against Dr. Zafrullah and 22 others. The Tribunal by its order exonerated 22 contemnors and convicted and sentenced Dr. Zafrullah to suffer one hour sentence in the dock and to pay a fine of Taka 5,000 within seven days form the date in default of which to suffer sentence of imprisonment of one month.

**14.** At the out set it would be relevant to note that being aggrieved by the order of conviction, Dr. Zafrullah preferred a Criminal Petition for leave to appeal being No. 317 of 2015 before the Appellate Division and

tendered unconditional and unqualified apology for the conduct for which he was convicted and fined the Appellate Division quashing the conviction disposed of the petition with observations by its order dated 28.7.2015 with warning not to repeat such conduct directing any court or judge of administration of justice.

**15.** First, he could have tendered apology before the Tribunal. Instead, he defended himself. Tendering unconditional apology to the Appellate Division proves again that he committed the offence of contempt by his conduct, by expressing concern, on the decision awarding punishment to David Bergamn. The Appellate Division in its order dated 28.7.2015 [Criminal Petition for leave to appeal being No. 317 of 2015] observed -- " We would like to observe here that it would have been proper if Dr. Zafrullah Chowdhury had tendered such apology before the concerned tribunal, the matter would have been disposed of earlier."

**16.** Second, after pronouncing decision finding him guilty of contempt he in the name of expressing reaction calculatedly made extreme derogatory comments, inside and outside the court room attacking the judges and Tribunal's lawful authority. The instant proceeding relates to such disparaging comments.

**17.** Admittedly, the comments the contemnor made were published in multiple daily newspapers while speaking to the media immediately after serving an hour's sentence in the ICT dock.

**18.** Now, Dr. Zafrullah Chowdhury the contemnor herein has come up with an affidavit of reply tendering unconditional apology and prays exoneration wherein he expresses repentance as below:

“.....Visibly shattered, mentally disturbed and anguished he made unbecoming and indecent remarks about the three Honourable Judges serving in the ICT-2 for which he is earnestly repentant”.

19. The contemnor thus has expressed repentance for his admitted contemptible actions. But he did it as he was shattered, mentally disturbed and anguished-- the contemnor argued. In paragraph 5 of the Affidavit of reply the contemnor further states—

“ That the contemnor –respondent hereby apologizes most sincerely and unconditionally to this learned Tribunal for any adverse implication on the proficiency of independence of this Learned tribunal that may have been inadvertently prompted by his remarks. The contemnor-Respondent reaffirms his highest regard for the courts in Bangladesh including this Honourable Tribunal”.

20. In view of above, before we arrive at decision on the unconditional apology tendered by the contemnor we consider it indispensable in recording observations backed by settled judicial propositions on contemnor’s admitted contemptible conducts. For at the out set it is to be determined whether the offence of contempt has been constituted by the alleged conduct of the contemnor calculated to scandalizing the Tribunal.

### ***Criticism when scandalizing***

21. Criticism on judicial verdict is permissible indeed. But it must be done without impeding or perverting the administration of justice of a sovereign country and also without crossing the recognised borderline of right to freedom of thought and expression.

22. We reinforce that it is the right of every citizen to make comment or criticize court’s decision. But it must be ‘fair’, in ‘good faith’ and on ‘public interest’. We do not fear criticism. In this regard, we recall the observation made by **Lord Denning** in *Metropolitan Police Commissioner, ex parte Blackburn* that-

It is the right of every man, in Parliament or out of it, in the Press or over broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not.[ 1968] 2 QB 155].

23. But those who criticize the judges or their judicial functions and lawful authority should remember that for the reason of nature of our

office we cannot reply to their criticism and we simply rely on our conduct, ability, lawful authority and jurisdiction. Nevertheless, we are however prompted to consider that winds of criticism will not deter us from doing what the occasion requires. And that is why now we deem it necessary to see whether the alleged comments made inside and outside the court room, instantly after pronouncement of the decision punishing Dr. Zafrullah Chowdhury finding him guilty of the offence of contempt [ICT-BD Miscellaneous Case No. 04 of 2014 ] were truly 'fair', in good faith' and on the 'public interest'.

24. Indeed, either party to a legal proceeding may feel aggrieved by the decision of court and may also express his grievances with a desire to move the higher judicial forum to have redress. Admittedly, the contemnor Dr. Zafrullah Chowdhury, after serving the one hour's sentence in court's dock, came out of the court room and faced the media when he expressed his desire to move to the Appellate Division against the order convicting him guilty of contempt. But at the same time he with extreme and blatant arrogance dared to make many comments attacking the Judges and the Tribunal, the ANNEXURES demonstrate it clearly.

25. We have watched the CD of 71 TV containing Zafrullah's briefing which demonstrates how and in which uncivilized manner he, vomiting venom, had scandalized the Judges, the Tribunal and its lawful authority. It is hard to believe that a civilized senior citizen who was a valiant freedom fighter too preferred to walk with such rudeness attacking the Judges and judiciary of the country. A responsible and highly educated citizen cannot go beyond the minimum norms of civility, in the name of freedom of expression, by commenting that **'the decision on his contempt was the proof of mental insanity of three judges'**.

26. The doctrine of "scandalizing the court" is rooted in English common law. The primary rationale for this form of contempt law is the maintenance of public confidence in the administration of justice. In the early case of *R. v. Almon*,<sup>61</sup> *Wilmot J.* stated:

[Criticism of judges] excites in the minds of the people a general dissatisfaction with all judicial determinations, and indisposes their minds to obey them; and whenever men's allegiances to the laws is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice, and, in my opinion, calls out for a more rapid and immediate redress than any other obstruction whatsoever....

27. Unlike other public authorities, judges cannot respond to criticisms and engage in public debate. In *Patrick Anthony Chinamasa*, a recent judgment of the Supreme Court of Zimbabwe which held that the offence of scandalizing the court is reasonably justifiable in a democratic society, **Gubbay CJ** stated:

Unlike other public figures, judges have no proper forum in which to reply to criticisms. They cannot debate the issue in public without jeopardizing their impartiality. This is why protection should be given to judges when it is not given to other important members of society such as politicians, administrators and public servants.[ S.C. 113/2000, 6 November 2000, p. 24.]

28. Expressing fair, reasonable and legitimate criticism of any act or conduct of a judge in his judicial capacity has been recognised by the Indian Supreme Court as it observed in the case of *Perspective Publications Vs. State of Maharashtra* that—

It is open to anyone to express fair, reasonable and legitimate criticism of any act or conduct of a judge in his judicial capacity or even to make a proper and fair comment on any decision given by him because 'justice is not cloistered virtue and she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.[AIR 1971 SC 221, 230),

29. We admit that we are allowed to suffer scrutiny and respectful comment on our ability and authority. But on no count, the above comment was 'fair', 'reasonable' and 'legitimate'. Rather, the conduct and the utterance the contemnor Dr. Zafrullah made before the media constitutes grossest scandalizing the Tribunal as it obviously excited in the minds of public and indisposes their minds to obey the justice delivery system; and whenever men's allegiance to the laws is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice delivery system, we firmly opine.



30. Dr. Zafrullah's uncouth comment patently strikes at the very core of the ability, lawful authority and functions of the judges of the Tribunal. Such arraignments are harmful to public interest and are clearly calculated to undermine public confidence in the administration of justice being dispensed with in the Tribunal a constitutionally judicial forum consisting of Supreme Court Judges.

31. Instantly after pronouncement of the order [ICT-BD Miscellaneous Case No. 04 of 2014] the contemnor started showing uncivilized conduct even inside the court room, instead of obeying Tribunal's order. Such actions and unbecoming posture interfered with the course of justice. It was simply a deliberate challenge to the authority of the judges and an interference with the administration of justice.

32. We would like to reiterate that the dignity and authority of the court has to be respected by all concerned failing which the very constitutional scheme and public faith in the judiciary would run the risk of being eroded. No one is expected to impede the administration of justice in any manner. . Any departure would be construed to be violative his obligations. In **Delhi Judicial Service Association v. State of Gujrat, (1991) 4 SCC 406**, the Apex Court held as under:

"The definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of court. The public have a vital stake in effective and orderly administration of justice . The Court has the duty of protecting the interest of the community in the due administration of justice and so, it is entrusted with the power to commit for contempt of court, not to protect the dignity of the Court against insult or injury, but to protect and vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with."

33. Although judges and courts are open to criticism but it must be within the limits of reasonable courtesy and good faith. But the

contemnor expressed hideous grievance by making extremely derogatory remark attacking the Judges and the Tribunal outside the court-room instantly after serving out the sentence of one hour in court's dock [ICT-BD Miscellaneous Case No. **04 of 2014**]. We believe that in a democratic society the judges need not always be too sensitive to the acts and conduct of citizens or media directing the judicial functions of courts. But here we are forced to record our finding that contemnor's conduct and comments pregnant of scurrilous language as depicted from the CD were the acts of serious scandalizing the Tribunal and its judges and thus constituted grave contempt.

**34.** We the judges do not have proper forum in which to reply to criticism, true. In *Patrick Anthony Chinamasa*, a recent judgment of the **Supreme Court of Zimbabwe** it has been held by **Gubbay CJ** that:

Unlike other public figures, judges have no proper forum in which to reply to criticisms. They cannot debate the issue in public without jeopardizing their impartiality. This is why protection should be given to judges when it is not given to other important members of society such as politicians, administrators and public servants.[ **S.C. 113/2000, 6 November 2000, p. 24.**]

**35.** But here, considering the graveness of deliberate offending comments calculated to malign the judicial process of the Tribunal and its judges we cannot remain mute. Now we can obviously extend our hand in order to protect independence, majesty and lawful authority of the Tribunal, a court of law. In a recent case in **Hong Kong**, a newspaper which attacked the local judiciary by, among other things, describing judges as “swinish whites-skinned judges”, “pigs”, and “judicial scumbags and evil remnants of the British Hong Kong government” was found in contempt of court in part because the comments were “scurrilous abuse”. On careful analysis of the admitted conducts and comments made by the contemnor it stands proved that the same were gravely scurrilous and were calculated to bring the Judges and their judicial capacity into hatred in the mind of public and on the administration of justice.

**36.** We keep in mind too that on 10 June 2015, instantly after pronouncement of the order punishing Dr. Zafrullah in the earlier contempt proceeding [ICT-BD Miscellaneous Case No. **04 of 2014** ] came forward to the podium[inside court room] and urged for keeping the order convicting him suspended till he preferred appeal. The Tribunal did not entertain it as the Statute does not provide provision of keeping the operation of its order stayed or suspended as no explicit provision of appeal finds place therein against an order in a contempt proceeding under section 11(4) of the Act of 1973. Ignorance of law is no excuse. But the convicted contemnor despite being aware of absence of provision of appeal instantly reacted by saying loudly in open court -  
**ÔGŪ m=úYAb`iq/ ¶lgZvi Ace`envi Kti:Qb/ô**

**37.** Can a civilized person demonstrate such visible disobedience to court's order by making such illegitimate utterance, instead obeying it, till the order rendered exists? Such scurrilous conduct of the contemnor happened in presence of the audience. Did the contemnor, by making such derogatory comment questioning Tribunal's lawful authority and accusing the judges, desire to keep him above law? We are of the view that only an ignorant and wrong headed person opts to show such revolting and arrogant behaviour demeaning the dignity and lawful authority of a court of law.

**38.** With such deliberate conduct the contemnor not only tarnished the image of the Tribunal a domestic juridical forum to prosecute, try and punish the perpetrators of the offences committed in 1971 in violation of customary international law but made a conscious attempt to scandalize intending to shake public confidence in the judicial system.

**39.** A responsible man, a party to a judicial proceeding, must have respect to law and the judicial system of the country and he cannot retort in such an uncivilized and disapproved manner, in presence of huge audience including the media persons. The crude conduct the contemnor had shown consciously has demeaned the authority of the Tribunal. Such conduct cannot be allowed to be negotiated, for the purpose of upholding

the lawful authority and majesty of a court of law. Such conduct deserves no endorsement even by any conscious and civilized quarter of a democratic society, we conclude.

**40.** Dr. Zafrullah Chowdhury the contemnor herein, for no lawful reason, instead of carrying out Tribunal's judicial order, started shouting refusing to stay on court's dock as ordered. And he did it in presence of number of audience, media persons and security men, as appeared from the report published in *banglanewsnews24.com*. Dr. Zafrullah Chowdhury is a notable senior citizen of the country having enormous qualities. He was expected to demonstrate reasonable conduct and reaction by his tolerant and responsible behaviour. But the conduct he had shown, by making alleged comments, did not reflect it.

**41.** We are surprised indeed how and on what norms instead of obeying order of a court of law, Dr. Zafrullah started acting as a lame-duck inside the court room, in the name of reacting over the decision convicting him for the offence of contempt of court. With this he committed a gross contempt. His contemptible actions he demonstrated inside the court room in presence of advocates, audience, media persons, and security persons exceeded limit of minimum norm of civility.

**42.** What the contemnor intended to achieve by disregarding the order of a court of law by exhibiting such unruly and aggressive posture? We simply fail to understand. We find no other way but to doubt whether such an egotistical person is a member of a discipline quarter of the society. Dr. Chowdhury, in other words, had demeaned and insulted his own achievement and nobility, not the Tribunal and its judges—we believe.

**43. Krishna Iyer, J** in his separate judgment in re S Mulgaokar (*In re : S. Mulgao Kar, AIR 19878 DC 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.

**44.** Therefore, blatant condemnatory attack by using disrespectful language the contemnor made inside the court room, after pronouncement of the order convicting him for the offence of contempt exceeded condonable limits.

**45.** Dr. Zafrullah Chowdhury the contemnor is a valiant freedom fighter. But it does not mean that this credential has given him unfettered license to do and say whatever he likes aiming to the court of law and its judges remaining present inside the court room. If he thought that he shall have remedy against the order of this Tribunal it was his liberty to knock the door of the Appellate Division and eventually he did it. But intention of preferring appeal and showing limitless rowdiness inside the court room cannot go together. As the protector of justice system we cannot remain mum. The conduct he displayed was nothing but something like hooliganism calculated to deliberately derogate country's justice delivery system. The matter did not end here.

**46.** After serving the sentence of one hour, the contemnor coming out of the court's dock uttered before the media persons in the Tribunal premises that –

ÔAvR†Ki Av`vj Z Aegvbbvi ivqUv wZbRb wPvi†Ki gvbumK  
AmÿZvi cÿvb| GLv†b wPvi cWZiv mgvtj vPbv mn` Ki†Z cv†i bbv|  
thLv†b Zviv mgvtj vPbv mn` Ki†Z cv†i b bv, tmLv†b b`vq wPvi nq  
bv|

**47.** In *Prager and Oberschlick v. Austria*, the applicant was convicted for defamation because of an article he wrote in which he claimed, among other things, that Judge J. was “arrogant” and “bullying” in his performance of duties and treated accused persons as if they had already been convicted. Again, the Court held that the restriction on freedom of expression was “necessary in a democratic society”, reasoning that the

judiciary must be protected against **unfounded attacks** and that the statements were excessive and lacked a factual basis:

Regard must... be had to the special role of the judiciary in society. As the guarantor of justice, a fundamental value in a law-governed State, it must enjoy public confidence if it is to be successful in carrying out its duties. It may therefore prove necessary to protect such confidence against destructive attacks that are essentially unfounded, especially in view of the fact that judges who have been criticized are subject to a duty of discretion that precludes them from replying....

**48.** But it transpires clearly that the contemnor deliberately scandalized the Tribunal and its Judges as well. His conduct was not in ‘good faith’, ‘fair’ and in ‘public interest’. It was rather a destructive and malicious attacks to the guarantors of justice in a law governed society. He by such uncivilized attacks, in the name of liberty of expression, has intentionally eroded the confidence of public in the courts of justice.

**49.** It has been observed by **Justice Sethi** in the case of **Arundhati Roy [(2000) 3 SC p.351]** that-

“The confidence in the courts of justice, which the people possess, cannot, in any way, be allowed to be tarnished, diminished or wiped out by contumacious behaviour of any person. The only weapon of protecting itself from the onslaught to the institution is the long hand of contempt of court left in the armoury of judicial repository which, when needed, can reach any neck howsoever high or far away it may be. ....If the judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs. ....The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create dissatisfaction and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded.”

**Justice Sethi** in the case of **Arundhati Roy [(2000) 3 SC p.360, para.16]** has also observed that-

“Action of scandalising the authority of the court has been regarded as an “obstruction” of public justice whereby the authority of the court is undermined.”

**50.** It is needless to note that public confidence on the judiciary and judicial system is the foundation of trust and allegiance to the law. It is

now settled that scandalising the court would mean hostile criticism of a judicial institution and its functioning. In the case of **DC Saxena Case [DC Saxena case, (1996) 5 SCC 216]** it has been held that if the people's allegiance to the law is so fundamentally shaken it is most vital and most dangerous obstruction of justice calling for urgent action.

**51. In N.B. Sanghvi v. High Court of Punjab and Haryana (1991) 3 SCC 600** the Apex Court observed as under:

When there is a deliberate attempt to scandalize which would shake the confidence of the litigating public in the system, the damage caused is not only to the reputation of the concerned judge but also to the fair name of the judiciary.

**52.** Dr. Zafrullah Chowdhury the contemnor herein has proved himself a precarious and extremely wrongheaded person. We think that if he is not prevented he will be continuing with his illegitimate arrogant actions intending to derogate the judiciary and the rule of law of the country. The nation of course recognises his contribution in the war of liberation. But merely for this reason it cannot be assumed that he can do any wrong and he is thus above law. Rather, in the above conspectus, the charge of criminal contempt against the contemnor is fully established.

**53.** The imputation of 'inability' [by terming the decision the proof of judges' mental illness] constitutes ground for contempt of court as it interferes with the performance of judicial duties and tended to erode public confidence on the administration of justice. The leading English case is *R. v. Editor of New Statesman, ex parte DPP*, where a newspaper was found in contempt of court after it published an article implying that the religious beliefs of the judge made it inevitable that he would rule against a woman who was a birth control advocate. **Lord Hewart CJ** reasoned:

It imputed unfairness and lack of partiality to a Judge in the discharge of his judicial duties. The gravamen of the offence was that by lowering his authority it interfered with the performance of his judicial duties.

**54.** Likewise, in the Indian case of *EMS Namboodivipad v. TN Nambiar*, the Chief Minister of Kerala made a public statement accusing judges of class bias:

Marx and Engels considered the judiciary an instrument of oppression and even today... it continues so.... Judges are guided and dominated by class hatred, class interests and class prejudices and where the evidence is balanced between a well dressed pot-bellied man and a poor ill-dressed and illiterate person the Judge instinctively favours the former.[**AIR 1970 SC. p. 215-16.**]

**55.** The Indian Supreme Court upheld his conviction for contempt of court, reasoning that the likely effects of his 'words' must be seen and they have clearly the effect of lowering the prestige of Judges and Courts in the eyes of the people.

**56.** We reiterate that we always recognise that the right of free speech is guaranteed by our Constitution and must be properly guarded but nevertheless, it is recognised that it must not be abused or be permitted to destroy or impair the efficiency and authority of the courts and public confidence and respect therein. Dr. Zafrullah's deliberate and extremely malicious and scandalizing utterance inside and outside the court room, instantly after pronouncing the order convicting him for the offence of contempt was calculated not only to show disobedience to court but also intended to impede and impair the ability and efficiency of its machinery and the judges.

**57.** It is quite wrong to feel that Dr. Zafrullah has got license to deliberately demean the judiciary and judges, by scandalising act committed in public merely for the reason that he is a freedom fighter. Good deeds either prior or subsequent to the wrong or offence done cannot make one absolved of liability of the said wrong or offence committed by him. Dr. Zafrullah has rather consciously attempted to abuse the glory of a freedom fighter by maligning a court of law and its Judges, by his scandalising actions.

**58.** Lord Denning in his book titled '*The Due process of Law*' says :



When the Judges of a Court are criticized or defamed—or as it is put ‘scandalised’—they can punish the offender. They do it, they say, not to protect themselves as individuals but to preserve the authority of the Court. It was so stated in one of the most eloquent passages in our law book---in a judgment which was prepared but never delivered. The Judge who was criticised was one of our greatest. It was Lord Mansfield himself in 1765.”

**59.** The article titled ‘*Scandalising the Court*’ articulated by **Lord Denning** further states that forty years later it [judgment] was published in a volume of Wilmot’s cases under the title ***R v Almon [1765 Wilm 243-271]***. The core message reflected in this judgement, as understood on reading the article, was that if the authority of the Judges is trampled upon by an individual, by his conduct, the court’s authority will not long survive and in such case the court retains power to protect its authority.

**60.** It transpires that in the name of demonstrating reaction on the order of the Tribunal, contemnor Dr. Zafrullah Chowdhury intended to malign the ‘judicial manner’ of adjudication of issue in question and thereby made a detrimental attack on the authority and jurisdiction of the Tribunal, a judicial body constituted under valid legislation. He cannot express his view maligning the ‘lawful authority’ and ‘manner’ the Tribunal rendered its finding in its final decision [ICT-BD Miscellaneous Case No. **04 of 2014**] until and unless it is reversed by the higher judicial forum.

**61.** Section 11(4) of the Act of 1973 is wide and the same is referable even to doing anything which tends to bring the Tribunal or its members into hatred, in addition to obstruction to its process or doing anything which tends to prejudice the case before it. The phrase ‘doing anything’ refers to publication or speech whether by words spoken or written or even by signs or by visible representations which scandalizes or tends to scandalize, or lowers or tends to lower the authority of the Tribunal or prejudices or interferes or tends to interfere with the due course of any judicial proceeding or interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner.



67. The reports and the transcript of the CD also go to show that the contemnor went on further by making comment, in his briefing to the electronic media that –

*ÒÀìR†K hìì ÀìR†K hìì †`Lìq hìq, D'PZì †KìU®hìì †`Lì hìq th, Zì†`ì GB ììqUìv fìž, Zìntìj ZìvìvìK Àìgvi Rìe†bi GB mgqUìvìdìwì†q ìì†Z cìvì†eb, bñ H 3 Rb ììPvìcìwìZ Àìgvi RìqìM†Z I Lì†b [Àìvìj†Zì Wì†K] ìì†q e†m ììKì†eb 1 NìUì.....Zìvìv AZ`Š- Àìe†ePbìc†hìZ e³e, m†uY®ììqUìB hìì c†o †`†Lb mē† D®y Àìvì ììMÓ.*

68. Does such reaction reflect respect to the rule of law and administration of justice? Rather this comment tended not only to demean the dignity of the Tribunal and its Judges but an express threat to the judicial system as well which is likely to erode public confidence. His conduct was indeed gross contemptible actions, it stands proved.

69. We always encourage post judgment criticism but for protecting majesty and authority of the judiciary it must be done in sober language and with due moderation, without undermining the authority and majesty of a court of law. In this regard we recall the observation made by the Indian Supreme Court in the case of *PN Duda vs P Shiv Shankar* which is as below:

*.....In a democracy Judges and Courts alike are, therefore, subject to criticism and if reasonable argument or criticism in respectful language and tempered with moderation is offered against any judicial act as contrary to law or public good, no Court would treat criticism as a contempt of Court[PN Duda vs P Shiv Shankar (1988) 3 SCC 167]*

70. But the conduct and act of the convict contemnor Dr. Zafrullah Chowdhury did not match to the principle propounded in the above cited decision. Right of expression does not provide license to any citizen to demonstrate any action that affects public confidence on the judicial act and process of a court of law. The conduct of the contemnor was not portrayed for any 'public good'. Language he used in demonstrating his expression was extremely 'unethical' and 'uncivilized'. In expressing reaction of own the contemnor should not have exceeded limit by using disrespectful and scurrilous language.

71. What language he used, in demonstrating his reaction and grievance against the order convicting and fining him for contempt? He uttered before the media persons that –

৐AvR†Ki Av`vj Z Aegybbvi ivqUv wZbRb wePvi†Ki gvbmK  
Am̄Zvi cŕvb|

72. We see that Dr. Zafrullah the convict contemnor, in the name of offering own reaction or expression against the judicial order convicting him, dumping all norms of civility rather had attacked the judges of the Tribunal questioning their ‘**mental ability**’. He did it in most abusive manner which tended to erode public confidence upon the administration of justice and functioning of the Tribunal formed intending to prosecute and try the individuals responsible for the horrific atrocities committed in 1971. In *De Haes and Gijssels v. Belgium*, the European Court of Human Rights stated:

“The courts — the guarantors of justice, whose role is fundamental in a State based on the rule of law — must enjoy public confidence. They must accordingly be protected from destructive attacks that are *unfounded....*”[24 February 1997, 25 EHRR 1, para. 37]

73. It is now settled too that any expression or opinion would not immune from liability for exceeding even the constitutional limitations. Thus, since the convict contemnor Dr. Zafrullah, despite being a responsible citizen, in the grab of exercising right of free expression under Article 39(2)(a) and (b), scandalized the court or undermined the dignity and lawful authority of the Tribunal by making abusive words and utterance, the Tribunal is deems it expedient to extend its hands to protect the majesty and authority of this institution.

74. In view of above, we are of the opinion that Dr. Zafrullah Chowdhury, by his scurrilous and grave scandalizing comments disparaging the lawful authority and ability of the Tribunal and its judges, has committed the offence of grossest contempt.

**75.** It will be extremely unfortunate if judiciary which is always with the right to liberty of speech and expression loses its credibility and respect on account irresponsible act or conduct of a distinguished citizen, the contemnor. Administration of justice is bound to suffer irreparable damage if irresponsible and unbridled comment is allowed in the name of freedom of speech and expression. In this context, it will be worthy to remember the comment of **Justice Black** in dissenting judgment in *Dennis Versus US (1951) 341 US* which is as below:

There comes a time when even speech loses its constitutional immunity. Speech innocuous one year may at another time fan such destructive flames that it must be halted in the interests of the safety of the Republic. When conditions are so critical that there will be no time to avoid the evil that the speech threatens, it is time to call a halt. Otherwise, free speech which is the strength of the Nation will be the cause of its destruction...”

**76.** Calculated attempt of destroying the system of administration of justice by vilification of judges cannot be allowed. It is not that we the judges need be protected. We the judges may well take care of ourselves. It is confidence of the public in the administration of justice that has to be protected. A conduct of a person when abuses and makes a mockery of the judicial process of a court of law requires to be dealt with iron hands and no person can tinker with it to demean its majesty and lawful authority.

**77.** It has been observed in many cases by the Indian Supreme Court that the use of insulting language does not absolve the contemnor on any count whatsoever. If the words are calculated and clearly intended to cause any insult, an apology, if tendered and lack penitence, regret or contrition, does not deserve to be accepted.

(Vide: Shri Baradakanta Mishra v. Registrar of Orissa High Court & Anr., AIR 1974 SC 710; The Bar Council of Maharashtra v. M.V. Dabholkar etc., AIR 1976 SC 242; Asharam M. Jain v. A.T. Gupta & Ors., AIR 1983 SC1151; Mohd. Zahir Khan v. Vijai Singh & Ors., AIR 1992 SC 642; In Re: Sanjiv Datta, (1995) 3 SCC 619; Patel Rajnikant Dhulabhai & Ors. v. Patel Chandrakant Dhulabhai & Ors., AIR 2008 SC 3016; and Vishram Singh Raghubanshi v. State of U.P., AIR 2011 SC 2275).

**78.** However, a democratic society expects lot and responsible behaviour from a citizen like Dr. Zafrullah Chowdhury. Still he and the citizens like him are yet to contribute further in disciplined and fair way on public interest and also for upholding the rule of law. We the judges are not here to cause any disgrace to anybody. We are oath bound simply to render justice in accordance with law. Everybody should remember it. At the same time conscious and responsible citizens are also expected to behave responsibly while criticizing decision of a court of law and its judges.

**79.** The alleged comments made by the contemnor Dr. Zafrullah Chowdhury were not in 'good faith' and in 'public interest' and the same were calculated to impede the ability, lawful authority and majesty of the Tribunal and its judges. The imputation was unwarranted, the contemnor now sincerely perceives. The contemnor, an well educated senior citizen should have kept in mind, while reacting on the decision of punishing him for contempt, that the right of free speech is guaranteed by the Constitution and must be properly guarded but nevertheless, it is recognized that it must not be abused or be permitted to destroy or impair the efficiency of a court of law and public confidence and respect therein.

**80.** Having given our due consideration to all the relevant factors and alleged behaviour and conduct of the contemnor, we have no hesitation in holding that the contemnor is responsible for his offensive and contemptuous behaviour which has undermined and scandalized the dignity and lawful authority of the Tribunal and justice administration system.

### ***Tendering Apology***

**81.** Let us have a look to the unconditional apology tendered by the contemnor. It is now settled that an apology should not be mere "paper apology" and expression of sorrow should come from the heart and not from the pen; for it is one thing to 'say' sorry, it is another to 'feel' sorry.

82. The contemnor has tendered unconditional apology for his conduct and comments he made expressing his reaction on the decision punishing him for contempt [ ICT-BD Miscellaneous Case No.04 of 2014, decision 06 June 2015], instead attempting to justify the same in any manner. The affidavit of reply submitted by him states as below:

“ That the contemnor –respondent hereby apologizes most sincerely and unconditionally to this learned Tribunal for any adverse implication on the proficiency of independence of this Learned tribunal that may have been inadvertently prompted by his remarks. The contemnor-Respondent reaffirms his highest regard for the courts in Bangladesh including this Honourable Tribunal”.

83. The contemnor together with tendering unconditional apology for his remarks that admittedly prompted adverse implication on the proficiency of independence of this Tribunal reaffirms sense of his highest regard for the courts in Bangladesh including this Honourable Tribunal, the affidavit of reply demonstrates.

84. Mr. Abdul Baset Majumdar the learned senior counsel for the contemnor simply submitted that the contemnor has completely surrendered himself before the Tribunal as he has tendered sincere and unconditional apology admitting the guilt he committed by making such unbecoming and disparaging comments attacking judges’ efficiency and lawful authority.

85. Admittedly, the contemnor moved the Appellate Division against the decision punishing him in earlier contempt proceedings and eventually he begged there unconditional apology for the conduct for which he was so punished. The Appellate Division accepting his apology exonerated him. Be that as it may, the very scurrilous comment the contemnor made after the decision punishing him by this Tribunal-2 –“**the decision on his contempt was the proof of mental insanity of three judges**” stands proved once again that finding the contemnor guilty for scandalizing the Tribunal was the proof of his wrong headedness.

86. It is regrettable too to note that Dr. Zafrullah Chowdhury a valiant freedom fighter is facing this contempt proceeding initiated on

application brought by three freedom fighters and two others. Truly speaking, we are not ready to see any such conflicting stand amongst the freedom fighters who are the brave sons of the soil.

**87.** By tendering unconditional apology the contemnor has admitted the grave wrong he committed by making the alleged derogatory and scandalizing comments, in the name of criticism, attacking the Tribunal and its judges. Only wrong headed person often errs in making criticism. We want to believe that the contemnor has now been able to perceive it.

**88.** We recall the decision on the notion of ‘freedom of speech and expression, in the case of **State V. Chief Editor, Manabjainin and others reported in 57 DLR 359** wherein it has been held that:

“Freedom of speech and expression is tolerated so long as it is not malicious or libelous. If speech or expression was untrue and reckless, the speaker or the author does not get protection of the Constitutional right”

**89.** Judges therefore always expect a constructive criticism in fair manner of judgments and judicial decisions. The contemnor, by his contemptible conduct, has audaciously and obnoxiously thrown all the recognised norms of criticism to the wind, and thus paved the path of gross incivility. The contemnor, by his conduct, in the name of freedom of expression, consciously tended to strangulate the public confidence upon the justice delivery system of the Tribunal. His proved and admitted culpable conduct leaves him unquestionably guilty of the offence of Contempt of Courts. The Tribunal, its judicial administration and lawful authority are to be protected from malignancy of scandalizing the court. We are therefore compelled to stamp the strapping view that the indecent and scandalizing comments the contemnor made were totally ostracizing to a civilized and orderly society which is incompatible to the notion of thriving rule of law.

**90.** In the proceeding in hand, the libelous wrongs have been admittedly committed by the contemnor Dr. Zafrullah Chowdhury for which he unconditionally surrendered himself to the mercy of the Tribunal. Presumably, the contemnor has perceived that he exceeded limit in



expressing reaction, under the safeguard of right to liberty of speech and expression. But mere repentance is not enough if it fails to show him the path keeping him restraint, sober and reasonable, in exercising the right to liberty of expression. We want to believe that repentance and regret he has expressed in tendering unconditional apology must keep him in right track, in future, while criticizing judicial decision of a court of law.

**91.** Now pardoning the contemnor, as prayed, does not mean endorsing his deliberate wrong and contemptible conduct. It simply aims to provide space of self-correction so that in future the contemnor can remain restrained from maligning the judiciary and the judges, in the name of freedom of expression, keeping it in mind that a person cannot say nor do whatever he likes under the safeguard of the principle of liberty of expression.

**92.** Having regard to submission made by Mr. Abdul Baset Majumdar the learned senior counsel for the contemnor and tendering unconditional apology with repentance we are thus forced to record the observation that Dr. Zafrullah Chowdhury the contemnor herein who is found guilty has eventually won nothing, by the wrongs he committed. In fact, wrong act gives nothing excepting the shame to its doer.

**93.** We recognise that 'right to freedom of speech and expression' is the 'life blood of democracy'. But the right cannot be allowed to be contaminated by the act of its abuse and irresponsible exercise. The scurrilous language used in making alleged comments, in the name of liberty of expression, by the contemnor inevitably shocks us and gravitates the mind to pose a question, what he gained by demonstrating such malevolent conduct directing the Tribunal and its judges ?

**94.** We think that the contemnor has rather branded himself as a 'wrong-headed' man in all considerations as his conduct directing the administration of justice was 'scandalizing', 'unfair' and 'scurrilous', in the name of right to freedom of expression. Now, tendering unconditional pardon for such culpable conduct by a distinguished

citizen indicates a sincere feeling of remorse. Thus, accepting pardon as tendered, admitting the guilt, as well may be the stamp of castigation for him.

**95.** However, we believe that the dignity of court is maintained more in restraint and forgiveness than in punishing for contempt of court. We the Judges should not be harsh and unsympathetic to a contemnor whenever a sincere and unconditional apology is tendered to court. Additionally, we realize that the fundamental relation between the authority of a court of law and the confidence of the people rests upon ability and efficiency of the judges inspired by their works and not upon any unfounded and derogatory comment made by a wrong-headed person. At the same time the contemnor must perceive that in the name of liberty of expression a conscious citizen cannot resort to improper and unethical practices to impede and scandalize a court of law, administration of justice and demean the judicial system of the country.

**96.** We further significantly believe that a more tolerant and sensitive, but not sentimental court, earn greater public admiration. In this regard we recall the famous quote of **Chief Justice Marshall of the US Supreme Court**, “Power of judiciary lies not in deciding cases, nor in imposing sentences, nor in punishing for contempt, but in the trust, confidence and faith in the common man.”

**97.** Finally, we are of the view that awarding penalty on a contemnor may not always be appropriate to complete the process of purging himself of the contempt, particularly when unconditional apology is tendered with sincere remorse without delay. There must be something more to be done to get oneself purged of the contempt. Since the contemnor herein has purged his contempt and also tendered an unqualified apology, without justifying his conduct, we deem it appropriate to accept it.

**Justice Md. Mozibur Rahman Miah, Member**

**98.** I have gone through the order to be delivered by my learned brothers, Obaidul Hassan, J and Md. Shahinur Islam, j. I fully endorse with the finding my learned brothers have arrived on adjudication of the Contempt proceeding against Dr. Zafrullah Chowdhury but still, I endeavour to write this episode expressing my independent views concurring with my learned brothers. Hence, I put across my own views and reasoning which I find myself pertinent in adjudicating the case.

**99.** Today is fixed for passing order on Contempt Petition (ICT-Bd Misc. Case no.05 of 2015) brought by one Monoranjan Ghoshal and four others against Dr. Zafrullah Chowdhury, founder of *Gono Shashtrya Kendra* for allegedly uttering disparaging remarks against three Supreme court Judges of International Crimes Tribunal-2 while briefing the journalist of print and electronic media in the premises of International Crimes Tribunal on 10-06-2015 right after serving one hour sentence in the dock awarded against him in ICT BD Miscellaneous Case No.04 Of 2014.

**100.** On initial hearing of the instant contempt petition and going through the entire contents of the 'briefing' published by an array of online news portals as well as listening to the Compact Disk (shortly CD) containing the similar briefing aired by *Ekattor TV* so annexed by the Petitioners with the Contempt Petition, this Tribunal found *prima facie* elements of contempt in the remarks articulated on 10-06-2015 by Dr. Zafrullah Chowdhury. Consequently, by order dated.12-7-2015 the Tribunal drew contempt proceeding against Dr. Zafrullah Chowdhury under section 11(4) of the International Crimes (Tribunals) Act, 1973

**101.** Dr. Zafrullah Chowdhury, contemner therefore, entered his appearance on 22-07-2015 through Mr. Abdul Baset Majumder, learned Senior Counsel and sought two weeks adjournment for preparing reply which was allowed fixing 05/08/2015 for submitting reply. On 05-08-2015 further four weeks time was sought by the Contemner for submitting reply as it could not be prepared for the personal difficulties of his learned Counsel while it was fixed on 09-08-2015. Then Mr. M.

Sayeed Ahamed, learned Counsel on 09-8-2015 though filed reply seeking unconditional apology for the Contemner but sought one day adjournment enabling his learned senior, Mr. Abdul Baset Majumder to make submission before the Tribunal which was also granted. Eventually, on 10-08-2015 we heard learned senior counsel for the Contemner and Mr. Morshed Ahamed Khan and Mr. Khan Mohammad Shameem Aziz, learned Counsels for the Petitioners.

**102.** It needs to be noted here that, before being heard the learned counsels, we felt it urge to display the briefing of Dr. Zafrullah made to the print and electronic media contained in the CD aired by *Ekattor TV* and accordingly the video footage of the briefing was screened in the Tribunal's room (*ejlash*) on two consecutive occasions dated.09/08/2014 and 10/8/2015 in presence of learned counsels of the contending parties including the Contemner, Dr. Zafrullah Chowdhury.

**103. Background:** As stated above, this Tribunal had earlier drawn a contempt proceedings against the present contemner and 22 other citizens being ICT-BD (ICT-2) Miscellaneous case no. 04 of 2014 and on adjudication, none but Dr. Zafrullah Chowdhury was found guilty of contempt and was sentenced to suffer one hour imprisonment to be detained at the dock of the Tribunal and also a fine of Tk.10, 000/= payable in seven days in default, he would have to undergo one month simple imprisonment.

**104.** While awarding such punishment, this Tribunal amongst others, also took in to its judicial notice of the order dated.12-06-2014 passed by ICT-1 in ICT-BD Miscellaneous Case No. 03 of 2013 where in another contempt proceeding, his reply to that Tribunal was found to be contumacious but it exonerated him of the charge considering his humble disposition towards that Tribunal though heavy caution had been inflicted upon him.

**105.** But, paying no heed to such warning, that is to say, defying earlier order of ICT-1, the Contemner kept on doing the same event. Even then,

on 10-06-2015 while the learned Judges of this Tribunal were about to leave the Tribunal room on conclusion of delivering order convicting (in ICT-BD (ICT-2) Miscellaneous case no. 04 of 2014 )the contemner, he came over before the podium from his standing position and started addressing the Judges of the Tribunal for keeping the said sentences stayed enabling him to prefer appeal.

**106.** The Hon'ble Chairman of three judge's panel in such an aberration instantly expressed his inability to provide him with such opportunity categorically clarifying that, there had been no such provision in the Act (Act No.XVIII of 1973) that ever empower the Tribunal with such authority and all the three judges then left the court room. This Tribunal had subsequently been informed by the Registrar that, Dr. Zafrullah served one hour sentence.

**107. Briefing to the newsmen after serving the Sentence :** What Dr. Zafrullah had uttered to the print and electronic media, present at the premises of this Tribunal soon after serving the sentence is the 'fact in issue' before us to adjudicate the instant contempt proceeding. So, for the suitability in comprehending the briefing, published in numerous on line news portals, I, here in, amongst others, reproduce the briefing appeared in *bdnews24.com* (Annexure-'B' to the Contempt petition) in verbatim:

*Rwivgubv f`e bv Rvdi j-un bdnews24.com*

<http://bangla.bdnews24.com/bangladesh/article981065.bdnews>

*ibR`^cZte`K, weWibDR tUvtqUtdvi WUKg*

### ANNEXURE- "B"

*ibRm`cZte`K, weWibDR tUvtqUtdvi WUKg*

Published: 2015-06-11 00:45:57.0 BdST Update: 1015-06-11 00:45:57.0

*Av`vj Z Aegvbbvi `vq mivrcU3 MY`r` tKt`i cUzOvZv cwi Pvj K Rvdi j-un  
tPŠajx KvVMovq `vq`vKvi mivRv gvb`j I Rwivgubv w`Z A`KwZ. Rmbtq`Qb/  
D`ev G ivq`K UvBejvtj i wZb wePviciwi UgubimK AmyZvi dj' etj gŠe`  
Kfi`Qb wZib|*

*wePviciwi I evq`j nimitbi tbZZjxib AvŠRwZK Aciva UvBejvj -2 egevi  
weWuk bvlmi K I misevri K tWwFW evMg`vbtK UvBejvtj i Rwivgubv w`l`q E`t`M  
Rmbtq weewZ t`l`q`q 50 e`w`i g`a` 23 R`bi w`i`x Av`vj Z Aegvbbvi  
Awf`thv`Mi ivq tNvI Yv Kfi`b|*



thB t`tki Rb` Awg gny`hy KtiwQ, tmB t`tki e`vci`ti tKvb e<sup>3</sup>e` iVLtZ  
cvi`tev bv, ZvtZv nq bv|

KvVMovq `vovt`bv vbtq vej`st e`vL`vq wZwb etj b, OGlv`tb Awg cwi`vi Kti  
ejwQ, Avcbvt`i ivtqi Kwc t`b AvgvtK| Avcbvrv t`Lb, RR mivneiv f`ZUv  
tKv\_vq tKv\_vq Ki`Qb| e<sup>3</sup>e` bv i`tb nVvr `\* Z tei ntj b| hw` t`Lv hvq  
E`PZi tKvU`t`Lv hvq th, Avgvi nei` t`x t`lqv Zvt`i G ivqUv f`Z ntq`Q  
..... Zvntj Zviv wK Avgvi GB Rxe`bi mgqUv wclwi`q w`tZ cvi`teb ? bv wK  
wZwbRb wePvi`civ Avgvi GB RvqUvq Gtm etm`\_vK`teb GKN`Uv ? Awg tmB  
cK`tv Kivi Rb` Zvti we`tePbiUVB Kvgbv KiwQ| Ó

Rvdij`wn etj b, m`\*b`ivqUv hw` cto t`Lb, cvjUvB EI`Avi i`vM| tWwfw  
e`vM g`v`v`bi th ivq 105wU c`vi`vM`d AvtQ Zvi g`ta` 31wU c`vi`vM`d e`vMg`v`btK  
tQvU Kiv ntq`Q| A\_P tmwU wQj gny`h`y` g`Zi msL`v vbtq, A\_P Zv vbtq tKvb  
WvBi`v`f (vbt`Rbv) bvB|

GZ mgq Ace`q Kivi ci l GB RvZvq K\_vq c`qvRb AvtQ| Avgiv weewZ` Zviv  
tevSvtZ tP`tqU, t`k MYZ`sj` t`\_B Avj vc-Avtj vPbvi c`qvRb AvtQ|

ivq bv gvbr Av`vj Z Aegvbbvi kwgj wK bv RvbtZ PvBtj wZwb etj b, ÓAwg  
ejwQ AvgvtK wj wLZ t`Lvb| Awg GK cj K t`L vbtj B tZv nte| ZvivB tZv  
t`wi Ki`Qb wj wLZ AvbtZ| wj wLZ Avbvi mstM mstMB Awg Avmvgxi KvVMovq  
EVwQ| Ó

<http://bangla.bdnews24.com/bangladesh/article981065.bdnews>

(Emphasis supplied)

**108.** Since having been convinced with the assertion set out in the contempt petition, contempt proceedings has been drawn against the Contemner, I am not inclined to revisit the same. True, the contemner has refrained from defending his position of what he had uttered before the media. He has filed reply seeking unconditional apology and the learned senior counsel, representing the contemner, at the very onset, averred his (contemner’s) such capitulation before the Tribunal without making any sorts of clarification or explanation to what the contemner had voiced before the media.

**109.** *Per contra*, the learned counsels representing the Petitioners, on the other hand, questioned the sincerity of his (Contemner) seeking apology which they alleged to have submitted at a belated stage and also doubted the humbleness of the contemner towards the Judges of the Tribunal on pointing out the very reply which on the face of it, appears to be tricky one and thus prays for awarding appropriate punishment on rejecting his apology.

**110. Core statement of the Contemner couched in the reply :**In view of the opposition raised by the Petitioners, It needs to look at the reply where apology has been rendered. In paragraph no. 3 of the reply, the contemner is trying to state that, since he had to spend an hour in the dock to serve the sentence, reserved for the war criminals, he felt insulted in staying there and out of anger he had made some **indecent remarks** about the three honourable judges for which he is earnestly repented. While in paragraph no.5 of the reply, the contemner has proffered his sincere and unconditional apology, had such remarks may cause any adverse implication on the proficiency or independence of the learned Tribunal that had prompted inadvertently. He has also reaffirmed his highest regard towards this Tribunal asserting further that, he had no intention to lower the image and dignity of this Tribunal.

**111. Vital remarks made against the Judges while briefing the media:**On the face of such Contempt petition and reply thereof, it would be expedient, if I revert to the entire contents of the 'briefing' first as, the said briefing is the crux of the dispute here, made by the contemner before the media. Now, to arrive at a concrete decision as to whether there remains any elements of contempt in the briefing for which the contemner deserves to be punished (if found guilty on adjudication) it is needed to examine its contents first. Next, if it is proved of having elements of contempt in the briefing of the Contemner, should he be exonerated, accepting his unconditional apology, merely on the face of his reply?

**112.** In the briefing to the news media, the contemner has made some astounding accusations against the judges and also tried to give lessons to them as what to prove in a contempt proceeding. Of that lengthy dialogue to the media, I would just figure out a few statements for the brevity of discussion which I consider myself relevant here.

**113.** At one point of the briefing, the contemner uttered- *“Today’s Contempt of court verdict is a proof of mental illness of the three judges. If the judges cannot stand criticism, justice cannot ensure*



*there. When the judges cannot bear criticism and lack rationality, they conceal themselves under the cover of law.”*

In another point, the Contemner went on by saying *“if it is found by the higher court that the verdict against me passed by the Tribunal was wrong can they (Judges of the Tribunal) return back the time he lost in his life? Or those three Judges take seat in the dock for an hour where he took seat.”*

**114. Deliberation:** I very sincerely agree that, the judges are not free from criticism. Rather, we the judges should entertain criticism in a positive manner which sometimes enriches our capability and in some cases we become enlightened with the constructive criticism that also usher in penning flawless and informative judgement. But there should be some limit in the making of criticism or remarks towards the judiciary or its judges as our Constitution has drawn a border line in its Article 39(2) and if anybody transgresses so, he/she will be dealt with in accordance with the provision enunciated in its Article 108 or provision envisaged in the respective statutes.

**115.** The implicit meaning of having such provision in our Constitution appears, none should be given the open licence to say whatever he/she likes. Had there been no such provision in our constitution, then the very existence and authority of judiciary as well as the majesty and dignity of the judges will be at stake and taking advantage of such unregulated freedom, nobody would care about the standing of judges and the court of law no matter how top position the judges may hold.

**116.** True, the Contemner before us is not being proceeded under that constitutional provision but the core essence to prosecute the contemner by this Tribunal basing on the provision of section 11(4) of the Act of 1973 has certainly been derived from Article 39(2) of the Constitution even though ICT Act of 1973 is an independent statute.

**117.** So, under the cloak of having constitutional guarantee of freedom of thought and speech no citizen can enjoy unfettered right to scandalize the judges or of their any verdict that might impair its image and dignity to the estimation of general people.

**118.** Indisputably, no judge is under any obligation to abide by any demand, request or appeal by any individual which is not substantiated by any law, rules and regulations of this country. As per Article 148 of the Constitution, the judges are to take oath under its third schedule affirming to preserve, protect and defend the Constitution and the laws of Bangladesh.

**119.** There are altogether 26 sections in International Crimes (Tribunals) Act, 1973. Nowhere in the entire Act there has been any provision that ever empowers the judges to stay the operation of its order it delivered. So, what is totally absent in the Act, that is to say, where there is no law then how a judge would give such relief violating his oath of office?

**120.** Dr. Zafrullah Chowdhury could certainly feel aggrieved with the sentence awarded against him. But merely for that, he as of right cannot demand, he should be provided with the relief (stay operation of the sentence) that has not been there in the respective law, under which he had been prosecuted. Hence, the demand raised by the Contemner for staying the operation of the sentence was totally unlawful, unrealistic and unreasonable.

**121.** Nonetheless, there must be minimum norms and etiquettes to ventilate grievance towards the judges if anybody become aggrieved with the order and it should be guided by some rational basis. When a verdict is delivered by a court of law, awarding sentence to someone there must contain some reasonable grounds in support of it. But without bothering to go through it carefully how Dr. Zafrullah, a renowned physician, dared to brand all the three judges to be mentally ill. What a dangerous castigation? For arguments sake, if we hold that, he had read the entire order before he made the remarks to the media even though, can those words be uttered by any sensible person having minimum prudence?

**122.** No doubt, what the contemner has uttered scandalizing the Judges is simply inexcusable. He has shown utter heroism by speaking out to the journalists standing in such a compound where the demons of this soil have awarded with death penalty and get the nation rid of culture of

impunity. The Contemner by his utterance plainly demeans the prestige of the judges. Those judges have been assigned with the task of trying those perpetrators who had brutally killed innumerable civilians, freedom fighters and ravished innocent women throughout nine month long war, it proved.

**123.** Even, the Contemner has dared to levelled the three Judges of the Supreme Court mentally sick when their three judgements awarding conviction and sentence against the perpetrators, found guilty for committing the offence of Crimes against humanity during our liberation war have already been upheld by the apex court of the country and out of those three, two have by now, been executed. So, his criticism though, does not matter most but can a court of law allow such unsophisticated and rustic criticism towards the judges to go unhindered and unpunished.

**124.** The Contemner in his reply has bragged for being a freedom fighter. Certainly, we feel proud of all the freedom fighters like him, as for their supreme sacrifice we achieved an independent country else, I myself would not hold this position today. But fact remains, here we would only focus about what the Contemner briefed to the media, have any elements of contempt.

**125.** Undeniably, any person of ordinary prudence would be astounded to find, how a freedom fighter could tell the judges mentally ill who have been adjudicating the most heinous perpetrators committing offence of crimes against humanity and even equalizes the judges with him anticipating them to take seat in the dock. Perhaps, the contemner could not foresee the grave consequence for his unbecoming and loathsome utterance towards the judges or he might have mustered such courage for not dealt with appropriately before, by any court of law for his such uncontrolled remark else, he could not have said so.

**126.** Perceptibly, an explanation has been furnished in paragraph no.3 of the reply by which the contemner has stated that, he felt insulted and humiliated to spend one hour in the dock reserved for the war criminals that infuriated him to make indecent remarks towards the judges. I very

strongly note, even these sorts of statement *per se* are tantamount to show utter disregard to the judges as well as the judgement, delivered.

**127.** In the dispensation of justice system, it is considered to be minimum norms and practice that what the judges' order, the offender must comply it. Here, the contemner was convicted and sentenced after having been found guilty on the basis of proven allegations. Moreover, it appears, the explanation given, is far from any truth rather subsequent embellishment. Because, in the entire briefing made to the media, he has never mentioned that, he felt insulted to serve the sentence in the dock since that are reserved for war criminal (according to the contemner) rather in the briefing, he clearly mentioned, soon after receiving the 'order' he served one hour sentence in the dock. So, I strongly deprecate that kind of misguided statement.

**128.** We have also got the opportunity to view the footage of the briefing. It does not appear to me, those indecent remarks so made by the contemner towards the judges was out of his sudden resentment or humiliation. I found him very candid, cool and calm while answering various queries to the media. He is found to have very candid, careful and unequivocal in elucidating his position while denigrating the judges and those of the fault of the judgement, delivered. In such a view of the matter, the alleged assertion of the contemner is absolutely untenable and not based on materials on record.

**129.** What Dr. Zafrullah did by ventilating his alleged anguish to the media defaming the judges in a cool brain and of full sense is more than contumacious for which he deserves highest punishment mandated by section 11(4) of the Act as his utterance to the media has definitely brought the judges in to hatred to the estimation of the public. But I believe, mere awarding punishment to the contemner will not bring any positive outcome until and unless introspection is aroused to the contemner and mindset is changed towards the honour and dignity of the judges and the administration of justice.

**130. Can Unconditional apology be accepted:** Mr. Morshed Ahamed Khan, learned counsel for the Petitioners submits that, unconditional

apology can be accepted if the wrongdoing towards the judge and that of the administration of justice is not contemptible, in other words, if it is not so grave in nature. What the Contemner did in the instant case, is so serious that, it has shaken the conscience of justice seeker and the general public as well, learned Counsel added.

**131.** He pointed out further that, if the reply of the Contemner itself is taken in to consideration, it would be clearly perceived that, the contemner tried to escape himself from the charge by simply furnishing a reply inserting some formal words which is totally inadequate in terms of the severity of his offence.

**132.** Even, nowhere in his reply he ever admitted or asserted his mistake and undertook not to repeat such blunder in future, learned counsel further asserted. Mr. Morshed next submits that, the contemner very ostensibly adopted a dilly dally tactic in offering the alleged apology which indicates that, such apology has not come from his heart, otherwise it would have been submitted on his first day of appearance in the proceeding.

**133.** Finally, the learned Counsel submits, on considering the gravity of offence, demeanor and antecedents of the contemner his such perfunctory apology may not be accepted for safeguarding the high esteem of the Judges and reputation of this Tribunal already gained in the international legal arena. In countenance of his submission, learned counsel cited some authorities both from India and our jurisdiction.

**134.** In his such endeavor, learned counsel at first, placed before us an unreported decision of the Indian Supreme Court delivered in the case of *Kalyaneshwari versus Union of India and others* dated. 12-05-2011 where the Hon'ble Judges convicted and sentenced the contemnners discarding the apology sought by the Contemnners. In finding so, the Hon'ble judges took notice of the following observation held in the case of *L.D. Jaikwal V. state of U.P.* 1984 passed by the same court reported in 3 SCC 405.

*“We do not think that merely because the appellant has tendered his apology we should set aside the*

*sentence and allow him to go unpunished. Otherwise all that a person wanting to intimidate a judge by making the grossest imputations against him has to do, is to go ahead and scandalize him, and later on and tender a formal apology which costs him practically nothing. If, such an apology were to be accepted, as a rule, and not as an exception, we would in fact be virtually issuing a “Licence” to scandalize courts and commit contempt of court with impunity’*

**135.** Learned Counsel for the Petitioners then referred to another decision in the case of Sukh Raj -versus- Hemraj and others reported in AIR 1967 Rajasthan 203 where it has been held that-

*An unconditional or unreserved apology in a case of minor and technical contempt may be accepted to have the effect of purging the same. But the same could not be legitimately predicated of serious or gross contempt. An apology is not a weapon of defence forged to purge the guilt under all circumstances. Nor can it be allowed to operate as a universal panacea. Whether an apology should be accepted or not as purging the contempt in any particular case must depend on the circumstances of each case and the chief of these factors must inevitable by the nature or character of the contempt made. Therefore, where the contempt is of a particularly gross character any apology offered by the contemner should not be accepted as having purged the same case law discussed.*

**136.** Lastly, the learned counsel relied upon a decision of our jurisdiction reported in 44 DLR (AD) 237 where Mr. Justice ATM Afzal (as his Lordship then was) very candidly asserted that-

*“Apology is an act of contrition. If tendered it may not be necessarily accepted and the contemner purged of his contempt. When a cotemner tenders apology as an act of contrition the court must weigh that apology and in awarding punishment the court must consider the apology tendered by the contemner. If the apology is found to be a real act of contrition, no action need be taken and a word of warning may be enough but if the apology is*

*qualified, hesitating and sought to be used as a device to escape the consequence of the contemner's action it must be rejected.”*

**137.** I have no dithering to concur with all the decisions, referred to above and all the ingredients which have been drawn in those cited decisions are very much present in the instant proceeding against the contemner. In my discussions, I have categorically observed that, the contemner cannot be absolved from being punished for making such highly contemptible remarks against the judges of the Supreme Court. I am in doubt; whether in the recent past such sorts of offensive remark has ever been made openly by any aggrieved convict against judges.

**138.** There is no earthly reason to get convinced calling for tendering unconditional apology to what has been written in the reply by the contemner and in this regard, I am totally at one with the submission made by the learned counsels of the Petitioners. On plain reading of the reply, I rather find that, such apology has been sought in a very perfunctory and mechanical manner having no reflection of actual remorse and contrition in it.

**139.** On the face of the very reply, it is visibly perceived that, the contemner leave it to the discretion of this Tribunal to decide as to whether his remark falls within the parameter of contempt. There appears no assertion of the contemner admitting the mistake he committed and fully surrender to the mercy of this Tribunal. Even, there is no word in the entire reply affirming that, the contemner would never repeat such mindless castigation towards the judges or do anything that ever impair the administration of justice which is *sine quo non* for accepting any prayer of apology by any contemner.

**140.** In this regard it will be profitable if I refer a valuable piece of observation his Lordship Mr. Justice Surendra Kumar Sinha(Now the Hon'ble Chief Justice of Bangladesh) made in the case of Advocate Reazuddin Khan Versus Mahmudur Rahman reported in 63 DLR (AD) 29 here.

*“Action of scandalizing the authority of the court has been regarded as an ‘obstruction’ of public*

*justice whereby the authority of the court is undermined-----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.”*

**141.** In another decision reported in the case of Abdul Karim -versus-State reported in 38 DLR (AD)188 his Lordship Mr. F.K.M.A. Munim (Hon’ble Chief justice then was) gave clear finding about the consequence in seeking belated apology in a contempt proceeding. For better understanding, I here quote the relevant part thereof:

*“Contempt of Court- Acceptance of an apology tendered not at the earliest opportunity showing sincere regret, would amount to opening and not closing the door of scandalizing the courts. In view of the circumstances as mentioned above, we find ourselves unable to condone his action which is not only humilitating to the presiding officer of a court, however small it may be, it also amounts to clear defiance of the majesty of law.”*

**142.** It is to be noted here that, the Contemner before us is being represented by none, other than Mr. Abdul Baset Majumder, learned senior counsel who has by the time, over 50 years outstanding practice in the legal arena and already conducted many leading cases of national importance both before the High Court Division and the Hon’ble Appellate Division. While appeared, the learned senior Counsel has completely surrendered his client to the mercy of this Tribunal. Even, in the midst of hearing, we find, the learned Counsel himself felt ashamed to hear the language his client uttered towards the judges while the video footage was on display.

**143.** Learned senior counsel further asserts that, his client gained nothing in debasing the honour of the Hon’ble judges rather he has belittled himself by uttering the words towards the judges. I do perceive, the learned Counsel also thought it his responsibility to uphold the honour and dignity of the Judges and the court of law and with such noble understanding, he took up the matter not only for the causes of his client



but to protect the honour of the judges too. As stated in the foregoing paragraph, learned counsel did not submit anything other than seeking unconditional apology for his client.

**144.** Dr. Zafrullah Chowdhury on the other hand, is found to have delayed in seeking unconditional apology. He could have prayed so on the first day of his appearance in this proceeding. His such attitude naturally arises question whether the apology, he tendered has come from his pen or from his heart or he was looking for other option for his redress.

**145.** There is no iota of any hesitation to note, this gentleman certainly has indulged in excesses while making comment regarding the position of three Supreme Court Judges. There are certain places where one should restrain himself in showing bravery and overstep the limit. His alleged disparagement towards the judges is atrocious, detestable and outrageous which is flagrant manifestation of his perverted ego.

**146.** However, by this order, I once again warn his act of criticism towards the judges seriously and rigorously and caution that, in future if he is found to repeats these sorts of hideous remark towards the judges, he shall have to face calamitous consequence. Out of magnanimity and showing due regard to the learned senior counsel, I am exonerating the contemner. But he should remember that, I am simply sparing him without placating the feeling against him.

**147.** Regard being had to the above observation and by recording my displeasure, this Contempt Petition is thus disposed of. The Contemner is exonerated from the liability of contempt and he be acquitted of the charge.

## **TRIBUNAL'S ORDER**

**Hence, Ordered**

That the contemnor Dr. Zafrullah Chowdhury is however apologized with a heavy caution not to recur such irresponsible and scurrilous conduct, in the name of right to freedom of expression keeping the observations made herein above in mind, with the expectation that in future he will keep him distanced from the unfair habit of making contemptible comments, in the name of exercising liberty of expression, that may erode public confidence upon the judicial machinery.

Given the foregoing, we hereby unanimously give the contemnor discharge and the contempt petition is thus disposed of.

The parties are at liberty to get copy of this order free of cost.

**Justice Obaidul Hassan, Chairman**

**Justice Md. Mozibur Rahman Miah, Member**

**Justice Md. Shahinur Islam, Member**