

Hindustan Times

September 24, 2007

SPECIAL - TRUTH AVALID CONTEMPT DEFENCE: JURISTS

Nagendar Sharma and Satya Prakash

Hindustan Times, New Delhi

The refusal of the Delhi High Court to examine the truthfulness or otherwise of the allegations against former Chief Justice of India Y.K. Sabharwal, published in Mid Day, has invited severe criticism from legal experts, who say the law of contempt has not been interpreted correctly. Sentencing four scribes from the daily to four months imprisonment, the high court had said: "We need not go into the truth or otherwise of the allegations against the former Chief Justice of India as the same in any case cannot be a valid defence to justify the attack on the Supreme Court as such."

Former Supreme Court Bar Association president and senior lawyer M.N. Krishnamani questioned the high court's jurisdiction to take action in the matter, saying that under Article 215 of the Constitution, a high court is empowered only to deal with contempt of itself while under the Contempt of Courts Act, 1971, it can handle contempt of subordinate courts. High courts have no jurisdiction to initiate action or punish anyone for contempt of the Supreme Court under Article 129 of the Constitution as this power is conferred only on the apex court, he added. "The high court judges should know the Supreme Court knows how to protect its dignity and honour. It does not require any high court as its proxy,"

Krishna- mani wrote to CJI K.G. Balakrishnan, demanding a probe into the allegations against Justice Sabharwal. Terming the high court order "a restriction on freedom of speech and expression, former law minister and veteran lawyer Ram Jethmalani said it was an "absurd interpretation of law". He said: "I am firmly of the opinion that the truth of the statement made and bona fide belief that the statement was true, even if it finally did not turn out to be true, is a defence in any contempt proceeding."

Senior Supreme Court advocate K.T.S. Tulsi said there was nothing wrong in the contempt law but its interpretation raised questions. "If what the journalists wrote was true, then what crime have they committed," he asked. "If what has been reported is correct, then instead of sentencing the journalists, somebody else would have to go to jail." According to former Chief Justice of India M.H. Kania, who refused to comment on any particular case, credible machinery is required to probe charges of misconduct against former judges. "I believe there should be some credible machinery for investigating allegations of corruption and misconduct against retired judges of the higher judiciary... This is important because if the allegations are false, the reputation of the judge stands tarnished for no reason. But if they are true, then?" However, another former CJI, K.N. Singh, sought to defend the contempt law in its present form, saying it was the only safeguard against vilification of a member of the judiciary "Judges need some defence as everyday in courts, one party wins and the other loses. The loser has a right to his/her opinion on the outcome of the case, but who is there to speak for the judiciary against wild and unsubstantiated allegations," he asked. "Despite all evils of our system, the courts are working freely and without fear They should be allowed to do their job."

Senior lawyer EN. Lekhi said there was no need for a change in the present law. Maintaining that truth was not an absolute defence in contempt cases, he asked why these questions were not raised when Justice Sabharwal was in office. "It is the media, both print and electronic, which is becoming a scandal monger and

divorced from objectivity and fairness in reporting," he said.
nagendar.sharma@hindustantimes.com satya.prakash@hindustantimes.com M I
FI'TI'T"M FOR The media is becoming a scandal monger and is divorced from
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