

**ATTORNEY-GENERAL**

v.

**SIRIWARDENA**

SUPREME COURT

SAMARAKOON, C.J., ISMAIL, J. AND SHARVANANDA, J.

OCTOBER 6, 7 and 8, 1980

*Parliament (Powers and Privileges) Act, Chapter 383 - Privileges, Powers and Immunities of Parliament and its Members - Defamatory statements -Contempt - Defences available - Punishment.*

The member for Ududumbara in Parliament alleged and imputed that Karl Marx was a brief less lawyer, that he was penniless and went begging from house to house and that utilising the funds of such begging he was able to write "Das Capital". Karl Marx was also characterized as a frustrated person with grandiose dreams of imperialist dictatorial government in the name of socialism. The respondent who was the editor of the **Aththa** newspaper appeared to have resented the remarks concerning Karl Marx and he replied by means of an editorial in the **Aththa** newspaper of 11.10.1977 where he likened the Members of Parliament in general and the member for Ududumbara in particular to ♦ bulls and donkeys and thereby represented them to be of low intellect, lacking in intelligence and unfit to perform the tasks for which they were elected.

**Held :**

Contempt and ridicule pervade the whole article and the words complained of are defamatory. In so far as they refer to statements made in the House they reflect on its proceedings and in so far as they refer to the conduct of the majority of the House they reflect on the conduct and character of the House - an offence within the meaning of item 7 of Part A of the Schedule to the Parliament (Powers and Privileges) Act, Chapter 383. In so far as they concern the member of Parliament for Ududumbara in respect of his conduct as a Member, they constitute an offence within the meaning of item 8 of Part A of the said Schedule.

In the matter of contempt there is one common factor that pertains to both Courts of Law and Parliament. Criticism is permitted. The proceedings in Parliament and Courts of Justice are published so that the public should be aware of what is happening within their walls, for the welfare of the community depends on what is said and done there. The law also recognises the fact that a citizen can form his own opinion on such proceedings and has the right to criticise them. But such criticism must be fair and within limits. The limitation is upon the mode of criticism. The respondent is guilty of improper excess in criticism. The language used is crude, intemperate and extravagant.

**Samarakoon, C.J.**

"What needs stressing is that when .... name calling is indulged in by Members of Parliament on the floor of the House, small wonder then that strangers are tempted to follow, suit and it then ill becomes Members of Parliament to complain. However the law seeks to preserve the dignity of Parliament and decorum in the House against inroads on it by offenders - be they Members or be they strangers. The Respondent has met ridicule with ridicule, contempt with contempt but he has overstepped the permissible limits, and for that he has to be punished."

**Cases referred to :**

(1) *Hoare v. Silverlock*, 12 Q.8. 624; (1848) 116 ER 1007

(2) *Attorney-General v. Somasunderam Nadesan* - (1978 - 79 -80) 1 Sri L. R. 339

(3) *Ambard v. Attorney-General for Trinidad and Tobago* (1936) AC 323, 325

**PETITION** for breach of privilege by publication of defamatory statements reflecting on the proceedings and chamber of the Members of the Parliament.

*G. P. S. de Silva Deputy Solicitor-General with ♦ Upawansa Yapa Senior State Counsel and S. Ratnapala State Counsel for petitioner.*

*H. L. de Silva with Desmond Fernando, Suriya Wickramasinghe and S. H. M. Reeza for Respondent.*

*Cur. adv. vult*

Dec. 19, 1980  
**SAMARAKOON, C.J.**

By petition dated 21st July, 1978, the Attorney-General made this application in terms of section 23 of the Parliament (Powers and Privileges) Act (Chapter 383) read with Article 131 and 169 of the Constitution praying that the Respondent be punished for publishing defamatory statements reflecting on the proceedings and character of the House during the period commencing 4-8-1977 and ending 11-10-1977 and also for publishing statements defamatory of A. M. R. B. A. Attanayake, Member of Parliament for the Electoral District of Ududumbara. This Act was subsequently amended by Law No. 5 of 1978 by which offences specified in Schedule A were made punishable by this Court as well as by the National State Assembly. Originally offences specified in Schedule A were punishable by this Court only. The offences complained of were committed prior to the enactment of - Law No. 5 of 1978 and therefore I do not need to consider whether or not this Court should entertain this application. That point could be left for decision in an appropriate case.

On the 5th October, 1977, the Member for Ududumbara, in his speech made in the course of a debate in Parliament, made certain defamatory statements regarding Karl Marx and his book "Das Kapital" which seems to have riled the Respondent. (The relevant parts of the member's speech will be set out later). The Respondent published a counter blast in the newspaper named "Aththa" of which he was the Editor. The Petitioner contends that

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the Respondent's publication is part defamatory of Parliament and part defamatory of the Member for Ududumbara. Counsel for Respondent contended that none of the statements reflect on the proceedings and character of the House. I am unable to agree with Counsel for Respondent. In the statement quoted in paragraph 13 (1) (a) of the petition the Respondent refers to the "U.N.P. Members". It is a well-known fact that they form an overwhelming majority in the House. In the statement quoted in para 13 (1) (b) he refers to Members of Parliament in general and

(ඉටුතට)

refers to them collectively again in the statement quoted in paragraph 13 (1) (c) of the petition. Thereafter he refers to all "new representatives" elected to Parliament (vide quotation in para 13 (1) (d) of petition). He also referred to the Senior Members of Parliament. These statements do not refer only to the Member for Ududumbara. I therefore reject this contention of Counsel for the Respondent and hold that the words referred to in paragraph 13 (1) (a) (b) (c) (d) refer to the Members of the House. Those that are set out in paragraph 13 (ii) (a) (b) (c) (d) (e) (f) & (g) refer to the Member for Ududumbara. These paragraphs will be set out later.

The Hansard of 5th October, 1977, (P1) (Cols. 1427 and 1428) contains a reproduction of that part of the statement of the Member for Ududumbara which was the cause of this rumpus. It reads :

"එදා කාලේ මාක්ස් කියන පුද්ගලයා පෙරකදෙරු විශාලයා පාස්කර නඩු දෙකක්වත් එත්තේ තැනිට මුදල් තැනිට ගෙයක් ගෙයක් ගානේ හිඟ කකා ඉන්නා වෙලාවේ කෙනෙකුගේ ආධාර ඇතුළුව 'දස් කැපිටාල්' කියන පොත ලිව්වේ. එයින් තමයි ඔහු ප්‍රසිද්ධියක් ගත්තේ. ඒ විධියේ පාරාජිකාටු පුද්ගලයින් ඇ ලාකාරවේ සිටිනවා. ඔවුන් බලපොරොත්තු වුණා අසරණ දරුවන්ගේ ශ්‍රමය කුලීන් ලොකු පුදු ලබාගෙන විධායක හා ව්‍යවස්ථාපයක බලයක් තමන් අතට අරගෙන සම්පූර්ණයෙන් ධේරුපාටාදී එකාධිපති ආණ්ඩුවක් සමාජවාදයේ නාමයෙන් බිහි කරන්නට."

The English translation is as follows :-

"it is said that the person called Karl Marx wrote the book known as 'Das Capital' after having obtained financial assistance from a person at a time when he had passed the Proctors examination and was begging penniless from house to house without getting even two briefs. It was by that (book), that he achieved fame. There are frustrated persons like him in Sri Lanka today. They hoped to achieve big seats (of power) through the labours of innocent children, to take completely into their hands the executive and legislative power and thereby to establish a completely imperialist dictatorial government in the name of socialism."

I must at this stage state that Counsel for the State did not seek to justify these statements and informed Court that he did not contend for the truth or accuracy of the facts contained in this statement. The long and the short of it is that the Member for Ududumbara alleged and imputed that Karl Marx was a briefless lawyer ("proctor" is the name used in Sri Lanka for one branch of the legal profession that once existed), that he was penniless and went begging from house to house, and that utilising the funds of such begging he was able to write the book 'Das Capital'. Karl Marx is also characterised as a frustrated person with grandiose dreams of imperialistic dictatorial government in the name of socialism. Such is the venom and ridicule of the Member for Ududumbara. Indeed this Member seems to have been in a puckish mood that day. In the course of the same speech he had this to say:

“මොලයක් වයසින් මනින්නට පුළුවනි. කෙනෙකුගේ මොලය වැඩෙන්නට පටන් ගන්නේ වයස අවුරුදු දෙකහමාරෙන්. වයස අවුරුදු දෙකහමාරේ සිට හතහමාර වන විට මොලය සම්පූර්ණයෙන්ම වැඩී අවසානයයි. නමුත්තාත්තේගේ මොලයත් මගේ මොලයත් මෙම උත්තරීතර සභාවේ සියලු දෙනාගේම මොලයන් අවුරුදු හතහමාර වන විට වැඩී අවසන් වූ මොලයි. අවුරුදු හතහමාරෙන් පසු ශරීරයේ වෙනත් අංශ වැඩෙනවා මිස මොලය වැඩෙන්නේ නැහැ. ඒ වාගේම වයස අවුරුදු 45ත් පසු කාන්තාවන්ගේ මොලය ක්‍රියා විරහිත වෙනවා.”

“මට ඒ කාරණය තවදුරටත් විග්‍රහ කරන්නට පුළුවනි. ශරීරය නමැති ආයතනයේ 'සෙල්ස්' නමැති ජාතියක් තිබෙනවා. සිංහලෙන් ඒකට බිල කියනවා. ඒවායේ වැඩී වැඩී මැරෙන ගතියක් තිබෙනවා. මොලේ බිල වැඩී වැඩී මැරෙන ගතියක් නැහැ. කාන්තාවන්ගේ නම් 45ත් පසු සම්පූර්ණයෙන්ම ඉවරයි. ඒක නමයි පසුගිය හත් අවුරුදු කාලයේදී වූණේ.”

The English translation is as follows:-

"The brain too can be measured by the age. A person's brain begins to develop at the age of 21/2 years. From the age of 21/2 years upto 71/2 years the brain would have been fully developed. Your brain as well as my brain and the brains of all those who are assembled in this august assembly are brains that have been already developed by 71/2 years. After 71/2 years even though the other parts of the body continue to develop the brain does not develop. Similarly, after 45 years the brain of ladies cease to function."

"I can analyse that matter further. In the body there is a thing called 'cells'. In Sinhala they are called 'Bila'. They

continue to grow up and decay. But the cells in the brain do not grow up and decay. In the case of a lady, after 45 it is completely over. That was what happened during the past seven year period."

The object of his sarcasm is obvious. The statements quoted above were reported in the "Ceylon Daily News" of the 6th October, 1977. The Respondent appears to have resented the remarks concerning Karl Marx. He belongs to a category of political thought that respects and holds Karl Marx in high esteem. The Member for Ududumbara apparently belongs to the category comprised of his detractors. The Respondent was provoked to reply and he did this by means of an Editorial in the issue of the 'Aththa' newspaper of the 11th October, 1977. The Editorial (marked P2) is headed -

“උමඩා ගොතියන්නන් ඉගැන්විය යුතුයි.”

The Petitioner has translated this as -

"Must also be taught not to bellow."

The Respondent has in P2A translated it as -

"Should also be taught not to bellow."

I do not think the word 'bellow', which word is used to describe the roaring of a bull, is the correct word to use. The

“උම්බෑ”

word used is (Umba) which is the sound made by the bleating of a calf. The use of it here is onomatopoeic and was intended to show that Members of Parliament were fledglings, as inexperienced as new born calves, whose only ability is to bleat.

The references to the Members of the House are set out in paragraph 13(i) as follows :

(a) මෙයට අමතරව ගොතා වුණාට රටට ඇහෙන්නට උම්බෑ ගොතියන සැට්ද මේ සම්මන්ත්‍රණයේදී යුදාත්පී මන්ත්‍රීවරුන්ට කියා දෙනු ලැබේ නම් කොතරම් අරේදැයි අපට පිනෙයි.

(We feel how useful it would be if in addition to these things, the U.N.P. Members are taught at this seminar not to bellow to be heard in the country although they are bulls).

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(b) එහෙත් මන්ත්‍රීවරුන්ට පාර්ලිමේන්තු සම්ප්‍රදාය පිළිබඳ අයනු අයනු උගන්වන්නට කටානායක තුමාගේ කාලය මිඩංගු කළ නොහැකිවි. කොහොමටත් සාමාන්‍ය දැනීමක් තැනී අයට සාමාන්‍ය දැනීම ලබා දෙන්නට ඔහුට බැරිය.

(However, the Speaker cannot devote time for the purpose of teaching Members of Parliament the A B C of parliamentary conventions. He cannot impart general knowledge to those who have no general knowledge whatsoever).

(c) ඔවුන්ට ගොතා ගොවන සැට්ද කියා දිය යුතු වේ. ඒ කියන්නේ, තොදන්නා දේ ගැන ගොත් කටා ගොතියන හැටියට ඔවුන් හැඩගැස්විය යුතුය.

(They should also be taught how not to be bulls. That is to say, they should be taught not to make bull-like statements-about things: they do not know).

(d) මැති සබයට අලුත් අලුත් නියෝජිතයන් පත් වෙතවා දකින්නට අපි කැමැත්තෙමු. එහෙත් ඔවුන් ඒ උත්තරීතර තත්වය දරන්නට සුදුස්සන් විය යුතුය.

(We like to see new representatives being elected to Parliament. However, they should befit to hold that high office).

The references to the Member of Parliament for Ududumbara are set out in paragraph 13(ii) as follows :

(a) අප මෙසේ කියන්නට යොමු වූයේ, උඩදුම්බර නවක යුදාත්පී මන්ත්‍රී ආර්. එච්. ඇම්. අත්තනායක මහතා පසුගියදා මැති සබයේදී කළ ගොත් තප්පුලුමක් නිසාය.

(We have been prompted to say this, because of the bellowing of the . freshman U.N.P. member for Ududumbara in Parliament the other day).

(b) තිගරුව එය කියනු මොඩයටවත් නොවේ.

(The insult is not even to the fool who uttered it).

(c) බල්ලෙකු බිරුවාට කන්ද පාත් නොවේ යැයි කියති. මේ බිරිල්ල නිසා කාල මාක්ස්ගේ ශ්‍රේෂ්ඨ නාමයට පිටුපු

නාතියක් නැත. බිරු ඔහුගෙන් ඔහු වැනි අනිත් උදවියගෙන් දැන ගැනීම පිණිස මාක්ස් ගැන යමක් කිව යුතුය.

(It is said that the mountain does not collapse at the barking of a dog. Although the great name of Karl Marx has not been damaged by reason of this barking, it is necessary to say something about Marx for the information of him who barked and others like him).

(d) මේ මුරු හඬ නැගූ මන්තීරියාගෙන් පළමුකොට අයත්තට ප්‍රශ්නයක් අපට ඇත.

(Firstly, we have a question to ask from the member who made this braying sound).

(e) ඊළඟට මේ මොඩ මිනිසාගේ දැන ගැනීම පිණිස කාල මාක්ස් කළ විභාග ගැනත් ඔහු දැරූ තනතුරු ගැනත් යමක් කිව යුතුය.

(Thereafter, for the information of this foolish man, it is necessary to say something about the examinations that Karl Marx passed and the positions that he held).

(f) මාක්ස්ට මේ අවලංගු නැඟ මිනිසා මන්තීරියකු වන්නට කලින්, විදුහල්පතිවරයකුට සිටි බැව් කියනු ලැබේ. මේකාගේ දැනුම මට්ටම මේක නම්. ඔහුගෙන් ඉගෙනුම ලැබූ සිසුනට දෙවියන්ගේම පිහිටයි! මාක්ස් ලියූ පොත් කියැව්වාද යන්නවත්, කියවා තේරුම් ගත්තාද යන්නවත් අපි මොවුනි මොඩයකුගෙන් නොඅසමු. අපු ගණනේ මාක්ස් ලියූ පොත්වල නම්වත් කියන්න තරම් සාමාන්‍ය දැනුමක්වත් අද සමාජ අධ්‍යයනය පාඨම ඉගෙන ගන්නා 8 වැනි ශ්‍රේණියේ දරුවනට ඇති සාමාන්‍ය දැනුමවත් මොහුට ඇතැයි විශ්වාස කළ හැකිය.

(It is said that this man who uttered this insult to Marx was a principal of a school before he became a member. If the level of this man's knowledge is such, then God save the pupils who learned from him. We will not ask from fools like this, whether they have read the books written by Marx or whether they have read and understood them. Could it be believed that this person has the general knowledge even to state the names of the books written by Marx or the general knowledge of students in the 8th Grade who are studying lessons in social studies).

(g) විශේෂයෙන්ම අපේ මන්තීන් හැටියට අප පාලනය කරන්නට පත්වුවත් මොඩකම් අපට දිරවන්නට අමාරුය. අපේ ජීවිත ගැන තීරණ ගැනීමේ අයිතිය මොඩයනට බාර දිය නොහැකි

බැවිනි. කේතනී යාමට තවත් හේතුවක් නම් කාලයක් තිස්සේ ගුරුවරයෙකුත් විදුහල්පතියෙකුත් වශයෙන් මේ පුද්ගලයා අපේ දරුවන් තුළට මොවුනි ගොත් අදහස් කෙනෙක් ඇතුළු කරන්නට ඇද්ද යන හැඟීමයි.



(It is especially difficult for us to digest the stupidity of those who have been elected to govern us as Members of Parliament. That is because, we cannot hand overpower to take decisions affecting our lives, to fools. Another reason for anger is the feeling that this person may have inculcated into our children idiotic ideas like this over a long period of time as a teacher and as a principal of a school)

(h) එහෙත් හොඳත්තා දේ ගැන කතා කරන විට බුරු කතා කියන විට අපට හිතෙන්නේ හොඹිබට දමලා අහිත්තටය.

(However, when he speaks of things that he does not know about and when he speaks like a donkey, we feel like punching him in the jaw).

The sum and substance of the Respondent's reply is that these utterances were foolish. utterances and shows a lack of general knowledge. But in the process he used harsh language in reference to the Members of the House

and the Member of Parliament for Ududumbara such as 'ගොත් කතා' (bull-like statements) 'ගොත් අදහස්' (bovine ideas, i.e. idiotic ideas) 'ගොත් තරපුලුමක්' (bovine bellow) 'බුරු හඬ' (asinine sound - braying) 'බුරු කතා' (asinine statements). He also used the words 'මොඩ්' 'මොඩකම්' 'මොඩයාටත්'

meaning foolish and fool. These are not mere words of abuse. No- innuendo has been pleaded but the allegorical allusion needs no innuendo. "Nothing is easier than to bring persons into contempt by allusion to names well known in history; or by mention of animals to which certain ideas are attached" per Erie J. in *Hoare v. Silverlock* (1). He likened the Members - of Parliament in general and the Member for Ududumbara in particular to bulls and donkeys and thereby represented them to be of low intellect, lacking in intelligence and unfit to perform the tasks for which they were elected. Contempt and ridicule pervade the whole article and the words complained of are defamatory. In so far as they refer to statements made in the House they reflect on its proceedings and in so far as they refer to the conduct of the majority of the House they reflect on the conduct and character of the House - an offence within the meaning of item 7 of Part A of the Schedule to Chapter 383. In so far as they concern the Member of Parliament for Ududumbara in respect of his conduct as a member they constitute an offence within the meaning of item 8 of Part A of the said Schedule.

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What of the defence? Counsel for the Respondent pleaded one of the well-known defences to an action for defamation in the Civil Law, viz., Pair Comment. The Deputy Solicitor-General contended that none of the general defences known to an action for defamation in the Civil Law are available to anyone accused of an offence under the provisions of the Parliament (Powers and Privileges) Act (Chapter 383). He pointed to the fact that the Act itself does not set out any defences, whereas section 479, of the Penal Code, which creates the offence of criminal defamation, sets out defences which defences are akin to those defences known to the Civil Law of Defamation. He argued that the only defences that are available to a charge under the, provisions of Chapter 383 are those specified in the general exceptions set out "in Chapter IV of- the Penal Code. These are of no avail to the Respondent. Section 38(1) of the Constitution of Sri Lanka 1972 provided that "the privileges, immunities and powers of the National State Assembly and of its members shall be the same as those of the House of Representatives and 'of its Members immediately prior to the commencement of the Constitution and accordingly the Parliament (Powers and Privileges) Act shall as far as practicable and *mutatis mutandis*, continue in force". At the date immediately prior to the date the Constitution of 1972 came into operation, i.e. 21-5-72, the privileges, powers and immunities of the House of Representatives did not exceed those "for the time being held or enjoyed by the Commons House of Parliament of the United Kingdom or its Members". (Section 27 Ceylon (Constitution) Order in Council. (Chapter 379) ). The Deputy Solicitor-General therefore argued that only those privileges, powers and immunities that existed on 21-5-72 were relevant for the consideration of this case. Counsel for the Respondent referred us to the provisions of section 7 of Chapter 383 which, he argued, empowered us to consider and accept subsequent developments and that the provisions of section 8 served as a guide to such developments. He relied a great deal on some of the comments and opinions to be found in the Report from the Select Committee of Parliamentary Privilege which was printed in 1967 by Order of the House of Commons of the United Kingdom (hereinafter referred to as the 1967 Report).

At the outset it is necessary to note that in the United Kingdom categories of contempt are not codified and the 1967 Report recommended that they should not be codified (vide para 40 page XIV). The House of Commons relies mainly on precedent and the Committee was satisfied that there was justification in the criticism that the scope of

Parliament's penal, jurisdiction was too

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uncertain and the defences that may legitimately be raised, also too uncertain (1967 Report para 20 page IX). It is to consider these and other criticisms and to make suggestions for change that this Committee was appointed. Their own broad approach to the basic requirements of a modern legislature has been set out in para 11 of the 1967 Report as follows :-

"They have asked themselves, first, whether "Parliamentary privilege" is justifiable at all in modern times, and secondly, what are the reasonable limits of protection and immunity which must be claimed if the legislature is to fulfil its proper functions, if its Members are to be able fearlessly to speak their minds and to pursue the grievances of those who elected them and if its Officers are to be given the facility to carry out their several duties on behalf of the House and of its Members."

In answering the second question the Committee proposed that the general rule should be that the House should exercise its penal jurisdiction.

"(a) in any event as sparingly as possible and

(b) only when it is satisfied that to do so is essential in order to provide reasonable protection for the House, its Members or its Officers, from such improper obstruction or attempt at or threat of obstruction as is causing, or is liable to cause-, substantial interference with the performance of their respective functions."

(Vide para 15 of 1967 Report page VIII)

It is sub-rule (b) that Counsel for the Respondent invited us to apply in deciding this case. This sub-rule is only a proposal and such a test is nowhere indicated in Chapter 383. Indeed the indication is quite the contrary. Just one act of defamation, whether serious or trivial, is an offence punishable under the Act. Truth is a good defence to an action for libel in the law of England, but the defence of justification has never been raised in a charge of contempt of the House. However there is also no authoritative decision that it cannot be so raised. The Committee recommended the recognition of the defences of justification and Fair Comment but within certain limitations (paras 50 - 59 of 1967 Report). For the purposes of this case. I do not have to make a decision on each of these contentions as I see no reason to

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accept the Defence of Fair Comment. The Defence of Fair Comment requires, as one of its essential elements, that the comment or criticism must be fair and *bona fide*. (Nathan - Law of Defamation in South Africa page 275). The vituperation that the Respondent has indulged in can hardly be called fair or even criticism. Such a defence even if available to the Respondent, cannot be upheld in this case.

In the case of *Attorney-General v. Somasunderam Nadesan* <sup>(2)</sup> Samerawickrame, A.C.J. stated that the "offence of breach of privilege of Parliament is analogous to the offence of contempt of Court". Samerawickrame, A.C.J. was there dealing with a case where comments were made by the Respondent on proceedings in which the Parliament was acting judicially upon powers assumed under Act No. 5 of 1978. Contempt of Court and its punishment seeks to preserve the majesty of the Law. Whether statements reflecting on the conduct of a Member or proceedings of the House in the course of debate for the purpose of legislating can be equated to contempt of Court is an open question. Whether Parliament constituted under the Constitution of 1972 or the Constitution of 1978 can claim to be the High Court of Parliament is: also an- arguable matter. These require consideration by a Full - Bench of this Court if and when it arises for decision.

In the matter of contempt there is one common factor that - pertains to both Courts of Law and Parliament. Criticism is permitted. The proceedings in Parliament and Courts of Justice are published so that the public should be aware of what is happening within their walls, for the welfare of the community depends on what is said and done there. The law also recognises the fact that a citizen can form his own opinion on such proceedings and has the right to criticise them. The report of the Committee 1967 recognised this right and expressed themselves thus :-

"The proposal made in paragraph 42 is fully consistent with the principle, which Your Committee believe to be right, that the House should be slow and reluctant to use

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its penal powers to stifle criticism or even abuse, whether of the machinery of the House, of a Member or of an identifiable group of Members, however strongly the criticism may be expressed and however unjustifiable it may appear to be. Your Committee regard such criticism as the life-blood of democracy. In their view the sensible

politician expects and even welcomes criticism of this nature". (Para 43 page XV 1967 Report).

"They accept the principle that a legislature which is isolated from informed and accurate criticism from outside cannot hope to recognise and remedy all its own defects." (Para 17 page IX 1967 Report).

Lord Atkin in delivering the order of the Privy Council in *Ambard v. Attorney-General for Trinidad and Tobago* <sup>(3)</sup> said thus of the right of criticism of Courts of Justice :-

"But whether the authority and position of an individual judge, or the due administration of justice, is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising, in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way : the wrong-headed are permitted to err therein : provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue : she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."

But such criticism must be fair and within limits. The limitation is upon the mode of expression. The Respondent is guilty of "improper excess in criticism" (Nathan p286). The language used is crude, intemperate and extravagant.

Counsel for the Respondent sought to justify this language and the whole of the editorial with the argument that they were no different from accepted political journalism at the time - meaning thereby that this kind of journalistic exercise was in vogue and therefore not objectionable. In para 12 of the affidavit the Respondent states that he wrote the said editorial "according to the prevalent standards, convention and practice of political journalism". In his affidavit he cites examples quoting extracts from the "Dinapatha", which was the newspaper of the U.N.P. between 1976 and 1977. In R3A the leftist Members of Parliament are referred to as "Kaballeys". R4A refers to Members of Parliament and Ministers as "blood-sucking water serpents" "fattening like Chinese pigs". Also "fattening their

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pockets (R5A). They are referred to as "fools" (R7A), (R9A) as "traitors" (R10A), as "racketeers" (R3A), as "thugs" (R12A) and indisciplined, vulgar, drunkards who resort to fisticuffs on the floor of the House (R11A, R13A, R14A). R20 refers to a drunken Member of Parliament who performed a "strip tease" act in Parliament. These are probably correct but I do not think that "Dinapatha" is the yardstick to judge political journalism nor do they justify the editorial of the Respondent.

Punishment has had my anxious consideration. The impugned words and names used by the Respondent are not strange or unknown or unused in Parliament. One Member of Parliament bemoaned the deterioration of standards in the House in recent times. Members had, he stated, used the words "puppies" "fellows" "chaps" and "buggers" in reference to fellow members (Vide Hansard of 18th November, 1980, Col. 1370). Another complained that he had

been called **කැලකර්තියා** (miserable man) **ඉරුවා** (donkey) **පිස්සා** (lunatic) (Vide Hansard of 14th November, 1980, Col. 831). These are Honourable Members addressing each other as "Honourable Members"-. Four-footed animals with that honorific do not exist within or without Parliament. What needs stressing is that when such name-calling is indulged in by Members of Parliament on the floor of the House, small wonder then that strangers are tempted to follow suit and it hen ill becomes Members of Parliament to complain. However the law seeks to preserve the dignity of Parliament and decorum in the House against inroads on it by offenders - be they Members or be they strangers. The Respondent has met ridicule with ridicule, contempt with contempt but he has overstepped the permissible limits, and for that he has to be punished. I find him guilty of the offences of contempt set out in paras 8(i) and 8(ii) of the petition. In regard to the offence of contempt in respect of the House (para 7 Part A of Schedule to Chapter. 383) I fine him Rs. 250/-. In default 2 months rigorous imprisonment In regard to the offence of contempt involving defamatory statements in respect of the Member of Parliament for Ududumbara I fine him Rs. 50/- In default 2 weeks rigorous imprisonment. The default sentences, if any, to run concurrently.

**ISMAIL, J.** - I agree

**SHARVANANDA, J.** - I agree