



IN THE HIGH COURT OF SIKKIM

ORDER SHEET
CONTEMPT CASE (CRL.) No. **1** of 200⁵
COURT ON SUO MOTU Petitioner / Appellant

Versus

ANJAN UPADHYAYA & ANOTHER Respondent

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
1.	13.06.2005	<p>We have come across a news item under the caption 'Nyayadhish Sharmako Barkkhast Sikkimayharulai Dhakka : Adhiwaktaharu' in the daily 'Hamro Prajashakti'. The translated English version of it is quoted below :-</p> <p><u>Dismissal of Judge Shri Sharma a jolt to the Sikkimese : Advocates'</u></p> <p>Gangtok, 9th June : Some legal experts of the State expressed their dissatisfaction on the removal of the District & Sessions Judge (Special Division-II) on 8th June and have alleged that the action was taken, as the concerned officer did not perform his duty taking the side of Chief Justice N. S. Singh and Judge A. P. Subba, and his removal was in their interest.</p> <p>The legal experts on condition of anonymity said that the dismissal of Judge Shri Sharma was unjust. An advocate based at Gangtok when contacted over telephone informed that the said dismissal was an outcome of Shri Sharma failing to</p>	<p>As per the order dated 11-06-2005 (Order is in misc file). A Contempt Case (Crl.) No.1 of 2005 has been registered and notice issued to the Editor, Publisher and Working Editor for 11-6-05 for appearance before this Hon'ble High Court.</p> <p><i>Unlaid</i> 11/6/05</p> <p>Notice served upon the Contemner on 11-6-05. <i>Unlaid</i> 11/6/05</p>



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get along with the Chief Justice and the Judge of the High Court and further stated that "it is known to all that Judge Shri Sharma gave justice to the harassed public and was an able Sikkimese therefore none of us are satisfied with the dismissal of Shri Sharma".

Another advocate informed that, Shri Sharma failed to toe the line of the Hon'ble Judges of the High Court and therefore before completion of the period of probation, he was removed from services without any reason with an intention to harm him. He said, 'we are all unhappy about the dismissal of Shri Udai P. Sharma, this dismissal ought not to have happened".

In this regard, efforts were made to contact the dismissed Judge Shri Sharma to know his opinion but he could not be contacted. Despite daylong efforts his mobile remained out of range. When the High Court had removed Shri Sharma from the cadre of Sikkim Superior Judicial Service on the allegation of administrative lapses under rule 1940 section 3, the Department of Personnel also had issued the final order of dismissal of Shri Sharma with immediate effect accepting the recommendation of the High Court. The period of probation of Judge Shri Sharma was to be completed only on June 13th.




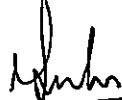
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		<p>Judge Shri Sharma was appointed on probation in the High Court during 2002 for two years. His period of two years was extended till 13th June 2005 and he was transferred as Sessions Judge (Special Division-II) during November, 2004. By dismissing the services of Shri Sharma five days prior to the completion of his period of probation his right to approach the Supreme Court has also been curtailed.</p> <p>According to them in a case of dismissal issued on the recommendation of the High Court, before completion of the probation period, no relief can be given even by the Highest Court".</p> <p>2. The Registry of this High Court placed the matter before this Court and was of the view that it is a false and misleading news item and such false and misleading news item tends to scandalize or interfere with the administration of justice. We have perused the news item.</p> <p>3. It appears to us that the publisher, editor and the working editor of this daily newspaper 'Hamro Prajashakti' published the said news item with the photograph of Shri U. P. Sharma now terminated from service. This news item highlighted that the</p>	



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		<p>action against Shri U. P. Sharma was taken, as the concerned officer did not perform his duty, taking the side of the Chief Justice and his companion brother Judge, and that, his removal was in their interest.</p> <p>4. The news item further highlighted the fact that an Advocate based at Gangtok, when contacted over telephone, informed that the said dismissal was an outcome of Shri Sharma failing to get along with the Chief Justice and the Judge of the High Court and further stated that "it is known to all that Judge Shri Sharma gave justice to the harassed public". It is quite astounding to note that the publisher did not give any instances in the news item to support the above statement, that, "Judge Shri Sharma gave justice to the harassed public". Secondly, this news item speaks that another Advocate informed that Shri Sharma failed to toe the line of Hon'ble Judges of the High Court. At this stage, we are of the view that, if the author or publisher or editor desired to know the real thing about the termination of Shri U. P. Sharma from service, thus dispensing him from services under the relevant rules, why the author did not contact the Registry of the High Court for getting true</p>	



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		<p>practicing advocate, if he or she speaks against sitting Judges of the High Court, it is interfering with the administration of justice and liable to contempt of court. Be that as it may, we are not issuing any formal notice at this juncture, but, are affording some time to the editor and publisher as well as the working editor to apply their mind in the matter.</p> <p>6. The matter be listed on 16.06.2005 for necessary orders. Mr. Anjan Upadhyaya, the editor and publisher and Mr. B. M. Rawat, the working editor are directed to appear in person before this Court on 16.06.2005 at 10.30 a.m.</p> <p style="text-align: center;">  N. S. (N. Surjamani Singh) <u>Chief Justice (Acting)</u> </p> <p style="text-align: center;">  (A. P. Subba) <u>Judge</u> </p>	

At/



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		<p>and correct information in the matter. Shri Anjan Upadhyaya, the editor and publisher of this daily paper appeared in person. Shri B. M. Rawat, working editor is also present.</p> <p>5. Judiciary cannot be immune from criticism. But, when that criticism is based on obvious distortion or gross mis-statement and made in a manner which seems designed to lower respect for judiciary and destroy public confidence in it, it cannot be ignored. It is not correct to say that an action for contempt of court, which is discretionary, should be frequently or lightly taken. But, when there appears some scheme and a design to bring about results which must damage confidence in our judicial system and demoralize Judges of the highest Court by making malicious attacks, anyone interested in maintaining high standards of fearless, impartial and unbending justice will feel perturbed. The only weapon available to judiciary against an attempt to tarnish or wipe out confidence of the people in judiciary, is the long hand of contempt of court. It is also well settled that there cannot be both justification and apology in a matter relating to contempt of court. It is also well settled that even a</p>	



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2.	16.06.2005	<p>The respondent, Mr. Anjan Upadhyaya, editor and publisher and Mr. B. M. Rawat, the working editor of Hamro Prajashakti are present. As these two respondents realized the real picture of the related matter, they had clarified, rather rectified their mistakes, particularly the news item under the caption 'Dismissal of Judge Shri Sharma a jolt to the Sikkimese : Advocates' published in their daily 'Hamro Prajashakti' on 09.06.2005 by making subsequent publications on two ^{consecutive} consequent days in their daily paper under the caption 'Disclosure about the administrative lapses by Judge, Mr. Sharma - PROOF OF GIVING BAIL TO THE ACCUSED', ^{and} thus tendering their unconditional apology for their mistake, before the issuance of formal notice upon them under the related provisions of the Contempt of Court Act.</p> <p>Considering their fairness and openness, we have no alternative but to accept their unconditional apology, which we do, and in view of the above position, this Contempt Case (Criminal) No.1 of 2005 is hereby closed.</p> <p style="text-align: right;">N. Surjamani Singh (N. Surjamani Singh) Chief Justice (Acting)</p>	


 (A. P. Subba)
Judge