STUDY MATERIAL FOR PAPER- III OF AOR EXAMINATION (ILLUSTRATIVE, NOT EXHAUSTIVE) BY MANINDER SINGH, SENIOR ADVOCATE

DATE: 17.05.2023
PLACE: NEW DELHI

SUPREME COURT OF INDIA

New Delhi, 19th April, 2023

NOTICE (II)

Subject: Advocates-on-Record Examination – June 2023
Paper-III (Advocacy and Professional Ethics)

This is for information of all concerned that the following topics are suggested for study in Paper-III of the said Examination:-

1. The concept of a profession; Nature of the legal profession and its purposes; Connection between morality and ethics; Professional Ethics in general:- definitions, general principles, seven lamps of Advocacy, public trust doctrine, exclusive right to practice in Court;

2. History of legal profession in India and relevant statutes.

3. Law governing the profession and its relevance and scope; professional excellence and conduct. Professional, criminal and other misconduct and punishment for it (Ss. 35 and 24(A) and other provisions of the Advocates Act, 1961 and prescribed code of conduct); Duty not to strike; Advertisement/ Solicitation.

4. The rules of the Bar council of India on the obligations and duties of the profession, need to shun sharp practices and commercialisation of the profession and the role of the Bar in promotion of legal services under the constitutional scheme of providing equal justice. Role of Bar Council in regulating ethics. Bar Council Rules Chapter-II Standard of professional conduct and Etiquette. Different duties of an advocate including categories laid down in the bar council rules on ethics. Conflict between duties and law to resolve them. Difference between: breach of ethics and misconduct and negligence, misconduct and crime.

5. Comparative study of the profession and ethics in various countries, and their relevance to the Bar.

6. Perspectives on the role of the profession in the Adversary system and critiques of the adversary system vis a vis ethics.

7. Issues of advocacy in the criminal law adversarial system, the zealous advocacy in the criminal defence setting and prosecutorial ethics.

8. Lawyer client relationship, confidentiality and issues of conflicts of interest (Sec. 126 of the Evidence Act); Counselling, negotiation and mediation and their importance to administration of justice. Mediation – Ethical Consideration; Amicus Curiae – Ethical Consideration.

9. Current developments in the organization of the profession, firms, companies etc. and application of ethics.

10. Special role of the profession in Supreme Court Practice and its obligations to administration of justice. Adjournments; Duties of Advocate-on-Record; Supervisory role of Supreme Court; Contempt of Courts.

It will not be the responsibility of the Registry to supply any book to any candidate.

Sd/-

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THE ADVOCATES ACT, 1961

ACT NO. 25 OF 1961

[19*th May*, 1961.]

An Act to amend and consolidate the law relating to the legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar.

BE it enacted by Parliament in the Twelfth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(*1*) This Act may be called the Advocates Act, 1961.

[1][(*2*) It extends to the whole of India.]

(*3*) It [2][shall, in relation to the territories other than those referred to in sub-section (*4*), come into force] on such date[3] as the Central Government may, by notification in the Official Gazette, appoint, and different dates[3] may be appointed for different provisions of this Act.

[4][(*4*) This Act shall, in relation to the State of Jammu and Kashmir*[5] and the Union territory of Goa, Daman and Diu, come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, and different dates may be appointed for different provisions of this Act.]

2. Definitions.—[6][(*1*)] In this Act, unless the context otherwise requires,—

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1. Subs. by Act 60 of 1973, s. 2, for sub-section (*2*) (w.e.f. 31-1-1974).

2. Subs. by s. 2, *ibid.*, for "shall come into force" (w.e.f. 31-1-1974).

3. The provisions of the Act have been brought into force as under:—

16th August, 1961, *vide* notification No. S.O. 1870, dated 7th September, 1961, in respect of Chapter I , II and VII, *see* Gazette of India, Extraordinary, Part II, sec. 3(*ii*).

1st December, 1961, *vide* notification No. S.O. 2790, dated 24th November, 1961, in respect of Chapter III and s. 50(*2*), *see* Gazette of India, Extraordinary, Part II, sec. 3(*ii*).

15th December, 1961, *vide* notification No. S.O. 2919, dated 13th December, 1961, in respect of s. 50(*1*), *see* Gazette of India, Extraordinary, Part II, sec. 3(*ii*).

24th January, 1962, *vide* notification No. S.O. 297, dated 24th January 1962, in respect of ss. 51 and 52, *see* Gazette of India, Extraordinary, Part II, sec. 3(*ii*).

29th March, 1962, *vide* notification No. S.O. 958, dated 29th March 1962, in respect of s. 46, *see* Gazette of India, Extraordinary, Part II, sec. (*ii*).

4th January, 1963, *vide* notification No. S.O. 50, dated 4th January 1963, in respect of s. 32 and Chapter VI [except s. 46, sub-sections (*1*) and (*2*) of s. 50, ss. 51 and 52], *see* Gazette of India, Extraordinary, Part II, sec. 3(*ii*).

1st September, 1963, *vide* notification No. S.O. 2509, dated 31st August, 1963, in respect of Chapter V, *see* Gazette of India, Extraordinary, Part II, sec. 3(*ii*).

10th June, 1968, *vide* notification No. S.O. 63, dated 7th June 1968, in respect of Chapters I, II, III, section 32 of Chapter IV and Chapters V, VI, VII and VIII in the Union territory of Pondicherry, *see* Gazette of India, Extraordinary, Part II, sec. 3(*ii*).

1st June, 1969, *vide* notification No. S.O. 1500, dated 5th April, 1969, in respect of ss. 29, 31, 33 and 34 of Chapter IV, *see* Gazette of India, Extraordinary, Part II, sec. 3(*ii*).

1st June, 1979, *vide* notification No. G.S.R. 84(E), dated 21st February 1979, except section 30 in respect of the Union territory of Goa, Daman and Diu, *see* Gazette of India, Extraordinary, Part II, sec. 3(*i*).

15th June, 2011, *vide* notification No. S.O. 1349(E), dated 9th June, 2011, in respect of section 30, *see* Gazette of India, Extraordinary, Part II, sec. 3(*i*).

4. Ins. by Act 60 of 1973, s. 2 (w.e.f. 31-1-1974).

5. 1st August 1986, *vide* notification No. G.S.R. 946 (E), dated 15th July 1986, except section 30, in respect of the State of Jammu and Kashmir.

6. Section 2 renumbered as sub-section (*1*) of that section by Act 60 of 1973, s. 3 (w.e.f. 31-1-1974).

*. *Vide* notification No. S.O. 3912(E), dated 30th October, 2019, this Act is made applicable to the Union territory of Jammu and Kashmir and the Union territory of Ladakh.

[1][(*2*) Without prejudice to the provisions contained in sub-section (*1*), the High Court at Calcutta may make rules providing for the holding of the Intermediate and the Final examinations for articled clerks to be passed by the persons referred to in section 58AG for the purpose of being admitted as advocates on the State roll and any other matter connected therewith.]

[2]* * * * *

CHAPTER V

CONDUCT OF ADVOCATES

35. Punishment of advocates for misconduct.—(*1*) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

[3][(*1A*) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.]

(*2*) The disciplinary committee of a State Bar Council [4]*** shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State.

(*3*) The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:—

(*a*) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;

(*b*) reprimand the advocate;

(*c*) suspend the advocate from practice for such period as it may deem fit;

(*d*) remove the name of the advocate from the State roll of advocates.

(*4*) Where an advocate is suspended from practice under clause (*c*) of sub-section (*3*), he shall, during the period of suspension, be debarred from practising in any court or before any authority or person in India.

(*5*) Where any notice is issued to the Advocate-General under sub-section (*2*), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf.

[5][*Explanation*.—In this section, [3][section 37 and section 38], the expressions "Advocate-General" and "Advocate-General of the State" shall, in relation to the Union territory of Delhi, mean the Additional Solicitor General of India.]

36. Disciplinary powers of Bar Council of India.—(*1*) Where on receipt of a complaint or otherwise the Bar Council of India has reason to believe that any advocate [6]*** whose name is not entered on any State roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

(*2*) Notwithstanding anything contained in this Chapter, the disciplinary committee of the Bar Council of India may, [7][either of its own motion or on a report by any State Bar Council or on an application made to it

1. Ins. by Act 38 of 1977, s. 6 (w.e.f. 31-10-1977).
2. Sub-section (*3*) omitted by Act 107 of 1976, s. 8 (w.e.f. 1-1-1977).
3. Ins. by Act 60 of 1973, s. 24 (w.e.f. 31-1-1974).
4. The words ", if it does not summarily reject the complaint," omitted by s. 24, *ibid*. (w.e.f. 31-1-1974).
5. Ins. by Act 21 of 1964, s. 17 (w.e.f. 16-5-1964).
6. The words "on the common roll" omitted by Act 60 of 1973, s. 25 (w.e.f. 31-1-1974).
7. Subs. by s. 25, *ibid.*, for "of its own motion" (w.e.f. 31-1- 1974).

by any person interested], withdraw for inquiry before itself any proceedings for disciplinary action against any advocate pending before the disciplinary committee of any State Bar Council and dispose of the same.

(*3*) The disciplinary committee of the Bar Council of India, in disposing of any case under this section, shall observe, so far as may be, the procedure laid down in section 35, the references to the Advocate-General in that section being construed as references to the Attorney-General of India.

(*4*) In disposing of any proceedings under this section the disciplinary committee of the Bar Council of India may make any order which the disciplinary committee of a State Bar Council can make under sub-section (*3*) of section 35, and where any proceedings have been withdrawn for inquiry [1][before the disciplinary committee of the Bar Council of India], the State Bar Council concerned shall give effect to any such order.

[2][**36A. Changes in constitution of disciplinary committees**.—Whenever in respect of any proceedings under section 35 or section 36, a disciplinary committee of the State Bar Council or a disciplinary committee of the Bar Council of India ceases to exercise jurisdiction and is succeeded by another committee which has and exercises jurisdiction, the disciplinary committee of the State Bar Council or the disciplinary committee of the Bar Council of India, as the case may be, so succeeding may continue the proceedings from the stage at which the proceedings were so left by its predecessor committee.

36B. Disposal of disciplinary proceedings.—(*1*) The disciplinary committee of a State Bar Council shall dispose of the complaint received by it under section 35 expeditiously and in each case the proceedings shall be concluded within a period of one year from the date of the receipt of the complaint or the date of initiation of the proceedings at the instance of the State Bar Council, as the case may be, failing which such proceedings shall stand transferred to the Bar Council of India which may dispose of the same as if it were a proceeding withdrawn for inquiry under sub-section (*2*) of section 36.

(*2*) Notwithstanding anything contained in sub-section (*1*), where on the commencement of the Advocates (Amendment) Act, 1973 (60 of 1973), any proceedings in respect of any disciplinary matter against an advocate is pending before the disciplinary committee of a State Bar Council, that disciplinary committee of the State Bar Council shall dispose of the same within a period of six months from the date of such commencement or within a period of one year from the date of the receipt of the complaint or, as the case may be, the date of initiation of the proceedings at the instance of the State Bar Council, whichever is later, failing which such proceedings shall stand transferred to the Bar Council of India for disposal under sub-section (*1*).]

37. Appeal to the Bar Council of India.—(*1*) Any person aggrieved by an order of the disciplinary committee of a State Bar Council made [3][under section 35] [4][or the Advocate-General of the State] may, within sixty days of the date of the communication of the order to him, prefer an appeal to the Bar Council of India.

(*2*) Every such appeal shall be heard by the disciplinary committee of the Bar Council of India which may pass such order [4][(including an order varying the punishment awarded by the disciplinary committee of the State Bar Council)] thereon as it deems fit:

[4][Provided that no order of the disciplinary committee of the State Bar Council shall be varied by the disciplinary committee of the Bar Council of India so as to prejudicially affect the person aggrieved without giving him reasonable opportunity of being heard.]

1. Subs. by Act 60 of 1973, s. 25, for "before the Bar Council of India" (w.e.f. 31-1-1974).
2. Ins. by s. 26, *ibid.* (w.e.f. 31-1-1974).
3. Subs. by Act 21 of 1964, s. 18, for "under sub-section (*3*) of section 35" (w.e.f. 16-5-1964).
4. Ins. by Act 60 of 1973, s. 27 (w.e.f. 31-1-1974).

38. Appeal to the Supreme Court.—Any person aggrieved by an order made by the disciplinary committee of the Bar Council of India under section 36 or section 37 [1][or the Attorney-General of India or the Advocate-General of the State concerned, as the case may be,] may, within sixty days of the date on which the order is communicated to him, prefer an appeal to the Supreme Court and the Supreme Court may pass such order [1][(including an order varying the punishment awarded by the disciplinary committee of the Bar Council of India)] thereon as it deems fit:

[1][Provided that no order of the disciplinary committee of the Bar Council of India shall be varied by the Supreme Court so as to prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard.]

[2][**39. Application of sections 5 and 12 of Limitation Act, 1963**.—The provisions of sections 5 and 12 of the Limitation Act, 1963 (36 of 1963), shall, so far as may be, apply to appeals under section 37 and section 38.]

40. Stay of order.—[3][(*1*)] An appeal, made under section 37 or section 38, shall not operate as a stay of the order appealed against, but the disciplinary committee of the Bar Council of India, or the Supreme Court, as the case may be, may, for sufficient cause, direct the stay of such order on such terms and conditions as it may deem fit.

[4][(*2*) Where an application is made for stay of the order before the expiration of the time allowed for appealing therefrom under section 37 or section 38, the disciplinary committee of the State Bar Council, or the disciplinary committee of the Bar Council of India, as the case may be, may, for sufficient cause, direct the stay of such order on such terms and conditions as it may deem fit.]

41. Alteration in roll of advocates.—(*1*) Where an order is made under this Chapter reprimanding or suspending an advocate, a record of the punishment shall be entered against his name—

(*a*) in the case of an advocate whose name is entered in a State roll, in that roll;

[5]* * * * *

and where any order is made removing an advocate from practice, his name shall be struck off the State roll [6]***.

[7]* * * * *

(*3*) Where any advocate is suspended or removed from practice, the certificate granted to him under section 22, in respect of his enrolment shall be recalled.

42. Powers of disciplinary committee.—(*1*) The disciplinary committee of a Bar Council shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

(*a*) summoning and enforcing the attendance of any person and examining him on oath;

(*b*) requiring discovery and production of any documents;

(*c*) receiving evidence on affidavits;

(*d*) requisitioning any public record or copies thereof from any court or office;

(*e*) issuing commissions for the examination of witnesses or documents;

(*f*) any other matter which may be prescribed:

1. Ins. by Act 60 of 1973, s. 28 (w.e.f. 31-1-1974).
2. Subs. by s. 29, *ibid*., for section 39 (w.e.f. 31-1-1974).
3. Section 40 re-numbered as sub-section (*1*) of that section by s. 30, *ibid.* (w.e.f. 31-1-1974).
4. Ins. by s. 30, *ibid.* (w.e.f. 31-1-1974).
5. Clause (*b*) omitted by s. 31, *ibid.* (w.e.f. 31-1-1974).
6. The words "or the common roll, as the case may be" omitted by s. 31, *ibid.* (w.e.f. 31-1-1974).
7. Sub-section (*2*) omitted by s. 31, *ibid.* (w.e.f. 31-1-1974).

Provided that no such disciplinary committee shall have the right to require the attendance of—

(*a*) any presiding officer of a court except with the previous sanction of the High Court to which such court is subordinate;

(*b*) any officer of a revenue court except with the previous sanction of the State Government.

(*2*) All proceedings before a disciplinary committee of a Bar Council shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860), and every such disciplinary committee shall be deemed to be a civil court for the purposes of sections 480, 482 and 485 of the Code of Criminal Procedure, 1898[1] (5 of 1898).

(*3*) For the purposes of exercising any of the powers conferred by sub-section (*1*), a disciplinary committee may send to any civil court in the territories to which this Act extends, any summons or other process, for the attendance of a witness or the production of a document required by the committee or any commission which it desires to issue, and the civil court shall cause such process to be served or such commission to be issued, as the case may be, and may enforce any such process as if it were a process for attendance or production before itself.

[2][(*4*) Notwithstanding the absence of the Chairman or any member of a disciplinary committee on a date fixed for the hearing of a case before it, the disciplinary committee may, if it so thinks fit, hold or continue the proceedings on the date so fixed and no such proceedings and no order made by the disciplinary committee in any such proceedings shall be invalid merely by reason of the absence of the Chairman or member thereof on any such date:

Provided that no final orders of the nature referred to in sub- section (*3*) of section 35 shall be made in any proceeding unless the Chairman and other members of the disciplinary committee are present.

(*5*) Where no final orders of the nature referred to in sub- section (*3*) of section 35 can be made in any proceedings in accordance with the opinion of the Chairman and the members of a disciplinary committee either for want of majority opinion amongst themselves or otherwise, the case, with their opinion thereon, shall be laid before the Chairman of the Bar Council concerned or if the Chairman of the Bar Council is acting as the Chairman or a member of the disciplinary committee, before the Vice-Chairman of the Bar Council, and the said Chairman or the Vice-Chairman of the Bar Council, as the case may be, after such hearing as he thinks fit, shall deliver his opinion and the final order of the disciplinary committee shall follow such opinion.]

[3][**42A. Powers of Bar Council of India and other committees.—** The provisions of section 42 shall, so far as may be, apply in relation to the Bar Council of India, the enrolment committee, the election committee, the legal aid committee, or any other committee of a Bar Council as they apply in relation to the disciplinary commitee of a Bar Council.]

43. Cost of proceedings before a disciplinary committees.— The disciplinary committee of a Bar Council may make such order as to the costs of any proceedings before it as it may deem fit and any such order shall be executable as if it were an order—

(*a*) in the case of an order of the disciplinary committee of the Bar Council of India, of the Supreme Court;

(*b*) in the case of an order of the disciplinary committee of a State Bar Council, of the High Court.

44. Review of orders by disciplinary committee.— The disciplinary committee of a Bar Council may of its own motion or otherwise review any order [4][within sixty days of the date of that order,] passed by it under this Chapter:

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1. *See* now the Code of Criminal Procedure, 1973 (Act 2 of 1974), ss. 345(*1*), 346 and 349.
2. Ins. by Act 60 of 1973, s. 32 (w.e.f. 31-1-1974).
3. Ins. by s. 33, *ibid*. (w.e.f. 31-1-1974).
4. Ins. by s. 34, *ibid*. (w.e.f. 31-1-1974).

Provided that no such order of review of the disciplinary committee of a State Bar Council shall have effect unless it has been approved by the Bar Council of India.

CHAPTER VI

MISCELLANEOUS

45. Penalty for persons illegally practising in courts and before other authorities.—Any person who practises in any court or before any authority or person, in or before whom he is not entitled to practise under the provisions of this Act, shall be punishable with imprisonment for a term which may extend to six months.

[**46**. *Payment of part of enrolment fees to the Bar Council of India*].—*Omitted by Act* 70 *of* 1993, *s.* 8 (*w.e.f.* 26-12-1993).

[1][**46A. Financial assistance to State Bar Council**.—The Bar Council of India may, if it is satisfied that any State Bar Council is in need of funds for the purpose of performing its functions under this Act, give such financial assistance as it deems fit to that Bar Council by way of grant or otherwise.]

47. Reciprocity.—(*1*) Where any country, specified by the Central Government in this behalf by notification in the Official Gazette, prevents citizens of India from practising the profession of law or subjects them to unfair discrimination in that country, no subject of any such country shall be entitled to practise the profession of law in India.

(*2*) Subject to the provisions of sub-section (*1*), the Bar Council of India may prescribe the conditions, if any, subject to which foreign qualifications in law obtained by persons other than citizens of India shall be recognised for the purpose of admission as an advocate under this Act.

48. Indemnity against legal proceedings.—No suit or other legal proceeding shall lie against any Bar Council or any committee thereof or a member of a Bar Council [2][or any committee thereof] for any act in good faith done or intended to be done in pursuance of the provisions of this Act or of any rules made thereunder.

[3][**48A. Power of revision**.—(*1*) The Bar Council of India may, at any time, call for the record of any proceeding under this Act which has been disposed of by a State Bar Council or a committee thereof, and from which no appeal lies, for the purpose of satisfying itself as to the legality or propriety of such disposal and may pass such orders in relation thereto as it may think fit.

(*2*) No order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard.

[4][**48AA. Review**.—The Bar Council of India or any of its committees, other than its disciplinary committee, may of its own motion or otherwise review any order, within sixty days of the date of that order, passed by it under this Act.]

48B. Power to give directions.—(*1*) For the proper and efficient discharge of the functions of a State Bar Council or any committee thereof, the Bar Council of India may, in the exercise of its powers of general supervision and control, give such directions to the State Bar Council or any committee thereof as may appear to it to be necessary, and the State Bar Council or the committee shall comply with such directions.

(*2*) Where a State Bar Council is unable to perform its functions for any reason whatsoever, the Bar Council of India may, without prejudice to the generality of the foregoing power, give such directions to the *ex officio* member thereof as may appear to it to be necessary, and such directions shall have effect, notwithstanding anything contained in the rules made by the State Bar Council.]

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1. Ins. by Act 60 of 1973, s. 35 (w.e.f. 31-1-1974).
2. Ins. by s. 36, *ibid.* (w.e.f. 31-1-1974).
3. Ins. by Act 21 of 1964, s. 19 (w.e.f. 16-5-1964).
4. Ins. by Act 60 of 1973, s. 37 (w.e.f. 31-1-1974).

I undertake to intimate my intention to resume practise to the State Bar Council mentioned in column 4.

4. I hereby express my intention as mentioned under Section 20 of the Advocate Act, (*as amended*) for the entry of my name in the roll of the Bar Council of .....

.....
.....I declare that the facts set out in this form are correct.

(Signature)

Date .....

Place .....

Address .....

.....

.....

PART - VI

RULES GOVERNING ADVOCATES

CHAPTER -I

Restrictions on Senior Advocates

(Rules Under Sections 16 (3) and 49 (1) (g) of the Act)

Senior Advocates shall, in the matter of their practice of the profession of law mentioned in Section 30 of the Act, be subject to the following restrictions:

(a) A Senior Advocate shall not file a vakalatnama or act in any Court, or Tribunal, or before any person or other authority mentioned in Section 30 of the Act.

Explanation : "To act" means to file an appearance or any pleading or application in any court or Tribunal or before any person or other authority mentioned in Section 30 of the Act, or to do any act other than pleading required or authorised by law to be done by a party in such Court or Tribunal or before any person or other

authorities mentioned in the said Section either in person or by his recognised agent or by an advocate or an attorney on his behalf.

(b) (i) A Senior Advocate shall not appear without an Advocate on Record in the Supreme Court or without an Advocate in Part II of the State Roll in any court or Tribunal or before any person or other authorities mentioned in Section 30 of the Act.

(ii) Where a Senior Advocate has been engaged prior to the coming into force of the rules in this Chapter, he shall not continue thereafter unless an advocate in Part II of the State Roll is engaged along with him. Provided that a Senior Advocate may continue to appear without an advocate in Part II of the Sate Roll in cases in which he had been briefed to appear for the prosecution or the defence in a criminal case, if he was so briefed before he is designated as a senior advocate or before coming into operation of the rules in this Chapter as the case may be.

(c) He shall not accept instructions to draft pleading or affidavits, advice on evidence or to do any drafting work of an analogous kind in any Court or Tribunal or before any person or other authorities mentioned in Section 30 of the Act or undertake conveyancing work of any kind whatsoever. This restriction however shall not extend to settling any such matter as aforesaid in consultation with an advocate in Part II of the State Roll.

(cc) A Senior Advocate shall, however, be free to make concessions or give undertaking in the course of arguments on behalf of his clients on instructions from the junior advocate.

(d) He shall not accept directly from a client any brief or instructions to appear in any Court or Tribunal or before any person or other authorities in India.

(e) A Senior Advocate who had acted as an Advocate (Junior) in a case, shall not after he has been designated as a Senior Advocate advise on grounds of appeal in a Court of Appeal or in the Supreme Court, except with an Advocate as aforesaid.

(f) A Senior Advocate may in recognition of the services rendered by an Advocate in Part-II of the State Roll appearing in any matter pay him a fee which he considers reasonable.

CHAPTER - II
Standards of Professional Conduct and Etiquette

(*Rules under Section 49 (1) (c) of the Act read with the Proviso thereto*)

Preamble

An advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate. Without prejudice to the generality of the foregoing obligation, an advocate shall fearlessly uphold the interests of his client and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit. The rules hereinafter mentioned contain canons of conduct and etiquette adopted as general guides; yet the specific mention thereof shall not be construed as a denial of the existence of others equally imperative though not specifically mentioned.

Section I - Duty to the Court

1. An advocate shall, during the presentation of his case and while otherwise acting before a court, conduct himself with dignity and self-respect. He shall not be servile and whenever there is proper ground for serious complaint against a judicial officer, it shall be his right and duty to submit his grievance to proper authorities.

2. An advocate shall maintain towards the courts a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community.

3. An advocate shall not influence the decision of a court by any illegal or improper means. Private communications with a judge relating to a pending case are forbidden.

4. An advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing

anything in relation to the court, opposing counsel or parties which the advocates himself ought not to do. An advocate shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouth-piece of the client, and shall exercise his own judgement in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in court.

5. An advocate shall appear in court at all times only in the prescribed dress, and his appearance shall always be presentable.

6. An advocate shall not enter appearance, act, plead or practise in any way before a court, Tribunal or Authority mentioned in Section 30 of the Act, if the sole or any member thereof is related to the advocate as father, grandfather, son, grand-son, uncle, brother, nephew, first cousin, husband, wife, mother, daughter, sister, aunt, niece, father-in-law, mother-in-law, son-in-law, brother-in-law daughter-in-law or sister-in-law.

*For the purposes of this rule, Court shall mean a Court, Bench or Tribunal in which above mentioned relation of the Advocate is a Judge, Member or the Presiding Officer.

7. An advocate shall not wear bands or gown in public places other than in courts except on such ceremonial occasions and at such places as the Bar Council of India or the court may prescribe.

8. An advocate shall not appear in or before any court or tribunal or any other authority for or against an organisation or an institution, society or corporation, if he is a member of the Executive Committee of such organisation or institution or society or corporation. "Executive
Committee ", by whatever name it may be called, shall include any Committee or body of persons which, for the time being, is vested with the general management of the affairs of the organisation or institution, society or corporation.

Provided that this rule shall not apply to such a member appearing as "amicus curiae" or without a fee on behalf of a Bar Council, Incorporated Law Society or a Bar Association.

9. An Advocate should not act or plead in any matter in which he is himself pecuniarily interested.

Illustration :

I. He should not act in a bankruptcy petition when he himself is also a creditor of the bankrupt.

II. He should not accept a brief from a company of which he is a Director.

* Dt. of this Rules 16-2-91 Proviso added by resolution no 11/91

10. An Advocate shall not stand as a surety, or certify the soundness of a surety for his client required for the purpose of any legal proceedings.

Section II Duty to the Client

11. An advocate is bound to accept any brief in the Courts or Tribunals or before any other authorities in or before which he proposes to practise at a fee consistent with his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief.

12. An advocate shall not ordinarily withdraw from engagements, once accepted, without sufficient cause and unless reasonable and sufficient notices is given to the client. Upon his withdrawal from a case, he shall refund such part of the fee as has not been earned.

13. An advocate should not accept a brief or appear in a case in which he has reason to believe that he will be a witness, and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear as an Advocate if he can retire without jeopardising his client's interests.

14. An advocate shall at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosure to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client's judgement in either engaging him or continuing the engagement.

15. It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence.

16. An advocate appearing for the prosecution of a criminal trial shall so conduct the prosecution that it does not lead to conviction of the innocent. The suppression of material capable of establishment the innocence of the accused shall be scrupulously avoided.

17. An advocate shall not, directly or indirectly, commit a breach of the obligations imposed by Section 126 of the Indian Evidence Act.

18. An advocate shall not, at any time, be a party to fomenting of litigation.

19. An advocate shall not act on the instructions of any person other than his client or his authorised agent.

20. An advocate shall not stipulate for a fee contingent on the results of litigation or agree to share the proceeds thereof.

21. An advocate shall not buy or traffic in or stipulate for or agree to receive any share or interest in any actionable claim. Nothing in this rule shall apply to stock, shares and debentures of government securities, or to any instruments which are, for the time being, by law or custom, negotiable or to any mercantile document of title to goods.

22. An advocate shall not, directly or indirectly, bid for or purchase, either in his own name or in any other name, for his own benefit or for the benefit of any other person, any property sold in the execution of a decree or order in any suit, appeal or other proceeding in which he was in any way professionally engaged. This prohibition, however, does not prevent an advocate from bidding for or purchasing for his client any property which his client may himself legally bid for or purchase, provided the Advocate is expressly authorised in writing in this behalf.

22A. An advocate shall not directly or indirectly bid in court auction or acquire by way of sale, gift, exchange or any other mode of transfer either in his own name or in any other name for his own benefit or for the benefit of any other person any property which is subject matter of any suit appeal or other proceedings in which he is in any way professionally engaged* .

23. An advocate shall not adjust fee payable to him by his client against his own personal liability to the client, which liability does not arise in the course of his employment as an advocate.

24. An advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client.

25. An advocate should keep accounts of the client's money entrusted to him, and the accounts should show the amounts received from the client or on his behalf, the expenses incurred for

* Rule 22A came into force w.e.f. 24-9-1998.

him and the debits made on account of fees with respective dates and all other necessary particulars.

26. Where moneys are received from or on account of a client, the entries in the accounts should contain a reference as to whether the amounts have been received for fees or expenses and during the course of the proceeding, no advocates shall, except with the consent in writing of the client concerned, be at liberty to divert any portion of the expenses towards fees.

27. Where any amount is received or given to him on behalf of his client, the fact of such receipt must be intimated to the client, as early as possible.

28. After the termination of the proceeding, the advocate shall be at liberty to appropriate towards the settled fee due to him, any sum remaining unexpended out of the amount paid or sent to him for expenses or any amount that has come into his hands in that proceeding.

29. Where the fee has been left unsettled, the advocate shall be entitled to deduct, out of any moneys of the client remaining in his hands, at the termination of the proceeding for which he had been engaged, the fee payable under the rules of the Court, in force for the time being, or by then settled and the balance, if any, shall be refunded to the client.

30. A copy of the client's account shall be furnished to him on demand provided the necessary copying charge is paid.

31. An advocate shall not enter into arrangements whereby funds in his hands are converted into loans.

32. An advocate shall not lend money to his client for the purpose of any action or legal proceedings in which he is engaged by such client.

Explanation. An advocate shall not be held guilty for a breach of this rule, if in the course of a pending suit or proceeding, and without any arrangement with the client in respect of the same, the advocate feels compelled by reason of the rule of the Court to make a payment to the Court on account of the client for the progress of the suit or proceeding.

33. An advocate who has, at any time, advised in connection with the institution of a suit, appeal or other matter or has drawn

pleadings, or acted for a party, shall not act, appear or plead for the opposite party.

Section III - Duty to Opponent

34. An advocate shall not in any way communicate or negotiate upon the subject matter of controversy with any party represented by an advocate except through that advocate.

35. An advocate shall do his best to carry out all legitimate promises made to the opposite party even though not reduced to writing or enforceable under the rules of the Court.

Section IV - Duty to Colleagues

36. An advocate shall not solicit work or advertise, either directly or indirectly, whether by circulars, advertisements, touts, personal communications, interviews not warranted by personal relations, furnishing or inspiring newspaper comments or producing his photographs to be published in connection with cases in which he has been engaged or concerned. His sign-board or name-plate should be of a reasonable size. The sign-board or name-plate or stationery should not indicate that he is or has been President or Member of a Bar Council or of any Association or that he has been associated with any person or organisation or with any particular cause or matter or that he specialises in any particular type of worker or that he has been a Judge or an Advocate General.

That this Rule will not stand in the way of advocates furnishing website information as prescribed in the Schedule under intimation to and as approved by the Bar Council of India. Any additional other input in the particulars than approved by the Bar Council of India will be deemed to be violation of Rule 36 and such advocates are liable to be proceeded with misconduct under Section 35 of the Advocates Act, 1961.**

SCHEDULE

1.	Name	
2.	Address	
	Telephone Numbers	
	E-mail id	

** Added vide Res. No. 50/2008 dt. 24-3-2008.

3 (*a*)	Enrolment Number	
(*b*)	Date of Enrolment	
(*c*)	Name of State Bar Council where originally enrolled	
(*d*)	Name of State Bar Council on whose roll name stands currently	
(*e*)	Name of the Bar Association of which the Advocate is Member	
4.	Professional and Academic Qualifications	
5.	Areas of Practice (Eg.: Civil Criminal Taxation, Labour etc.)	

(NAME & SIGNATURE)

Declaration :

I hereby declare that the information given is true.

(NAME & SIGNATURE)

37. An advocate shall not permit his professional services or his name to be used in aid of, or to make possible, the unauthorised practice of law by any law agency.

38. An advocate shall not accept a fee less than the fee taxable under rules when the client is able to pay the same.

39. An advocate shall not enter appearance in any case in which there is already a vakalat or memo of appearance filed by an advocate engaged for a party except with his consent; in case such consent is not produced he shall apply to the Court stating reasons why the said consent could not be produced and he shall appear only after obtaining the permission of the Court[1].

Section IV-A[2]

1. Rule modified by addition of words "in case.....court" w.e.f. 5-6-1976.

2. Section 4A : Revised rules came into effect from 1-4-1984 (Rules 47 to 54 re-numbered as 45 to 52)

40. Every Advocate borne on the rolls of the State Bar Council shall pay to the State Bar Council a sum of Rs. 300/- every third year commencing from 1st August, 2001 along with a statement of particulars as given in the form set out at the end of these Rules, the first payment to be made on or before 1st August, 2001 or such extended time as notified by the Bar Council of India or the concerned State Bar Council.

Provided further however that an advocate shall be at liberty to pay in lieu of the payment of Rs. 600/-[3] every three years a consolidated amount of Rs. 1,000/- . This will be a life time payment to be kept in the fixed deposit by the concerned State Bar Council. Out of life time payment, 80% of the amount will be retained by the State Bar Council in a fixed deposit and remaining 20% has to be transferred to the Bar Council of India. The Bar Council of India and State Bar Council have to keep the same in a fixed deposit and the interest on the said deposits shall alone be utilized for the Welfare of the Advocates"**.

Explanation 1 : Statement of particulars as required by rule 40 in the form set out shall require to be submitted only once in three years.

Explanation 2. The Advocates who are in actual practise and are not drawing salary or not in full time service and not drawing salary from their respective employers are only required to pay the amount referred to in this rule.

Explanation 3. This rule will be effective from 1-10-2006 and for period prior to this, advocates will continue to be covered by old rule.

41. (1) All the sums so collected by the State Bar Council in accordance with Rule 40 shall be credited in a separate fund known as "Bar Council of India Advocates Welfare Fund" and shall be deposited in the bank as provided hereunder.

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[3]. Contribution enhancement vide Resolution No. 130/2006 dt. 16-9-2006

** Proviso to Rule 40 amended vide Res. No. 66/2001 dt. 22-6-2001 w.e.f. 1-8-2001.

(2) The Bar Council of India Advocates Welfare Fund Committee for the State shall remit 20% of the total amount collected and credited to its account, to the Bar Council of India by the end of every month which shall be credited by the Bar Council of India and Bar Council of India shall deposit the said amount in separate fund to be known as "BAR COUNCIL OF INDIA ADVOCATES WELFARE FUND." This fund shall be managed by the Welfare Committee of the Bar Council of India in the manner prescribed from time to time by the Bar Council of India for the Welfare of Advocates.

(3) The rest 80% of the total sum so collected by the Bar Council of India Advocates Welfare Fund Committee for the State under Rule 41 (1) shall be utilised for the welfare of advocates in respect of Welfare Schemes sponsored by the respective State Bar Councils and this fund shall be administered by the Advocates Welfare Committee for the State which shall submit its report annually to the Bar Council of India.

(4) In case of transfer of an advocate from one State Bar Council to other State Bar Council, 80% of the total sum collected so far in respect of that advocate by the Bar Council of India Advocates Welfare Committee for the State under Rule 41 (1) where the said Advocate was originally enrolled, would get transferred to the Advocates Welfare Fund Committeed of the Bar Council of India for the State to which the said Advocate has got himself transferred* .

42. If any advocate fails to pay the aforesaid sum within the prescribed time as provided under rule 40, the Secretary of the State Bar Council shall issue to him a notice to show cause within a month why his right to practice be not suspended. In case the advocate pays the amount together with late fee of Rs. 5/- per month, or a part of a month subject to a maximum of Rs. 30/- within the period specified in notice, the proceedings shall be dropped. If the advocate does not pay the amount or fails to show sufficient cause, a Committee of three members constituted by the State Bar Council in this behalf may pass an order suspending the right of the advocate to practise.

Provided that the order of suspension shall cease to be in force when the advocate concerned pays the amount along with a late fee of Rs. 50/- and obtain a certificate in this behalf from the State Bar Council.

* Sub-rule(4) of Rule 41 came into force w.e.f. 3-11-1995.

43. An Advocate who has been convicted of an offence mentioned under Section 24A of the Advocates Act or has been declared insolvent or has taken full time service or part time service or engages in business or any avocation inconsistent with his practising as an advocate or has incurred any disqualification mentioned in the Advocates Act or the rules made thereunder, shall send a declaration to that effect to the respective State Bar Council in which the advocate is enrolled, within ninety days from the date of such disqualification. If the advocate does not file the said declaration or fails to show sufficient cause for not filing such declaration provided therefor, the Committee constituted by the State Bar Council under rule 42 may pass orders suspending the right of the advocate to practise.

Provided that it shall be open to the Committee to condone the delay on an application being made in this behalf.

Provided further that an advocate who had after the date of his enrolment and before the coming into force of this rule, become subject to any of the disqualifications mentioned in this rule, shall within a period of ninety days of the coming into force of this rule send declaration referred to in this rule to the respective State Bar Council in which the Advocate is enrolled and on failure to do so by such advocate all the provisions of this rule would apply.

44. An appeal shall lie to the Bar Council of India at the instance of an aggrieved advocate within a period of thirty days from the date of the order passed under Rules 42 and 43.

44A. (1) There shall be a Bar Council of India Advocates Welfare Committee, consisting of five members elected from amongst the members of the Council. The term of the members of the committee shall be co-extensive with their term in Bar Council of India.*

(2) (i) Every State Council shall have an Advocates Welfare Committee known as Bar Council of India Advocates Welfare Committee for the State.

(ii) The Committee shall consist of member Bar Council of India from the State concerned who shall be the Ex-Officio Chairman of the Committee and two members elected from amongst the members.

* Amended vide Resolution No. 78 of 1985 dated 27th and 28th July, 1985.

(iii) The Secretary of the State Bar Council concerned will act as Ex-Officio Secretary of the Committee.

(iv) The term of the member, Bar Council of India in the Committee shall be co-extensive with his term in the Bar Council of India.

(v) The term of the members elected from the State Bar Council shall be two years.

(vi) Two members of the Committee will form a quorum of any meeting of the Committee.

(3) Every State Bar Council shall open an account in the name of the Bar Council of India Welfare Committee for the State, in any nationalised Bank,

(4) No amount shall be withdrawn from the Bank unless that cheque is signed by the Chairman of the Welfare Committee and its Secretary.

(5) The State Bar Council shall implement Welfare Schemes approved by the Bar Council of India through Advocates Welfare Committee as constituted under sub-clause (2) (i). The State Bar Councils may suggest suitable modifications in the Welfare Schemes or suggest more schemes, but such modifications or such suggested schemes shall have effect only after approval by the Bar Council of India.

(6) The State Bar Council shall maintain separate account in respect of the Advocate Welfare Fund which shall be audited annually along with other accounts of the State Bar Council and send the same along with Auditors Report to the Bar Council of India.

Provided that the Bar Council of India Advocates Welfare Fund Committee for the State shall be competent to appoint its own staff in addition to the staff of the Bar Council of the State entrusted with duty to maintain the account of the Fund if their funds are adequate to make such appointment. The salary and other conditions of the said staff be determined by the Bar Council of India Advocates Welfare Fund Committee for the State.*

Provided further that Chairman of the Bar Council of India Advocates Welfare Fund Committee for the State shall be competent

* Came into force w.e.f. 10th Feb. 1996 (Resolution No. 25/96)

to make temporary appointment for a period not exceeding six months in one transaction if the situation so requires subject to availability of fund in the said Committee for making such appointment.*

44B. The Bar Council of India shall utilise the funds received under Rule 41(2) in accordance with the schemes which may be framed from time to time.**

**Rules framed for Scheme No. IV are given separetely.

FORM UNDER RULE 40

Bar Council of .....

.....

Dear Sirs,

(1) I am enclosing herewith a Postal Order/Bank Draft/Cash for ..... being the payment under Rule 40. Chapter II, Part VI of the Rules of the Bar Council of India.

(2) I am enrolled as an Advocate on the Rolls of your State Bar Council.

(3) I am ordinarily practising at ..... in the territory/ State of .....

(4) I am a member of the ..... Bar Association/not a member of any Bar Association.

(5) My present address is .....

DATED SIGNATURE

PLACE NAME IN BLOCK LETTERS

ENROLMENT NO .....

Received a sum of Rs. ..... from ..... towards payment under Rule 40, Chapter II, Part VI of the Rules of the Bar Council of India by way of Postal Order/Bank Draft/Cash on .....

DATED: SECRETARY

PLACE : BAR COUNCIL OF .....

SCHEME FOR FINANCIAL ASSISTANCE TO STATE BAR COUNCILS AND INDIVIDUALS UNDER RULE 44B OF THE BAR COUNCIL OF INDIA RULES*

1. These rules shall be known as the Scheme for Financial Assistance to the State Bar Councils under Rule 44B of the Bar Council of India Rules.

2. The Scheme shall come into force immediately.

3. These schemes shall be applicable to only such State Bar Councils which have remitted the sum in accordance with the Rule 41 (2) of the Bar Council of India.

4. That on receiving information from the Chairman of the State Bar Council or Member, Bar Council of India from that State, the Chairman, Bar Council of India on being satisfied by such report may immediately sanction a reasonable amount not exceeding Rs. 20,000/-** in an individual case and Rs. 50,000/-** in case of some calamity involving more than one advocate and shall report to the Advocates Welfare Committee of the Bar Council of India. The financial assistance to the State Bar Councils will be available in any of the following cases : —

(*a*) The advocate or advocates have suffered seriously on account of some natural calamity or ;

(*b*) the advocate or advocates have died an unnatural death, due to an accident or natural calamity or any other cause of like nature, or;

(*c*) the advocate or advocates have suffered or is suffering from such serious disease or illness which is likely to cause death if no proper treatment is given and the advocate requires financial assistance without which he would not be able to get proper treatment and has no personal assets except a residential house to meet such expenditures, or;

(*d*) the advocate or advocates become physically disabled or incapacitated to continue his profession on account of natural calamity or accident or any other cause of like nature.

5. That the amount sanctioned under Rule 4 shall be placed at the disposal of the Advocates Welfare Committee of the Bar Council of India for the State and the said State Committee shall maintain

* Came into force w.e.f. July 1998 vide Resolution No. 64/1998.

** w.e.f. 22-11-2008 vide Resolution No. 146/2008

separate account and send the same to the Bar Council of India within three months from the date of the receipt thereof.

6. That the Advocates Welfare Committee of the Bar Council of India on receiving such applications duly recommended by the State Bar Councils, may sanction a sum provided in the different schemes prepared by the Bar Council of India.

Section V-Duty in imparting training

45. It is improper for an advocate to demand or accept fees or any premium from any person as a consideration for imparting training in law under the rules prescribed by State Bar Council to enable such person to qualify for enrolment under the Advocates Act, 1961.

Section VI-Duty to Render Legal Aid

46. Every advocate shall in the practice of the profession of law bear in mind that any one genuinely in need of a lawyer is entitled to legal assistance even though he cannot pay for it fully or adequately and that within the limits of an Advocate's economic condition, free legal assistance to the indigent and oppressed is one of the highest obligations an advocate owes to society.

Section VII-Restriction on other Employments

47. An advocate shall not personally engage in any business; but he may be a sleeping partner in a firm doing business provided that in the opinion of the appropriate State Bar Council, the nature of the business is not inconsistent with the dignity of the profession.

48. An advocate may be Director or Chairman of the Board of Directors of a Company with or without any ordinarily sitting fee, provided none of his duties are of an executive character. An advocate shall not be a Managing Director or a Secretary of any Company.

49. An advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise, and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears and shall thereupon cease to practise as an advocate so long as he continues in such employment.

*"That as Supreme Court has struck down the appearance by Law Officers in Court even on behalf of their employers the Judgement will operate in the case of all Law Officers. Even if they were allowed to appear on behalf of their employers all such Law

* Vide Resolution No. 156/2001

Officers who are till now appearing on behalf of their employers shall not be allowed to appear as advocates. The State Bar Council should also ensure that those Law Officers who have been allowed to practice on behalf of their employers will cease to practice. It is made clear that those Law Officers who after joining services obtained enrolment by reason of the enabling provision cannot practice even on behalf their employers."

* "That the Bar Council of India is of the view that if the said officer is a whole time employee drawing regular salary, he will not be entitled to be enrolled as an advocate. If the terms of employment show that he is not in full time employment he can be enrolled."

50. An advocate who has inherited, or succeeded by survivorship to a family business may continue it, but may not personally participate in the management thereof. He may continue to hold a share with others in any business which has decended to him by survivorship or inheritance or by will, provided he does not personally participate in the management thereof.

51. An advocate may review Parliamentary Bills for a remuneration, edit legal text books at a salary, do press-vetting for newspapers, coach pupils for legal examination, set and examine question papers; and subject to the rules against advertising and full-time employment, engage in broadcasting, journalism, lecturing and teaching subjects, both legal and non-legal.

52. Nothing in these rules shall prevent an advocate from accepting after obtaining the consent of the State Bar Council, part-time employment provided that in the opinion of the State Bar Council, the nature of the employment does not conflict with his professional work and is not inconsistent with the dignity of the profession. This rule shall be subject to such directives if any as may be issued by the Bar Council India from time to time.

CHAPTER - III

(Conditions for right to practice)

(Rules under Section 49 (1) (ah) of the Act)

1. Every advocate shall be under an obligation to see that his name appears on the roll of the State Council within whose jurisdiction he ordinarily practices.

PROVIDED that if an advocate does not apply for transfer of his name to the roll of the State Bar Council within whose jurisdiction he

* Vide Resolution No. 113/2002

is ordinarily practising within six months of the start of such practice, it shall be deemed that he is guilty of professional misconduct within the meaning of Section 35 of the Advocates Act.

2. An advocate shall not enter into a partnership or any other arrangement for sharing remuneration with any person or legal practitioner who is not an advocate.

3. Every advocate shall keep informed the Bar Council on the roll of which his name stands, of every change of his address.

4. The Council or a State Council can call upon an advocate to furnish the name of the State Council on the roll of which his name is entered, and call for other particulars.

5. (1) An advocate who voluntarily suspends his practice for any reason whatsoever, shall intimate by registered post to the State Bar Council on the rolls of which his name is entered, of such suspensions together with his certificate of enrolment in original.

(2) Whenever any such advocate who has suspended his practice desires to resume his practice, he shall apply to the Secretary of the State Bar Council for resumption of practice, along with an affidavit stating whether he has incurred any of the disqualifications under Section 24A, Chapter III of the Act during the period of suspension.

(3) The Enrolment Committee of the State Bar Council may order the resumption of his practice and return the certificate to him with necessary endorsement. If the Enrolment Committee is of the view that the advocate has incurred any of the disqualifications, the Committee shall refer the matter under proviso to Section 26(1) of the Act.

(4) On suspension and resumption of practice the Secretary shall act in terms of Rule 24 of Part IX.

6. (1) An advocate whose name has been removed by order of the Supreme Court or a High Court or the Bar Council as the case may be, shall not be entitled to practice the profession of law either before the Court and authorities mentioned under Section 30 of the Act, or in chambers or otherwise.

(2) An advocate who is under suspension, shall be under same disability during the period of such suspension as an advocate whose name has been removed from the roll.

Modified Rule[*]

Rule 7. "An officer after his retirement or otherwise ceasing to be in service for any reasons, if enrolled as an Advocate shall not practice in any of the Judicial, administrative Courts/ Tribunals/ authorities

[*] Amended vide decision dt. 14-10-2007.

which are presided over by an officer equivalent or lower to the post which such officer last held."
Explanation: "An officer shall include Judicial Officer, Officer from State or central services and Presiding Officers or Members of the Tribunals or Authorities or such officers as referred under section 30 (ii) of the Advocates Act, 1961."[1]

"7A. Any person applying for enrolment as an Advocate shall not be enrolled, if he is dismissed, retrenched, compulsorily retired, removed or otherwise relived from Government service or from the service under the control of the Hon'ble High Courts or the Hon'ble Supreme Court on the charges or corruption or dishonesty unbecoming of an employee and a person having such disqualification is permanently debarred from enrolling himself as an advocate".[2]

8. No advocate shall be entitled to practice if in the opinion of the Council he is suffering from such contagious disease as makes the practice of law a hazard to the health of others. This disqualification shall last for such period as the Council directs from time to time.

BAR COUNCIL EXAMINATION

[To be inserted as Rules 9 to 11 in Part VI, Chapter III of the Bar Council of India Rules – Conditions for Right To Practice – under Section 49(1)(ah) of the Advocates Act, 1961]

RESOLVED that as the Bar Council of India is vested with the power of laying down conditions subject to which an advocate shall have the right to practice, these Rules, therefore, lay down such condition of an All India Bar Examination, the passing of which would entitle the advocate to a Certificate of Practice which would permit him/her to practice under Chapter IV of the Advocates Act, 1961.

9. No advocate enrolled under section 24 of the Advocates Act, 1961 shall be entitled to practice under Chapter IV of the Advocates Act, 1961, unless such advocate successfully passes the All India Bar Examination conducted by the Bar Council of India. It is clarified that the Bar Examination shall be mandatory for all law students graduating from academic year 2009-2010 onwards and enrolled as advocates under Section 24 of the Advocates Act, 1961.
The All India Bar Examination

10. (1) The All India Bar Examination shall be conducted by the Bar Council of India.

(a) The Bar Examination shall be held at least twice each year in such month and such places that the Bar Council of India may determine from time to time.

(b) The Bar Examination shall test advocates in such substantive and procedural law

[1] Rule 7A came into force Gazette 26-2-2000
[2] Held invalid by Andhra Pradesh High Court by its order dt. 21-9-2001. In writ petition No. 3162/2001.

areas as the Bar Council of India may determine from time to time.

(c) Such substantive/procedural law areas and syllabi shall be published by the Bar Council of India at least three months prior to the scheduled date of examination.

(d) The percentage of marks required to pass the Bar Examination shall be determined by the Bar Council of India.

(e) An unsuccessful advocate may appear again for the Bar Examination, without any limit on the number of appearances.

(f) The Bar Council of India, through a committee of experts, shall determine the syllabi, recommended readings, appointment of paper setters, moderators, evaluators, model answers, examination hall rules and other related matters.

(g) The Bar Council of India shall determine the manner and format of application for the examination.

(h) Upon successfully passing the Bar Examination, the advocate shall be entitled to a Certificate of Practice.

Application for Certificate of Practice

11. (1) The Certificate of Practice shall be issued by the Bar Council of India to the address of the successful advocate within 30 days of the date of declaration of results.

(2) The Certificate of Practice shall be issued by the Bar Council of India under the signature of the Chairman, Bar Council of India.

CHAPTER-IIIA[3]
To address the Court

Consistent with the obligation of the Bar to show a respectful attitude towards the Court and bearing in mind the dignity of Judicial Office, the form of address to be adopted whether in the Supreme Court, High Courts or Subordinate Courts should be as follows: "Your Honour" or "Hon'ble Court" in Supreme Court & High Courts and in the Subordinate Courts and Tribunals it is open to the Lawyers to address the Court as "Sir" or the equivalent word in respective regional languages.

EXPLANATION: As the words "My Lord" and "Your Lordship" are relics of Colonial post, it is proposed to incorporate the above rule showing respectful attitude to the Court.4

CHAPTER-IV[4]

[3] Added vide Res. No. 58/2006

[4] Gazetted on 6-5-2006 Pt. III Sec. IV of Gazette of India.

FORM OF DRESSES OR ROBES TO BE WORN BY ADVOCATES*

(*Rules under Section 49 (I) (gg) of the Act*)

Advocates appearing in the Supreme Court, High Courts, Subordinate Courts, Tribunals or Authorities shall wear the following as part of their dress, which shall be sober and dignified.*

1. ADVOCATES

(a) A black buttoned up coat, chapkan, achkan, black sherwani and white bands with Advocates' Gowns.

(b) A black open breast coat. white shirt, white collar, stiff or soft, and white bands with Advocates' Gowns.

In either case wear long trousers (white, black striped or grey) Dhoti excluding jeans.

Provided further that in courts other than the Supreme Court, High Courts, District Courts, Sessions Courts or City Civil Courts, a black tie may be worn instead of bands.

II. LADY ADVOCATES

(a) Black full sleeve jacket or blouse, white collar stiff or soft, with white bands and Advocates' Gowns.

White blouse, with or without collar, with white bands and with a black open breast coat.

Or

(b) Sarees or long skirts (white or black or any mellow or subdued colour without any print or design) or flare (white, black or black stripped or grey) or Punjabi dress Churidar Kurta or Salwar-Kurta with or without dupatta (white or black) or traditional dress with black coat and bands.

III. Wearing of Advocates' gown shall be optional except when appearing in the Supreme Court or in High Courts.

IV. Except in Supreme Court and High Courts during summer wearing of black coat is not mandatory.

* Amendment recommended by the Rules Committee at its meeting dt. 24.08.2001 was approved by the Bar Council of India at its meeting held on 25th and 26th August, 2001 (Resolution No. 121/2001). The Chief Justice of India approved the Rules vide letter dt. 12.11.2001 subject to modification of Rule IV. The amendment suggested by the Hon'ble Chief Justice of India was incorporated in Rule IV vide Resolution No. 155/2001 dt. 22nd and 25th December, 2001.

In the change brought about in the Dress Rules, there appears to be some confusion in so far as the Sub Courts are concerned. For removal of any doubt it is clarified that so far as the courts other than Supreme Court and High Court are concerned during summer while wearing black coat is not mandatory, the advocates may appear in white shirt with black, white striped or gray pant with black tie or band and collar.*

* Meeting dt. 23/24-2-2002

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भारत का राजपत्र
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SUPREME COURT OF INDIA

NOTIFICATION

New Delhi, the 27th May, 2014

G.S.R. 367 (E).- The following is published for general information :

In exercise of the powers conferred by sub-Rule (2), Rule 1 of Order I of the Supreme Court Rules, 2013, the Hon'ble the Chief Justice of India has been pleased to appoint the19th day of August, 2014, as the date from which the Supreme Court Rules, 2013 shall come into force.

[No.F.1/2014/Record Room]

By Order

SANJIV JAIN, Registrar

SUPREME COURT OF INDIA
NOTIFICATION

New Delhi, the 27th May, 2014

G.S.R.368(E).-The following is published for general information·

In exercise of the powers conferred by Article 145 of the Constitution, and all other powers enabling it in this behalf the Supreme Court hereby makes, with the approval of the President, the following rules, namely :

PART - I

GENERAL

ORDER I

INTERPRETATION, ETC.

1.(1) These rules may be cited as the Supreme Court Rules, 2013.

(2) They shall come into force on such date as the Chief Justice of India may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of these rules.

2.(1) In these rules, unless the context otherwise requires -

(i) to require any plaint, petition of appeal, petition or other proceeding presented to the Court to be amended in accordance with the practice and procedure of the Court or to be represented after such requisition as the Registrar is empowered to make in relation thereto has been complied with;

(ii) to fix the date of hearing of appeals, petitions or other proceedings and Issue notices thereof,

(iii) to settle the index in cases where the record is prepared in the Court,

(iv) to make an order for change of advocate-on-record with the consent of the advocate-on-record,

(v) to direct any formal amendment of record;

(vi) to grant leave to inspect and search the records of the Court and order the grant of copies of documents to parties to proceedings, without interfering or dispensing with any mandatory requirement of these rules;

(vii) to allow from time to time on a written request any period or periods not exceeding twenty-eight days in aggregate for furnishing information or for doing any other act necessary to bring the plaint, appeal, petition or other proceeding in conformity with the rules and practice of the Court:

Provided that where the matter filed on scrutiny is found to be defective and a diary number has been generated, one copy of the Petition and Court Fee Stamp tendered shall be retained and the defects shall be communicated to the petitioner. If the defects are not removed till 90 days from the date of communication of the defects, the matter shall be listed with Office Report on default before the Judge in Chambers for appropriate orders.

ORDER IV

ADVOCATES

1 (a) Subject to the provisions of these rules an advocate whose name is entered on the roll of any State Bar Council maintained under the Advocates Act, 1961 (25 of 1961) as amended shall be entitled to appear before the Court:

Provided that an advocate whose name is entered on the roll of any State Bar Council maintained under the Advocates Act, 1961 (25 of 1961), for less than one year, shall be entitled to mention matters in Court for the limited purpose of asking for time, date, adjournment and similar such orders, but shall not be entitled to address the Court for the purpose of any effective hearing:

Provided further that the Court may, if it thinks desirable to do so for any reason, permit any person to appear and address the Court in a particular case.

(b) No advocate other than the Advocate-on-record for a party shall appear, plead and address the Court in a matter unless he is instructed by the advocate-on-record or permitted by the Court.

(c) In petitions/appeals received from jail or a matter filed by a party-in- person or where a party-in-person as respondent is not represented by an Advocate-on-Record, the Secretary General/Registrar may require the Supreme Court Legal Services Committee to assign an Advocate, who may assist the Court on behalf of such person:

Provided that whenever a party wants to appear and argue the case in person, he/she shall first file an application alongwith the petition seeking permission to appear and argue in person. The application shall indicate reasons as to why he/she cannot engage an Advocate and wants to appear and argue in person, and if he is willing to accept an Advocate, who can be appointed for him by the Court. Such application shall, in the first instance, be placed before the concerned Registrar to interact with the party-in-person and give opinion by way of office report whether the party-in-person will be able to give necessary assistance to the Court for proper disposal of the matter or an Advocate may be appointed as Amicus Curiae.

If the application is allowed by the Court then only the party-in-person will be permitted to appear and argue the case in person.

2. (a) The Chief Justice and the Judges may, with the consent of the advocate, designate an advocate as senior advocate if in their opinion by virtue of his ability, standing at the Bar or special knowledge or experience in law the said advocate is deserving of such distinction

(b) A senior advocate shall not -

(i) file a vakalatnama or act in any Court or Tribunal in India;

(ii) appear without an advocate-on-record in the Court or without a junior in any other Court or Tribunal in India;

(iii) accept instructions to draw pleadings or affidavit, advise on evidence or do any drafting work of an analogous kind in any Court or Tribunal in India or undertake conveyancing work of any kind whatsoever but this prohibition shall not extend to settling any such matter as aforesaid in consultation with a junior;

(iv) accept directly from a client any brief or instructions to appear in any Court or Tribunal in India.

Explanation.-

In this order-

(i) 'acting' means filing an appearance or any pleadings or applications in any Court or Tribunal in India, or any act (other than pleading) required or authorised by law to be done by a party in such Court or Tribunal either in person or by his recognised agent or by an advocate or attorney on his behalf.

(ii) 'tribunal' includes any authority or person legally authorised to take evidence and before whom advocates are, by or under any law for the time being in force, entitled to practice.

(iii) 'junior' means an advocate other than a senior advocate.

(c) Upon an advocate being designated as a senior advocate, the Registrar shall communicate to all the High Courts and the Secretary to the Bar Council of India and the Secretary of the State Bar Council concerned the name of the said Advocate and the date on which he was so designated

3. Every advocate appearing before the court shall wear such robes and costume as may from time to time be directed by the Court.

4. Any advocate not being a senior advocate may, on his fulfilling the conditions laid down in rule 5, be registered in the Court as an advocate-on-record.

5. No advocate shall be qualified to be registered as an advocate-on-record unless :-

(i) his name is, and has been borne on the roll of any State Bar Council for a period of not less than four years on the date of commencement of his training as provided hereinafter :

Provided however, if any candidate has earlier appeared in any of the Advocates-on-Record Examination he shall continue to be so eligible to sit in any subsequent examination;

(ii) he has undergone training for one year with an advocate-on-record approved by the Court, and has thereafter passed such tests as may be held by the Court for advocates who apply to be registered as advocates on record particulars whereof shall be notified in the Official Gazette from time to time provided however that-

(a) an attorney shall be exempted from such training and test, and

(b) a solicitor on the rolls of the Bombay Incorporated Law Society shall be exempted from such training and test if his/her name is, and has been borne on the roll of State Bar Council for a period of not less than seven years on the date of making the application for registration as an advocate-on-record;

(c) the Chief Justice may, in appropriate cases, grant exemption-

(1) from the requirement of training under this clause in the case of an advocate, whose name is borne on the roll of any State Bar Council and has been borne on such roll for a period of not less than ten years.

(2) from the requirement of clause (i) and from training under this clause in the case of an advocate having special knowledge or experience in law.

(iii) he has an office in Delhi within a radius of 16 kilometers from the Court House and gives an undertaking to employ, within one month of his being registered as advocate-on-record, a registered clerk; and

(iv) he pays a registration fee of two hundred fifty rupees.

6 (1) An advocate who has been convicted of an offence involving moral turpitude shall not be eligible, unless the said conviction has been stayed or suspended by any Court, to appear in the tests referred to in clause

(ii) of rule 5, on and from the date of such conviction and thereafter for a period of two years with effect from the date he has served out the sentence, or has paid the fine imposed on him, or has served out the sentence and paid the fine imposed on him, as the case may be:

Provided that the Chief Justice may, if he thinks fit so to do, relax the provisions of this rule in any particular case or cases.

(2) Nothing in clause (1) shall apply to an advocate who has been released on probation of good conduct or after due admonition and no penalty has been imposed thereafter in the manner provided under the provisions of the Probation of Offenders Act, 1958 (20 of 1958) or under section 360 of the Code of Criminal Procedure, 1973 (2 of 1974).

7. (a) An advocate-on-record shall, on his filing a memorandum of appearance on behalf of a party accompanied by a vakalatnama duly executed by the party, be entitled-

(i) to act as well as to plead for the party in the matter and to conduct and prosecute before the Court all proceedings that may be taken in respect of the said matter or any application connected with the same or any decree or order passed therein including proceedings in taxation and applications for review; and .

(ii) to deposit and receive money on behalf of the said party.

(b) (i) Where the vakalatnama is executed in the presence of the Advocate-on-Record, he shall certify that it was executed in his presence.

(ii) Where the Advocate-on-Record merely accepts the vakalatnama which is already duly executed in the presence of a Notary or an advocate, he shall make an endorsement thereon that he has satisfied himself about the due execution of the vakalatnama.

(c) No advocate other than an advocate-on-record shall be entitled to file an appearance or act for a party in the Court.

(d) Every advocate-on-record shall keep such books of account as may be necessary to show and distinguish in connection with his practice as an advocate-on-record-

(i) moneys received from or on account of and the moneys paid to or on account of each of his clients; and

(ii) the moneys received and the moneys paid on his own account.

(e) Every advocate-on-record shall, before taxation of the Bill of Costs, file with the Taxing Officer a Certificate showing the amount of fee paid to him or agreed to be paid to him by his client.

8. Where an advocate-on-record ceases to have an office or a registered clerk or both as required by clause (iii) of rule 5, notice shall issue to such advocate to show cause before the Chamber Judge on a date fixed. why his name should not be struck off the register of advocates on record, and if the Chamber Judge makes such an order, the name of such advocate shall be removed from the register accordingly and the advocate shall thereafter cease to be entitled to act as an advocate-on-record.

9. Where an advocate-on-record is suspended or his name is removed from the State roll maintained under the Advocates Act, 1961 [25 of 1961], he shall, unless otherwise ordered by the Court, be deemed as from the date of the order of the State Bar Council or the Bar Council of India, as the case may be, to be suspended or removed from the register of advocates on record for the same period as is mentioned in the order of the State Bar Council or the Bar Council of India, as the case may be.

10. When, on the complaint of any person or otherwise, the Court is of the opinion that an advocate-on-record has been guilty of misconduct or of conduct unbecoming of an advocate-on-record, the Court may make an order removing his name from the register of advocates on record either permanently or for such period as the Court may think fit and the Registrar shall thereupon report the said fact to the Bar Council of India and to State Bar Council concerned·

Provided that the Court shall, before making such order, issue to such advocate-on-record a summons returnable before the Court or before a Special Bench to be constituted by the Chief Justice, requiring the advocate-on-record to show cause against the matters alleged in the summons, and the summons shall, if practicable, be served personally upon him with copies of any affidavit or statement before the Court at the time of the issue of the summons.

Explanation.- For the purpose of these rules, misconduct or conduct unbecoming of an advocate-on-record shall include

a) Mere name lending by an advocate-on-record without any further participation in the proceedings of the case;

b) Absence of the advocate-on-record from the Court without any justifiable cause when the case is taken up for hearing; and

c) Failure to submit appearance slip duly signed by the advocate-on-record of actual appearances in the Court.

11. Any advocate-on-record may at any time by letter request the Registrar to remove his name from the register of advocates on record, absolutely or subject to his continuing to act as advocate-on-record in respect of all or any of the pending cases in which he may have filed a vakalatnama, of which he shall file a list. The Registrar shall thereupon remove his name from the register of advocates on record, absolutely or subject as aforesaid.

12. Every advocate-on-record shall notify to the Registrar his/her e-mail address and the address of his office in Delhi and every change of such address, and any notice, writ, summons, or other document sent on such e-mail address or served on him or his clerk at the address so notified by him shall be deemed to have been properly served.

13. (1) An advocate-on-record or a firm of advocates may employ one or more clerks to attend the registry for presenting or receiving any papers on behalf of the said advocate or firm of advocates:

Provided that the clerk has been registered with the Registrar on an application in the prescribed form made to the Registrar for the purpose:

Provided further that the said clerk gives an undertaking that he shall attend the Registry regularly.

(2) Notice of every application for the registration of a clerk shall be given to the Secretary, Supreme Court Bar Association, who shall be entitled to bring to the notice of the Registrar within seven days of the receipt of the notice any facts which in his opinion may have a bearing on the suitability of the clerk to be registered.

(3) The Registrar may decline to register any clerk who in his opinion is not sufficiently qualified, or is otherwise unsuitable to be registered as such, and may for reasons to be recorded in writing, remove from the register the name of any clerk after giving him and the employer an opportunity to show cause against such removal. Intimation shall be given to the Secretary, Bar Association, of every order registering a clerk or removing a clerk from the register.

(4) Every clerk shall, upon registration, be given an identity card which he shall produce whenever required, and which he shall surrender when he ceases to be the clerk of the advocate or firm of advocates, for whom he was registered. Where a fresh identity card is required in substitution of one that is lost or damaged, a fee of fifty rupees shall be levied for the issue of the same.

(5) Every advocate-on-record shall have a registered clerk. No advocate may employ as his clerk any person who is a tout.

14. (1) The Registrar shall publish lists of persons proved to his satisfaction, by evidence of general repute or otherwise, habitually to act as touts to be known as 'list of touts' and may from time to time, alter and amend such lists. A copy of every list of touts shall be displayed on the notice board of the Court.

Explanation.-

In this Order-

(a) 'tout' means a person who procures, in consideration of any remuneration moving from any advocate or from any person acting on his behalf, the employment of such advocate in any legal business, or who proposes to or procures any advocate, in consideration of any remuneration moving from such advocate or from any person acting on his behalf, the employment of the advocate in such business, or who, for purposes of such procurement, frequents the precincts of the Court.

(b) the passing of a resolution by the Supreme Court Bar Association or by a High Court Bar Association declaring any person to be a tout shall be evidence of general repute of such person for the purpose of this rule.

(2) No person shall be included in the list of touts unless he has been given an opportunity to show cause against the inclusion of his name in such list. Any person may appeal to the Chamber Judge against the order of the Registrar including his name in such list.

(3) The Registrar may, by general or special order, exclude from the precincts of the Court all such persons whose names are included in the list of touts.

15. No person having an advocate-on-record shall file a vakalatnama authorizing another advocate-on-record to act for him in the same case save with the consent of the former advocate-on-record or by leave of the Judge in Chambers, unless the former advocate-on-record is dead, or is unable by reason of infirmity of mind or body to continue to act.

16. Where a party changes his advocate-on-record, the new advocate-on-record shall give notice of the change to all other parties appearing.

17. No advocate-on-record, may, without the leave of the Court, withdraw from the conduct of any case by reason only of the non-payment of fees by his client.

18. An advocate-on-record who, on being designated as a senior advocate or on being appointed as a Judge or for any other reason ceases to be an advocate-on-record for any party in a case shall forthwith inform the party concerned that he has ceased to represent the said party as advocate-on-record in the case. The senior advocate, so designated, shall not appear as senior advocate till he reports to the Registry that parties represented by him earlier have been so informed of his designation as senior advocate and that necessary arrangements have been made for the parties to make appearance before the Court in all the cases represented by him till then.

19. No person having an advocate-on-record, shall be heard in person save by special leave of the Court.

20. No advocate-on-record shall authorise any person whatsoever except another advocate-on-record, to act for him in any case.

21. Every advocate-on-record shall be personally liable to the Court for the due payment of all fees and charges payable to the Court.

22. Two or more advocates on record may enter into a partnership with each other, and any partner may act in the name of the partnership provided that the partnership is registered with the Registrar. Any change in the composition of the partnership shall be notified to the Registrar.

23. Two or more advocates not being senior advocates or advocates on record, may enter into partnership and subject to the provision contained in rule 1(b), any one of them may appear in any cause or matter before the Court in the name of the partnership.

ORDER V

BUSINESS IN CHAMBERS

1. The powers of the Court in relation to the following matters may be exercised by the Registrar, namely:-

(1) Application for discovery and inspection.

(2) Application for delivery of interrogatories.

(3) Application for substituted service, or for dispensing with service of notice of the appeal on any of the respondents to the appeal under rule 7 of Order XIX.

(4) Application for time to plead, for production of documents, and generally relating to the conduct of cause, appeal or matter save those coming under rule 2 of this Order.

(5) Application for leave to take documents out of the custody of the Court.

(6) Questions arising in connection with the payment of court-fees.

(7) Application for the issue of a certificate regarding any excess court fee paid under a mistake.

(8) Application for requisitioning records from the custody of any Court or other authority.

(9) Application for condoning delay in paying deficit court-fees.

(10) Application for condonation of delay in filing statement of case, provided that where the Registrar does not think fit to excuse the delay, he shall refer the application to the Court for Orders

(11) Application for appointment and for approval of a translator or interpreter.

(12) Application for withdrawal of appeal by an appellant prior to his lodging the petition of appeal.

(1979) 1 Supreme Court Cases 308

(BEFORE V. R. KRISHNA IYER, D. A. DESAI, AND A. P. SEN, JJ.)

V. C. RANGADURAI .. Appellant;

Versus

D. GOPALAN AND OTHERS .. Respondents.

Civil Appeal No. 839 of 1978, decided on October 4, 1978

Advocates Act, 1961 — Section 35 — Handing over brief to another lawyer without consent of the client is against professional etiquette (Para 30)

Advocates Act, 1961 — Section 35 — Representing conflicting interests without knowledge and concurrence of all the parties is professional misconduct (Para 30)

Advocates Act, 1961 — Section 38 — Professional misconduct — Concurrent finding by the State Bar Council and the Bar Council of India — When can the finding be interfered with, in appeal to Supreme Court — Tests

Advocates Act, 1961 — Sections 35, 30, 37 and 38 — Scope of — Professional misconduct — Punishment to be imposed — Should not be merely punitive but should be correctional as well — Matters to be considered

Words and Phrases — 'pass such other order . . . as it deems fit' — Meaning of

The complainants-respondents had instructed the appellant, an advocate, to file two suits on the basis of two promissory notes and had given the appellant some amount for court-fees and expenses. The appellant filed a suit on one of the promissory notes and was asked to represent it to the proper court. But he never represented it. He did not file any suit on the other promissory note. In spite of this, the appellant made false representations to the complainants that the suits had been filed and were pending, gave them various dates as fixed in the two suits and later on falsely told them that the court had passed the decrees for recovery on the basis of the two promissory notes. On the faith of these representations, the complainants called upon the debtor by a lawyer's notice to pay the decretal amounts under pain of her property being brought to sale. Actually, no such decrees were in fact passed. On a complaint being made to the State Bar Council the appellant denied having received the two promissory notes or any amount for court-fees or his fees. He also pleaded that though he had drafted the plaints, he handed over the case to another advocate, a junior who was the complainants' choice, as he felt that since the debtor had consulted him in another matter, he should not be engaged by the complainants. The other advocate pleaded that he had never met the complainants nor had he been instructed by them to file the suits, but had in fact signed the vakalat as a junior counsel, as a matter of courtesy at the appellant's behest. He also said that the appellant later told him that the plaint together with all the documents had been returned to the complainants as per a receipt. The receipt was found by the Bar Councils to be forged by the appellant. The State Bar Council observed that in a case of such grave

professional misconduct the appellant deserved the punishment of disbarment, but in view of his young age, suspended him from practice for six years. The Disciplinary Committee of the Bar Council of India however, reduced the period of suspension of the appellant from practice to one year. On appeal to the Supreme Court under Section 38 of the Advocates Act, 1961, the appellant contended that the finding of professional misconduct was not based on legal evidence but proceeded on mere conjectures and that the finding could not be sustained as there were discrepancies in the evidence. Dismissing the appeal with a modification in the punishment only, the Supreme Court

Held :

(1) In an appeal under Section 38 of the Act, the Supreme Court would not, as a general rule, interfere with the concurrent findings of fact by the Disciplinary Committee of the State Bar Council and of the Bar Council of India merely because on a re-appraisal of the evidence a different view may be possible, unless the finding is based on no evidence or it proceeds on mere conjectures and unwarranted inferences, which is not so in the present case. The Disciplinary proceedings are **sui generis** and are neither civil nor criminal in character and are therefore not subject to the ordinary criminal procedural safeguards. Findings in disciplinary proceedings must be sustained by higher degrees of proof than that required in civil suits, yet falling short of the proof required to sustain a conviction in a criminal prosecution. There should be convincing preponderance of evidence, which is clearly fulfilled in the instant case and on the facts and in the circumstances of the case no other conclusion than the one reached is possible. The finding that the appellant is guilty of gross professional misconduct is therefore affirmed. (Paras 1, 27, 28 and 29)

(2) It is against professional etiquette for an advocate to hand over his brief to another unless the client consents to it. The relation between a lawyer and his client is highly fiduciary in nature requiring a high degree of fidelity and good faith. A counsel's paramount duty is to the client and it is unprofessional to represent conflicting interests except by express consent of all concerned after a full disclosure of the facts. The appellant completely betrayed the trust reposed in him by the complainants which is highly reprehensible. (Paras 30, 31 and 32)

Per majority (Krishna Iyer and Desai, JJ.)

(3) (a) Justice has a correctional edge, a socially useful function, especially when the delinquent is too old to be pardoned and too young to be disbarred. Every delinquent who deceives his client deserves to be frowned upon. The appellant is guilty of gross professional misconduct and deserves condign punishment. But a curative, not cruel punishment has to be designed in the social setting of the legal profession. Every punishment has a functional duality — deterrence and correction. Punishment for professional misconduct is no exception to this 'social justice' test. While suspension from practice is the deterrent component, giving the appellant an opportunity to rehabilitate himself by changing his ways, resisting temptations and atoning for the serious delinquency by a more zealous devotion to people's cause like legal aid to the poor, may be a step in the correctional direction. (Paras 1, 3, 5 and 6)

(b) But the goals should be accommodated within the scheme of the

Statute. Section 35(3)(c) enables suspension of the advocate — whether conditionally or absolutely, it is left unclear. Section 37(2) and Section 38 empower the Bar Council of India and the Supreme Court widely to pass such order . . . as it deems fit'. Though Section 35(3) has a mechanistic texture, we may note that words grow in content with time and circumstance, that phrases are flexible in semantics and that the printed text is a set of vessels into which the court may pour appropriate judicial meaning. That statute is sick which is allergic to change in sense which the times demand and the text does not countermand. That court is superficial which stops with the cognitive and declines the creative function of construction. Therefore, 'quarrying' more meaning, to achieve the goals in the instant case, is permissible out of Section 35(3) and the appeal provisions, in the brooding background of social justice, sanctified by Article 38 and of free legal aid enshrined by Article 39-A of the Constitution. (Paras 8, 9 and 10)

(c) Wide as the power may be, the order must be germane to the Act and its purposes. Hence, the suspension from practice is reduced to the period up to August 14, 1979 to allow the appellant to become people-minded in his profession. If the appellant gives an undertaking to this court that he will do only free legal aid for one year under the State Legal Aid Board and produces a certificate in that behalf from the Board (and shall not, during that period, accept any private engagement), his period of suspension shall stand terminated with effect from January 26, 1979. As a condition precedent to his moving this court the appellant must pay Rs.2,500 to the victim of the misconduct.
(Paras 11, 12, 13 and 14)

Dickerson: *The Interpretation and Application of Statutes*, p. 238, *referred to.*

Per Sen, J. (partially dissenting)

(4)(a) When the wrong was committed by means of false representations, fraud or deceit, the fact that the advocate makes restitution to or settlement with the client will not prevent disbarment, especially where restitution was made under pressure and after the commencement of the disciplinary proceedings. When there is disbarment or suspension from practice the lawyer must prove, after the expiration of a reasonable length of time, that he appreciates the significance of his dereliction, that he has lived a consistent life of probity and integrity and that he possesses the good character necessary to guarantee uprightness and honour in his professional dealings, and therefore is worthy to be restored. There is nothing of the kind in the present case. Further, in terms of Section 38, the Court has a duty to act with justice to the profession and the public as well as the appellant seeking reinstatement and without regard to mere feelings of sympathy for the applicant. The punishment of suspension for one year imposed by the Disciplinary Committee should therefore be maintained. (Paras 34, 36, 37 and 38)

(b) When an advocate is suspended from practice, under Section 35(4) he is debarred from practising in any court in India. A direction requiring such advocate to undertake free legal aid work during the period of suspension would be a contradiction in terms. If the direction to undertake free legal aid implies the termination of the order of suspension, then no restriction or condition on the right of the advocate to appear

before any court or authority, which privilege is granted by Section 30 of the Act, can be imposed. (Para 39)

V/4046/C

The Judgment of the Court was delivered by

Krishna Iyer, J. (for himself and Desai, J.)—We agree wholly with our learned brother Sen, J., that the appellant is guilty of gross professional misconduct and deserves condign punishment. But conventional penalties have their punitive limitations and flaws, viewed from the reformatory angle. A therapeutic touch, a correctional twist, and a locus penitentiae, may have rehabilitative impact, if only we may experiment unorthodoxly but within the parameters of the law. Oriented on this approach and adopting the finding of guilt, we proceed to consider the penalty, assuming the need for innovation and departing from wooden traditionalism.

2. A middle-aged man, advocate by profession, has grossly misconducted himself and deceived a common client. Going by precedent, the suspension from practice for one year was none too harsh. Sharp practice by members of noble professions deserves even disbarment. The wages of sin is death.

3. Even so, justice has a correctional edge, a socially useful function, especially when the delinquent is too old to be pardoned and too young to be disbarred. Therefore, a curative, not cruel punishment has to be designed in the social setting of the legal profession.

4. Law is a noble profession, true ; but it is also an elitist profession. Its ethics, in practice, (not in theory, though) leave much to be desired, if viewed as a profession **for the people.** When the Constitution under Article 19 enables professional expertise to enjoy a privilege and the Advocates Act confers a monopoly, the goal is not assured income but commitment to the people — the common people whose hunger, privation and hamstrung human rights need the advocacy of the profession to change the existing order into a Human Tomorrow. This desideratum gives the clue to the direction of the penance of a deviant geared to correction. Serve the people free and expiate your sin, is the hint.

5. Law's nobility as a profession lasts only so long as the members maintain their commitment to integrity and service to the community. Indeed, the monopoly conferred on the legal profession by Parliament is coupled with a responsibility — a responsibility towards the people, especially the poor. Viewed from this angle, every delinquent who deceives his common client deserves to be frowned upon. This approach makes it a reproach to reduce the punishment, as pleaded by learned Counsel for the appellant.

6. But, as we have explained at the start, every punishment, however, has a functional duality — deterrence and correction. Punishment for professional misconduct is no exception to this 'social justice' test. In the present case, therefore, from the punitive angle, the deterrent component

persuades us not to interfere with the suspension from practice reduced 'benignly' at the appellate level to one year. From the correctional angle, a gesture from the Court may encourage the appellant to turn a new page. He is not too old to mend his ways. He has suffered a litigative ordeal, but more importantly he has a career ahead. To give him an opportunity to rehabilitate himself by changing his ways, resisting temptations and atoning for the serious delinquency, by a more zealous devotion to people's causes like legal aid to the poor, may be a step in the correctional direction.

7. Can these goals be accommodated within the scheme of the statute? Benignancy beyond the bounds of law are not for judges to try.

8. Speaking frankly, Section 35(3) has a mechanistic texture, a set of punitive pigeon holes, but we may note that words grow in content with time and circumstance, that phrases are flexible in semantics, that the printed text is a set of vessels into which the court may pour appropriate judicial meaning. That statute is sick which is allergic to change in sense which the times demand and the text does not countermand. That court is superficial which stops with the cognitive and declines the creative function of construction. So, we take the view that 'quarrying' more meaning is permissible out of Section 35(3) and the appeal provisions, in the brooding background of social justice, sanctified by Article 38, and of free legal aid enshrined by Article 39A of the Constitution.

> A statute rarely stands alone. Back of Minerva was the brain of Jove, and behind Venus was the spume of the ocean. (The Interpretation and Application of Statutes — Reed Dickerson p. 103).

9. Back to the Act. Section 35(3) reads:

> The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:
>
> (a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;
>
> (b) reprimand the advocate;
>
> (c) suspend the advocate from practice for such period as it may deem fit;
>
> (d) remove the name of the advocate from the State roll of advocates.

Section 37 provides an appeal to the Bar Council of India. It runs:

> 37(1). Any person aggrieved by an order of the disciplinary committee of a State Bar Council made under Section 35 or the Advocate-General of the State may, within sixty days of the date of the communication of the order to him, prefer an appeal to the Bar Council of India.

> (2) Every such appeal shall be heard by the disciplinary committee of the Bar Council of India which may pass **such order** (including an order varying the punishment awarded by the disciplinary committee of the State Bar Council) thereon **as it deems fit.**

Section 38 provides a further, final appeal to the Supreme Court in these terms :

> Any person aggrieved by an order made by the disciplinary committee of the Bar Council of India under Section 36 or Section 37 (or the Attorney General of India or the Advocate General of the State concerned, as the case may be) may, within sixty days of the date on which the order is communicated to him, prefer an appeal to the Supreme Court and the Supreme Court may pass **such order** (including an order varying the punishment awarded by the disciplinary committee of the Bar Council of India) thereon **as it deems fit.**

10. Section 35(3)(c) enables suspension of the advocate — whether conditionally or absolutely, it is left unclear. Section 37(2) empowers the Bar Council of India widely to 'pass such order . . . . **as it deems fit'.** And the Supreme Court, under Section 38 enjoys ample and flexible powers to 'pass such order . . . . **as it deems fit'.**

11. Wide as the power may be, the order must be germane to the Act and its purposes, and latitude cannot transcend those limits. Judicial 'Legisputation' to borrow a telling phrase of J. Cohen[1], is not legislation but application of a given legislation to new or unforseen needs and situations broadly falling within the statutory provision. In that sense, 'interpretation is inescapably a kind of legislation'[1]. This is not legislation stricto sensu but application, and is within the court's province.

12. We have therefore sought to adapt the punishment of suspension to serve two purposes — injury and expiation. We think the ends of justice will be served best in this case by directing suspension plus a provision for reduction on an undertaking to this court to serve the poor for a year. Both are orders within this court's power.

13. Tamil Nadu has a well-run free legal aid programme with which the Governor and Chief Justice of the State are associated. The State Legal Aid Board, working actively with two retired Judges of the High Court at the head, may use the services of the appellant keeping a close watch on his work and relations with poor clients, if he applies to the Legal Aid Board for giving him such an opportunity, after getting this court's order as provided below. Independently of that, as a token of our inclination to allow the appellant to become people-minded in his profession, we reduce the suspension from practice up to the **14th of August, 1979.** With the next Independence Day we hope the appellant will inaugurate a better career and slough off old bad habits. If the appellant

1. Dickerson : *The Interpretation and Application of Statutes*, p. 238

gives an undertaking that he will work under any official legal aid body in Tamil Nadu and convinces the Chairman of the State Legal Aid Board, Tamil Nadu, to accept his services in any specific place where currently there is an on-going project, produces a certificate in this behalf from the Board, and gives an undertaking to this Court that he will do only free legal aid for one year as reasonably directed by the Board (and shall not, during that period accept any private engagement), his period of suspension shall stand terminated with effect from January 26, 1979. As a condition precedent to his moving this court he must pay (and produce a receipt) Rs. 2,500 to the victim of the misconduct. Atonement cannot be by mere paper pledges but by actual service to the people and reparation for the victim. That is why we make this departure in the punitive part of our order.

14. Innovation within the framework of the law is of the essence of the evolutionary process of judicial development. From that angle, we think it proper to make a correctional experiment as a superaddition to punitive infliction. Therefore, we make it clear that our action is less a precedent than a portent.

15. With the modification made above, we dismiss the appeal.

Sen, J. (partially dissenting)—This appeal under Section 38 of the Advocates Act, 1961 by V. C. Rangadurai is directed against an order of the Disciplinary Committee of the Bar Council of India dated March 11, 1978 upholding the order of the Disciplinary Committee-II of the State Bar Council, Madras dated May 4, 1975 holding him guilty of professional misconduct but reducing the period of suspension from practice to one year from six years.

17. There can be no doubt that the appellant had duped the complainants, T. Deivasenapathy, an old deaf man aged 70 years and his aged wife Smt. D. Kamalammal by not filing the suits on two promissory notes for Rs. 15,000 and Rs. 5,000 both dated August 26, 1969 executed by their land-lady Smt. Parvathi Ammal, who had borrowed Rs.20,000 from them, by deposit of title deeds.

18. Admittedly, though the plaint for recovery of the amount due on the promissory note for Rs. 15,000 with interest thereon bearing court fee of Rs. 1,519·25 was returned for presentation to the proper court, it was never re-presented. It is also not denied that though the appellant had drafted the plaint for recovery of Rs. 5,000 with interest, no such suit was ever filed. In spite of this, the appellant made false representations to the complainants Deivasenapathy (PW 1), his wife Smt. Kamalammal (PW 3) and the power of attorney agent of the complainants, D. Gopalan (PW 2) that the suits had been filed and were pending, gave them the various dates fixed in these two suits, and later on falsely told them that the court had passed decrees on the basis of the two promissory notes. On the faith of such representations, the

complainants served a lawyer's notice dated December 29, 1973 (Ex. P-3) on the debtor Smt. Maragathammal, sister and co-widow to the effect:

> That you are aware of my clients' filing two suits against you for recovery of Rs.15,000 and Rs.5,000 with due interest and cost thereon and it is needless to state that both the suits were decreed as prayed for by my clients in the court proceedings.
>
> My clients further say that in spite of the fact that the suits had been decreed long ago you have not chosen to pay the amount due under the decrees in question and on the other hand trying to sell the property by falsely representing that the original documents have been lost to the prospective buyers. My clients further state that you are aware of the fact that my clients are in possession of the original documents relating to the property bearing door No. 41 Shaik Daood Street, Royapetta, Madras-4, but deliberately made false representation as aforesaid with the mala fide intention to defeat and defraud my clients' amounts due under the decree.
>
> My clients emphatically state that you cannot sell the property in question without disclosing the amounts due to them . . . .

It would thus appear that acting on the representations made by the appellant, the complainants called upon the debtor Smt. Maragathammal to pay the amount due under the decrees failing which they had instructed their lawyer to bring the property to sale. Actually no such suits had in fact been filed nor any decree passed.

19. It is argued that the finding as to professional misconduct on the part of the appellant reached by the Disciplinary Committee of the Bar Council of India is not based on any legal evidence but proceeds on mere conjectures. It is pointed out that the ultimate conclusion of the Disciplinary Committee cannot be reconciled with its earlier observation that it was not prepared to attach any credence to the conflicting assertion of Deivasenapathy that he had at first handed over Rs.855 on December 2, 1970 for filing the suit on the promissory note for Rs.5,000 and then paid Rs.2,555 some time in July 1972 for filing the suit on the promissory note for Rs.15,000 which is in conflict with the allegation in the lawyer's notice dated February 21, 1974 (Ext. R-1) that a sum of Rs.3,410 was paid on July 17, 1972 towards court fees and expenses for the filing of the two suits, or that the various dates marked in the copies of the two plaints, Ext. P-1, and Ext. P-2, were indeed given by him. It is urged that the Disciplinary Committee was largely influenced by the fact that the appellant gave the receipt, Ext. R-7 to K. S. Lakshmi Kumaran, which was found to be forged. In view of the discrepancies in the testimony of Deivasenapathy, PW 1, Smt. Kamalammal, PW 3 and their agent, D. Gopalan, PW 2, it was evident that the Disciplinary Committee mainly based the charge of misconduct on mere suspicion. Lastly, it is said that the complaint was a false one and was an attempt to pressurize the appellant to persuade his client Smt. Maragathammal to sell the house to the complainants. We are afraid, the contentions cannot be accepted.

20. In denial of the charge the appellant pleaded that though he had drafted the plaint in the suit to be filed on the basis of the promissory note for Rs. 5,000, he felt that as the debtor Smt. Maragathammal had consulted him in another matter, it would be better that the complainants engaged some other counsel and he advised them accordingly. He suggested the names of two or three lawyers out of whom, the complainants engaged K. S. Lakshmi Kumaran. He denied that the two promissory notes were handed over to him or that he had received any amount by way of court-fees or towards his fees. According to him, K. S. Lakshmi Kumaran was, therefore, instructed to file the suits.

21. K. S. Lakshmi Kumaran, on the other hand, pleaded that he knew nothing about the suits but had in fact signed the vakalat as a junior counsel, as a matter of courtesy at the behest of the appellant. He pleaded that he had never met the complainants nor had he been instructed by them to file the suits. He further pleaded that when the complainants served him with their lawyer's notice dated February 11, 1974, Ext. R-11, he went and saw the appellant who told him that he had returned the plaint, which was returned by the court, together with all the documents to the complainant Deivasenapathy as per receipt, Ext. R-7. On February 21, 1974 the complainants served another lawyer's notice on both the appellant and K. S. Lakshmi Kumaran. The appellant and K. S. Lakshmi Kumaran sent their replies to this notice. The appellant's reply, Ext. R-2, was practically his defence in the present proceedings. K. S. Lakshmi Kumaran in his reply, Ext. R-5, refers to the lawyer's notice, Ext. R-11, sent by the complainants earlier and states that when he took the notice to the appellant, he told him that the papers were taken back from him by the complainant Deivasenapathy who had passed on to him a receipt.

22. The Disciplinary Committee, in its carefully written order, has marshalled the entire evidence in the light of the probabilities and accepted the version of K. S. Lakshmi Kumaran to be true. It observes :

> Earlier we referred to the conflict between the two advocates. We cannot help observing that we feel there is want of candour and frankness on the part of RD. On a careful consideration of the evidence we see no reason to reject the evidence of L that he merely signed the vakalat and plaint and when the plaint was returned he took the return and passed on the papers to RD.

It then concludes stating :

> On an overall view of the evidence we hold that L was not directly engaged by the parties and that when the plaint with its annexure was returned, L passed it on to RD. We also accept L's evidence that when on receipt of the notice Ext. R-11 he met RD he was informed that the cause papers were taken back by PW 1 and that some time afterwards RD gave him the receipt Ext. R-7.
>
> It must be, that when the complainants turned against RD

suspecting his bona fides he denied having had anything to do in the matter and throw up (sic) his junior colleague in the profession stating that he passed the clients on to L and had nothing more to do with the case. As the clients had no direct contact with L his statement that he handed over the plaint on its return to RD looks probable and likely. We accept it. When a notice was issued to him in the matter he went to RD and RD gave him the receipt Ext. R-7. The receipt purports to be signed by Deivasenapathy and L accepted it for what it was worth.

23. In that view, both advocates were found guilty of professional misconduct, but differing in character and different in content. In dealing with the question, it observes :

> As regards RD, the litigants entrusted the briefs to him whatever their motive. The record does not establish that before entrusting the case to L the complainants were introduced by RD to L and L was accepted by them as counsel in charge of the case.

24. It condemned both the advocates for their dereliction of duty, but only reprimanded K. S. Lakshmi Kumaran, the junior advocate, because he never knew the complainants and had signed the vakalat at the binding of the appellant, but took a serious view of the misconduct of the appellant, and castigated his whole conduct in no uncertain terms, by observing :

> Finding himself in difficulties RD miserably failed in his duty to his fellow advocate very much junior to him in the profession and who trusted him. The conduct of a lawyer to his brothers in the profession must be characterised by candour and frankness. He must keep faith with fellow members of the bar. While quite properly RD did not accept the engagement himself we are of the view that he has been party to the institution of a suit tended merely to harass the defendants in the suit, with a view to secure some benefit for the other party — manifestly unprofessional.

It went on to observe :

> The only casualty is RD's professional ethics in what he might have thought was a gainful yet good samaritan move. When the move failed and there was no likelihood of his success, the complainants turned against him securing for their help their power of attorney. Then fear psychosis appears to have set in, leading RD to totally deny his involvement in the plaint that was filed and let down the junior whose assistance he sought. We see no other probability out of the tangled web of exaggerations, downright denials, falsehood and fabrications mingled with some truth.

25. Maybe, the complainants were not actuated by a purely altruistic motive in lodging the complaint but that does not exonerate the appellant of his conduct. The suggestion that the complaint was a false one and constituted an attempt at blackmail is not worthy of

acceptance. The property was actually sold to M. M. Hanifa for Rs.36,000 by registered sale deed dated August 1, 1974, while the complaint was filed in April 1974. We do not see how the initiation of the proceedings would have pressurised the appellant to compel his client Smt. Maragathammal to part with the property for Rs.20,000 the price offered by the complainants. It is no doubt true that at one stage they were negotiating for the purchase of the house of which they were the tenants but the price offered by them was too low. The Disciplinary Committee of the Bar Council of India summoned the purchaser and he stated that from December 1973, he had been trying to purchase the property. It is also true that in response to the notice dated August 1, 1974 served by the purchaser asking the complainants to attorn to him, they in their reply dated August 8, 1974 expressed surprise that he should have purchased the property for Rs.36,000, when in fact it was not worth more than Rs.26,000.

26. It matters little whether the amount of Rs.3,410 was paid to the appellant in a lump sum or in two instalments. Deivasenapathy, PW 1 faltered when confronted with the notice Ext. R-1 and the Disciplinary Committee of the Bar Council of India has adversely commented on this by saying that he is not 'an illiterate rustic' but is an M.I.S.E., a retired Civil Engineer. This by itself does not disprove the payment of the amount in question. It may be that the general power of attorney, D. Gopalan, PW 2, made a mistake in instructing the counsel in giving the notice. As regards the various dates appearing on the copies of the two plaints, Exs. P-1 and P-2, the complainants could not have got these dates by themselves unless they were given by the appellant.

27. In an appeal under Section 38 of the Act, this Court would not, as a general rule, interfere with the concurrent finding of fact by the Disciplinary Committee of the Bar Council of India and of the State Bar Council unless the finding is based on no evidence or it proceeds on mere conjecture and unwarranted inferences. This is not the case here.

28. Under the scheme of the Act, the disciplinary jurisdiction vests with the State Bar Council and the Bar Council of India. Disciplinary proceedings before the State Bar Council are sui generis, are neither civil nor criminal in character, and are not subject to the ordinary criminal procedural safeguards. The purpose of disciplinary proceedings is not punitive but to inquire, for the protection of the public, the courts and the legal profession, into fitness of the subject to continue in the capacity of an advocate. Findings in disciplinary proceedings must be sustained by a higher degree of proof than that required in civil suits, yet falling short of the proof required to sustain a conviction in a criminal prosecution. There should be convincing preponderance of evidence. That test is clearly fulfilled in the instant case.

29. When 'a lawyer had been tried by his peers', in the words of our brother Desai, J., there is no reason for this Court to interfere in

appeal with the finding in such a domestic enquiry merely because on a re-appraisal of the evidence a different view is possible. In the facts and circumstances of the case, we are satisfied that no other conclusion is possible than the one reached. There is, therefore, no ground for interference with the finding of the Disciplinary Committee of the Bar Council of India.

30. It is not in accordance with professional etiquette for one advocate to hand over his brief to another to take his place at a hearing (either for the whole or part of the hearing), and conduct the case as if the latter had himself been briefed, unless the client consents to this course being taken. Counsel's paramount duty is to the client; accordingly where he forms an opinion that a conflict of interest exists, his duty is to advise the client that he should engage some other lawyer. It is unprofessional to represent conflicting interests, except by express consent given by all concerned after a full disclosure of the facts.

31. Nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession. Lord Brougham, then aged eighty-six, said in a speech, in 1864, that the first great quality of an advocate was 'to reckon everything subordinate to the interests of his client'. What he said in 1864 about 'the paramountcy of the client's interest', is equally true today. The relation between a lawyer and his client is highly fiduciary in its nature and of a very delicate, exacting, and confidential character requiring a high degree of fidelity and good faith. It is purely a personal relationship, involving the highest personal trust and confidence which cannot be delegated without consent. A lawyer when entrusted with a brief, is expected to follow the norms of professional ethics and try to protect the interests of his clients, in relation to whom he occupies a position of trust. The appellant completely betrayed the trust reposed in him by the complainants.

32. It is needless to stress that in a case like this the punishment has to be deterrent. There was in this case complete lack of candour on the part of the appellant, in that he in a frantic effort to save himself, threw the entire blame on his junior, K. S. Lakshmi Kumaran. The evidence on record clearly shows that it was the appellant who had been engaged by the complainants to file suits on the two promissory notes for recovery of a large sum of Rs.20,000 with interest due thereon. There was also complete lack of probity on the part of the appellant because it appears that he knew the debtor, Smt. Maragathammal for 7/8 years and had, indeed, been appearing for her in succession certificate proceedings. If there was any conflict of interest and duty, he should have declined to accept the brief. What is reprehensible is that he not only accepted the brief, but pocketed the money meant for court-fees, and never filed the suits.

33. The appeal for mercy appears to be wholly misplaced. It is a breach of integrity and a lack of probity for a lawyer to wrongfully withhold the money of his client. In a case of such grave professional mis-

conduct, the State Bar Council observes that the appellant deserved the punishment of disbarment, but looking to his young age, only suspended him from practice for a period of six years. The Disciplinary Committee of the Bar Council of India has already taken a lenient view and reduced the period of suspension from six years to one year, as in its view the complainants did not suffer by the suits not being proceeded with because even if they had obtained decrees for money, they would still have been required to file a regular mortgage suit for the sale of the property charged.

34. In the facts and circumstances of the case, I am of the view that the punishment awarded by the Disciplinary Committee of the Bar Council of India does not warrant any further interference.

35. I have had the advantage of reading the judgment of my learned brother Krishna Iyer for the restitution to the appellant of his right to practice upon fulfilment of certain conditions. I have my own reservations in the matter, that is, whether any such direction should at all be made in the present case.

36. Where it is shown that the advocate acted in bad faith towards his client in detaining or misappropriating funds of the client, or that the wrong was committed or aided by means of false representations, fraud or deceit, as here, the fact that the advocate makes restitution to or settlement with the client will not prevent disbarment, especially where restitution was not made until after the commencement of the disciplinary proceedings. It is only an ameliorating circumstance but does not mitigate the offence involved in the misappropriation, particularly when the repayment is made under pressure.

37. When there is disbarment or suspension from practice, the lawyer must prove, if he can, after the expiration of a reasonable length of time, that he appreciates the significance of his dereliction, that he has lived a consistent life of probity and integrity, and that he possesses the good character necessary to guarantee uprightness and honour in his professional dealings, and therefore is worthy to be restored. The burden is on the applicant to establish that he is entitled to resume the privilege of practising law without restrictions. There is nothing of the kind in the present case.

38. Further, even if this Court has the power to make such a direction, in terms of Section 38, the Court has a duty to act with justice to the profession and the public as well as the appellant seeking reinstatement, and without regard to mere feelings of sympathy for the applicant. Feelings of sympathy or a feeling that the lawyer has been sufficiently punished are not grounds for reinstatement.

39. I also doubt whether a direction can be made requiring the advocate to undertake free legal aid during the period of his suspension. This would be a contradiction in terms. Under Section 35(4), when

an advocate is suspended from practice under clause (c) of sub-section (3) thereof, he shall, during the period of suspension, be debarred from practising in any court or before any authority or person in India. If the making of such a direction implies the termination of the order of suspension, on the fulfilment of the conditions laid down, I am of the considered view that no restriction on the right of the advocate to appear before any court or authority, which privilege he enjoys under Section 30 of the Act, can be imposed.

40. The taking of too lenient a view in the facts and circumstances of the case, I feel, would not be conducive to the disciplinary control of the State Bar Councils. I would, for these reasons, dismiss the appeal and maintain the punishment imposed on the appellant.

41. In conclusion, I do hope the appellant will fully reciprocate the noble gesture shown to him by the majority, come up to their expectations and turn a new leaf in life. It should be his constant endeavour to keep the fair name of the great profession to which he belongs unsullied.

(1979) 1 Supreme Court Cases 321

(BEFORE S. MURTAZA FAZAL ALI AND P. N. SHINGHAL, JJ.)

MAJOR CHANDRA BHAN SINGH .. Appellant;

Versus

LATAFAT ULLAH KHAN AND OTHERS .. Respondents.

Civil Appeal No. 2329 of 1969†, decided on September 19, 1978

Constitution of India — Article 226 — Writ of certiorari — Party obtaining administrative review of administrative order though not statutorily authorised — Aggrieved opposite party getting the order reviewed and cancelled — First party invoking writ jurisdiction of High Court — Held, not a fit case for granting certiorari — Conduct of petitioners in such cases relevant

Administrative Law — Administrative review — Valid only if authorised by the Statute — Competent officer passing a proper order under Sections 8 and 11 of the Evacuee Interest (Separation) Act, 1951 vesting property in the custodian — Order becoming final under Section 18 as no appeal or revision application filed against it — Hence reopening of the order and its review by the competent officer on the basis of a "restoration" application against the statutory bar was impermissible and without jurisdiction — Further review orders were also void

In the present case, the property in question, was a composite property owned by three brothers and the undivided share of one of the brothers in the property, who had migrated to Pakistan, had vested in the Custodian under the Administration of Evacuee Property Act, 1950. It was permissible for the non-evacuee shareholders, having the remaining 2/3rd share in the property, to make a claim in respect of it. Notices

†Appeal by Special Leave from the Judgment and Order dated December 16, 1966 of the Allahabad High Court in SCA 346 of 1966.

shall not vest in the Government, but shall be delivered to the owner of the copyright. One fundamental difference between the nature of a notification under Section 11 of the Customs Act and an order made under Section 53 of the Copyright Act is that the former is quasi-legislative in character, while the latter is quasi-judicial in character. The quasi-judicial nature of the order made under Section 53 is further emphasised by the fact that an appeal is provided to the Copyright Board against the order of the Registrar under Section 72 of the Copyright Act. We mention the character of the order under Section 53 to indicate that the effect of an order under Section 53 of the Copyright Act is not as portentous as a notification under Section 11 of the Customs Act. The Registrar is not bound to make an order under Section 53 of the Copyright Act so soon as an application is presented to him by the owner of the copyright. He has naturally to consider the context of the mischief sought to be prevented. He must consider whether the copies would infringe the copyright if the copies were made in India. He must consider whether the applicant owns the copyright or is the duly authorised agent of the copyright. He must hear those claiming to be affected if an order is made and consider any contention that may be put forward as an excuse for the import. He may consider any other relevant circumstance. Since all legitimate defences are open and the enquiry is quasi-judicial, no one can seriously complain.

34. In the result, the judgment of the Division Bench is set aside and that of the learned single Judge restored. There is no order as to costs. We are grateful to the learned Attorney-General, who appeared at our instance, for the assistance given by him.

(1984) 2 Supreme Court Cases 556

(BEFORE A.P. SEN, E.S. VENKATARAMIAH AND R.B. MISRA, JJ.)

PANDURANG DATTATRAYA KHANDEKAR .. Appellant;

Versus

BAR COUNCIL OF MAHARASHTRA, BOMBAY AND OTHERS .. Respondents.

Civil Appeal No. 720 (NCM) of 1976†,
decided on October 20, 1983

Advocates Act, 1961 — Section 35(1) — Professional misconduct — What constitutes — Test to determine — Nature of proof required — 'Wrong' legal advice and 'improper' legal advice — Which amounts to professional misconduct — On facts held, misconduct under Section 35(1) not made out

†Appeal under Section 38 of the Advocates Act, 1961 from the Order dated April 23, 1976 of the Disciplinary Committee of the Bar Council of India in D.C. Appeal No. 11 of 1975

Advocates Act, 1961 — Section 38 — Supreme Court's interference under, when called for

'P' and 'D', both educated persons, came one day to Poona and approached the advocates, viz. the appellant and one 'A', soliciting legal advice in regard to their proposed marriage on the same day. They were both anxious to leave Poona and brought a document styled as a marriage certificate obtained under Section 5 of the Bombay Registration of Marriages Act, 1953 under which even Hindu marriages have to be registered. The document was signed by both 'P' and 'D' and also attested by one 'G' who claimed to have acted as the priest and solemnised the marriage. The appellant and 'A' drafted an affidavit inter alia stating, "We ('P' and 'D') have today married at Poona as per Hindu rites". Both 'P' and 'D' signed the document before the Magistrate in English after reading the contents. The first charge against the appellant and 'A', as was found established by the Disciplinary Committee of the Bar Council of India, was that they were guilty of drawing up a false affidavit regarding their marriage although no such marriage was ever performed.

The second charge against the appellant and 'A', as found established by the Disciplinary Committee, was that in order to effect a gift of land by 'S' to her grand-daughter 'M', the appellant and 'A' suggested to 'S' that instead of spending large amount over stamp duty and registration charges, as advised by other advocates, they would have the work done for Rs 45 only and thus succeeded in securing the work of transferring the property, which they did by simply drawing up an affidavit containing a recital that 'S' had made a gift of the land to 'M'. The Disciplinary Committee held the appellant and 'A' guilty of professional misconduct under Section 35(1) of the Advocates Act. Partly allowing the appeal under Section 38 of the Act the Supreme Court

Held :

The test to determine professional misconduct within the meaning of Section 35(1) is whether the proved misconduct of the advocate is such that he must be regarded as unworthy to remain a member of the honourable profession to which he has been admitted, and unfit to be entrusted with the responsible duties that an advocate is called upon to perform. (Para 7)

In re A Solicitor Ex parte the Law Society, (1912) 1 KB 302 ; Allinson v. General Council of Medical Education & Registration, (1894) 1 QB 750 ; George Frier Graham v. Attorney-General, Fiji, AIR 1936 PC 224 : 163 IC 434 and In the matter of P. An Advocate, (1964) 1 SCR 697 : AIR 1963 SC 1313 : (1963) 2 Cri LJ 341, relied on

An advocate stands in a **loco parentis** towards the litigants. Therefore, he is expected to follow norms of professional ethics and try to protect the interests of his client in relation to whom he occupies a position of trust. Counsel's paramount duty is to the client. The client is entitled to receive disinterested, sincere and honest treatment. Nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession. For an advocate to act towards his client otherwise than with utmost good faith is unprofessional. (Paras 9 and 10)

Giving of improper legal advice is different from giving of wrong legal advice. While the former may amount to professional misconduct, the latter may not be so. It is against professional etiquette for a lawyer to give improper legal advice with an ulterior object. It is unworthy that an advocate should

accept employment with such motive, or so long as his client has such understanding of his purpose. It is professionally improper for a member of the bar to prepare false documents or to draw pleadings knowingly that the allegations made are untrue to his knowledge. But mere negligence unaccompanied by any moral delinquency on the part of a legal practitioner in the exercise of his profession does not amount to professional misconduct. (Paras 8 and 10)

In the matter of P. An Advocate, (1964) 1 SCR 697 : AIR 1963 SC 1313 : (1963) 2 *Cri LJ 341*, relied on

In re a Vakil, ILR (1925) 49 Mad 523 [Reported at AIR 1926 Mad 568 as In re Munuswami Naidu]; In re G Mayor Cooke, (1889) 33 Sol Jour 397; In re An Advocate, ILR (1935) 62 Cal 158 and In the matter of An Advocate of Agra, *ILR (1940) All* 386 [Reported at AIR 1940 All 289 as In re Prem Narain], approved

There is nothing unprofessional for an advocate to draft an affidavit on the instructions of his client. As regards the first charge, the recital in the affidavit that 'P' and 'D' got married at Poona according to the Hindu rites must have been made on their instructions. Both of them were educated persons and they had the power to understand what they were doing and therefore they being the executants of the affidavit must be held bound by the recitals contained therein. The oral evidence adduced by the complainant to the contrary was not sufficient to rebut the presumption arising from the recitals coupled with the other circumstances appearing. As regards the second charge, there was no real or substantial evidence to connect the appellant with the affidavit. Thus the Disciplinary Committee of the Bar Council of India erred in holding the appellant and 'A' guilty of professional misconduct because the evidence adduced by the complainants falls short of the required proof, but the circumstances appearing do give rise to considerable suspicion about the manner in which they had been conducting their affairs, which deflects from the norms of professional ethics. (Paras 13 to 15)

The charges of professional misconduct must be clearly proved and should not be inferred from mere ground for suspicion, however reasonable, or what may be error of judgment or indiscretion. The finding in disciplinary proceedings must be sustained by a higher degree of proof than that required in civil suits, yet falling short of the proof required to sustain a conviction in a criminal prosecution. There should be convincing preponderance of evidence. In an appeal under Section 38 the Supreme Court would not, as a general rule, interfere with the concurrent finding of fact by the Disciplinary Committee of the Bar Council of India and the State Bar Council unless the finding is based on no evidence or it proceeds on mere conjectures and surmises. (Paras 6 and 7)

A, a Pleader v. Judges of the High Court of Madras, AIR 1930 PC 144 : 123 IC 184, relied on

In the present case Supreme Court's interference is called for. Therefore, the order of the Disciplinary Committee holding the appellant and 'A guilty of professional misconduct must be set aside and proceedings drawn against them under Section 35(1) dropped. (Para 22)

[The Court suggested that the Bar Council of India and the State Bar Council should take strong steps to abolish the practice of touting prevailing in various courts in our country. The Court also suggested that the Bar

Councils with their funds should organise the legal profession and safeguard the interests of lawyers in general and the junior members of the bar in particular, and should frame proper schemes for the training of the junior members, for entrusting work to them, and for their proper guidance so that eventually a new generation of efficiently trained lawyers is evolved.]

(Para 21)

R-M/6405/CR

Advocates who appeared in this case :

V.J. Francis, Advocate, for the Appellant ;
V.N. Ganpule and Mrs V.D. Khanna, Advocates, for Respondent 1 ;
S.V. Tambwekar, Advocate, for Respondent.

The Judgment of the Court was delivered by

A.P. SEN, J.—The disciplinary proceedings out of which this appeal under Section 38 of the Advocates Act, 1961 ('Act' for short) has arisen were initiated on a complaint made by a group of 12 advocates practising in the two courts of Sub-Divisional Magistrates in the Collectorate of Poona alleging various acts of professional misconduct against the appellant P.D. Khandekar and one A.N. Agavane. The proceedings stood transferred to the Bar Council of India under Section 36-B of the Act. The Disciplinary Committee of the Bar Council of Inda by its order dated April 23, 1976 held both the appellant and A.N. Agavane guilty of professional misconduct and directed that the appellant be suspended for a period of four months from June 1, 1976 and Agavane for a period of two months therefrom. This Court by its order dated September 24, 1976 admitted the appeal and stayed the operation of the suspension of order.

2. First as to the facts. The complainants alleged various acts of professional misconduct against the appellant and Agavane. According to them, the appellant and Agavane sometimes impersonated as other advocates for whom the briefs were meant and at times they directly approached the clients and adopted questionable methods charging exorbitant fees. The State Bar Council referred to four specific charges relating to them, two of impersonation as A.D. Ghospurkar and N.L. Thatte and depriving these gentlemen of the briefs meant for them. The State Bar Council held that these two charges have not been substantiated and the Disciplinary Committee of the Bar Council of India has not gone into them. Both the Disciplinary Committee of the Bar Council of India and the State Bar Council however found the appellant and Agavane to be guilty of giving improper legal advice and held the charge of professional misconduct proved, but having regard to the fact that they were junior members of the bar, the Disciplinary Committee has taken a lenient view and passed the sentence indicated above. In dealing with the

question of punishment to be imposed on them, the Disciplinary Committee observes :

> We take into consideration the age of the advocates, the families they have to maintain, the environments in which they practise and the standard which is maintained in such an environment is not very high as the 'Bar Association Rules' certify toutism and provide for toutism which could be unthinkable anywhere else.

3. The gravamen of the charge against the appellant and Agavane relates to the giving of improper legal advice on two specific counts, namely : (1) On January 7, 1974 the appellant and Agavane are alleged to have got the remarriage of a couple S.B. Potdar and Smt. Leelawati Dhavale performed although their divorce was not legal. The accusation is that the appellant and Agavane induced Potdar and Smt. Dhavale to part with Rs 100 towards their professional fee on the faith of an assurance that the affidavit sworn by them before the Sub-Divisional Magistrate, Poona to the effect that they had divorced their respective spouses and had got married at Poona on January 7, 1974 as per Hindu rites would be sufficient proof of their marriage. (2) On February 22, 1974 the appellant and Agavane drew up an affidavit containing a recital that Smt. Sonubai Girju Valekar of Loni Bhapkar, Tehsil Baramati, District Poona had made a gift of her lands to her grand-daughter Smt. Mangala Ramesh Ghorpade. The charge is that she had met all the lawyers except these two and all of them advised her to give the market value of the land intended to be gifted and pay ad valorem stamp duty thereon indicating the amount of stamp duty and the registration charges payable, but these two lawyers told her that she should not unnecessarily spend a large amount over the stamp duty and registration charges and they would instead have the work done within an amount of Rs 50 which was finally settled at Rs 45. The charges levelled against the appellant and Agavane are serious enough and if true in a case like the present, the punishment has to be deterrent, but the question still remains whether the charges have been proved.

4. The appellant virtually pleads that the ease against him is a frame-up. As to the incident of January 7, 1974, the appellant pleads that the affidavit sworn by Potdar and Smt. Dhavale was prepared on their instructions as they represented that they had divorced their respective spouses and expressed that they wanted to marry each other on that very day and leave Poona. His case is that they represented that the priest was insisting upon an affidavit as regards their divorce as a precaution before performing their marriage and therefore they wanted to swear an affidavit to that effect. Regarding the

incident of February 22, 1974, there was a complete denial that the appellant drew up an affidavit containing a recital that Smt. Sonubai had made a gift of her lands to her grand-daughter Smt. Mangala which he handed over to her on receipt of Rs 45 as his professional fee.

5. The Disciplinary Committee has recorded a finding that it did not consider that the conduct of the appellant and Agavane amounted to cheating their clients, and that both were guilty of giving improper legal advice, but these were not cases of a bona fide mistake of a lawyer. With respect to the first charge, it held that they had misled their clients Potdar and Smt. Dhavale that the affidavit sworn by them before the Sub-Divisional Magistrate and the certificate of marriage issued by him would make them legally married according to Hindu rites although no marriage was ever performed. As regards the second charge, the Disciplinary Committee held them to be guilty of not giving proper legal advice to their client Smt. Sonubai. It observed that if the gift deed could not be executed because Smt. Sonubai had no sufficient funds to bear the cost of stamp duty and registration charges payable, the affidavit was no substitute for that as it would hardly be evidence of a gift. It further observed that it was unfortunate that the appellant and Agavane did not advise Smt Sonubai also to execute a will contemporaneously in favour of her grand-daughter Smt. Mangala because if the affidavit were supplemented by an unregistered will, nothing would be wrong. It proceeded upon the view that the affidavit could be taken as evidence that Smt. Sonubai had handed over possession of her property to her grand-daughter Smt. Mangala and if the latter possessed it for 12 years she would acquire title by prescription and although the will may not be a deed of gift, it would be the nearest approach to it.

6. In an appeal under Section 38 of the Act this Court would not, as a general rule, interfere with the concurrent finding of fact by the Disciplinary Committee of the Bar Council of India and the State Bar Council unless the finding is based on no evidence or it proceeds on mere conjectures and surmises. Finding in such disciplinary proceedings must be sustained by a higher degree of proof than that required in civil suits, yet falling short of the proof required to sustain a conviction in a criminal prosecution. There should be convincing preponderance of evidence.

7. It is argued that the finding as to professional misconduct on the part of the appellant and Agavane reached by the Disciplinary Committee was not based on any legal evidence but proceeds on mere conjectures and surmises. The case against the appellant and Agavane rests upon professional misconduct and not any other conduct. The question is whether there was any evidence upon which the

Disciplinary Committee could reasonably find that they have been guilty of 'professional misconduct' within the meaning of sub-section (1) of Section 35 of the Act. The test of what constitutes "grossly improper conduct in the discharge of professional duties" has been laid down in many cases. In the case of *In re A Solicitor Ex parte the Law Society*[1], Darling, J. adopted the definition of "infamous conduct in a professional respect" on the part of a medical man in *Allinson* v. *General Council of Medical Education and Registration*[2], applied to professional misconduct on the part of a Solicitor, and observed :

> If it is shown that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to the General Medical Council to say that he has been guilty of "infamous conduct in a professional respect".

The Privy Council approved of the definition in *George Frier Grahame* v. *Attorney-General, Fiji*[3] and this Court in *In the matter of P. An Advocate*[4] has followed the same. The narrow question that remains for consideration now is whether the finding of the Disciplinary Committee as to professional misconduct on the part of the appellant can be legally sustained. The test to be applied in all such cases is whether the proved misconduct of the advocate is such that he must be regarded as unworthy to remain a member of the honourable profession to which he has been admitted, and unfit to be entrusted with the responsible duties that an advocate is called upon to perform. The Judicial Committee of the Privy Council in *A, a Pleader* v. *Judges of High Court of Madras*[5] laid down that charges of professional misconduct must be clearly proved and should not be inferred from mere ground for suspicion, however reasonable, or what may be error of judgment or indiscretion.

8. There is a world of difference between the giving of improper legal advice and the giving of wrong legal advice. Mere negligence unaccompanied by any moral delinquency on the part of a legal practitioner in the exercise of his profession does not amount to professional misconduct. *In re a Vakil*[6], Coutts Trotter, C.J. followed

1. (1912) 1 KB 302 : 105 LT 874
2. (1894) 1 QB 750
3. AIR 1936 PC 224 : 163 IC 434
4. (1964) 1 SCR 697 : AIR 1963 SC 1313 : 1963 (2) Cri LJ 341
5. AIR 1930 PC 144 : 123 IC 184
6. ILR (1925) 49 Mad 523 (FB). Reported at AIR 1926 Mad 568 as In re Munuswami Naidu

the decision *In re G. Mayor Cooke*[7] and said that :

> Negligence by itself is not professional misconduct ; into that offence there must enter the element of moral delinquency. Of that there is no suggestion here, and we are therefore able to say that there is no case to investigate, and that no reflexion adverse to his professional honour rests upon Mr M.

The decision was followed by the Calcutta High Court *In re An Advocate*[8] and by the Allahabad High Court *In the matter of An Advocate of Agra*[9] and by this Court *In the matter of P. An Advocate*[4].

9. For an advocate to act towards his client otherwise than with utmost good faith is unprofessional. When an advocate is entrusted with a brief, he is expected to follow norms of professional ethics and try to protect the interests of his client in relation to whom he occupies a position of trust. Counsel's paramount duty is to the client. When a person consults a lawyer for his advice, he relies upon his requisite experience, skill and knowledge as a lawyer and the lawyer is expected to give proper and dispassionate legal advice to the client for the protection of his interests. An advocate stands in *a loco parentis* towards the litigants and it therefore follows that the client is entitled to receive disinterested, sincere and honest treatment especially where the client approaches the advocate for succour in times of need. The members of the legal profession should stand free from suspicion. *In the matter of An Advocate*[10], Page, C.J. in an oft-quoted passage after extolling the ideals that an advocate ought to set before him. and the ancient and noble conception of his office, observed :

> From this conception of the office of an advocate it follows that the public are entitled to receive disinterested, sincere, and honest treatment and advice from the advocates to whom they repair for counsel and succour in their time of need ; and it is for this reason that Lord Mansfield laid down, and the Court has always insisted, that members of the legal profession "should stand free from all suspicion".

10. Nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession. For an advocate to act towards his client otherwise than with utmost good faith is

7. (1889) 33 Sol Jour 397
8. ILR (1935) 62 Cal 158 : AIR 1935 Cal 484 : 36 Cri LJ 1130
9. ILR 1940 All 386. Reported at AIR 1940 All 289 : 41 Cri LJ 620 as In re Prem Narain
10 ILR (1934) 12 Rang 110, 115. Reported at AIR 1934 Rang 33 as P. an Advocate, In the matter of

unprofessional. It is against professional etiquette for a lawyer to give improper legal advice with an ulterior object. It is unworthy that an advocate should accept employment with such motive, or so long as his client has such understanding of his purpose. It is professionally improper for a member of the bar to prepare false documents or to draw pleadings knowingly that the allegations made are untrue to his knowledge. Thus the giving of improper legal advice may amount to professional misconduct. That however may not be so by the giving of wrong legal advice.

11. It appears to us that there was abundant evidence upon which the Disciplinary Committee could find the appellant and Agavane guilty of giving wrong legal advice, but there is considerable doubt whether upon such evidence the charge of professional misconduct can be supported. In the instant case, it is not at all certain that it can be said with strict accuracy that the appellant was guilty of moral turpitude or that there was any moral delinquency on his part.

12. As to the first charge, the Disciplinary Committee has found the appellant and Agavane to be guilty of drawing up a false affidavit to the effect that Potdar and Smt. Dhavale had been married at Poona on January 7, 1974 according to Hindu rites although no such marriage was ever performed. Upon the evidence on record, it is difficult to believe that Potdar and Smt. Dhavale could be prevailed upon to swear an affidavit of the kind unless it was prepared on their instructions or that they were induced to part with Rs 100 towards the professional fee of the appellant and Agavane on the faith of a false assurance that the affidavit would be sufficient evidence in proof of their marriage. Potdar was an overseer and had put in an advertisement inviting suitable proposals for his marriage. Smt. Dhavale held a Diploma in Education and had been working as a teacher in a primary school under the Zila Parishad, Satara. She had also advertised in the papers seeking suitable proposals for her marriage. Both of them corresponded with each other and decided to get married and for this purpose they came to Poona on January 7, 1974 for legal advice with respect to their marriage. Incidentally, Smt. Dhavale who is a tribal woman claims to have got a divorce by custom prevalent among her tribe, whereas Potdar who was married earlier according to Hindu rites presumably got his divorce by initiating proceedings under the Hindu Marriage Act, 1955. They both approached the appellant and Agavane and wanted their legal advice and stated that they would like to get married and leave Poona on the same day or, in other words, they were in a hurry to get married. Ex. C-13 which inter alia states "We have today married at Poona as per Hindu rites" was drawn up by the appellant and Agavane and signed by both the

parties before the Sub-Divisional Magistrate in English after reading the contents. The recital in the affidavit that they got married at Poona on January 7, 1974 according to Hindu rites must have been made on their instructions. They were both anxious to leave Poona and brought a document styled as a marriage certificate obtained under Section 5 of the Bombay Registration of Marriages Act, 1953 under which even Hindu marriages have to be registered. The document was signed by both Potdar and Smt. Dhavale and also attested by one Gangadhar Laxman Jamkhedkar who claimed to have acted as the priest and said to have solemnised the marriage. There is nothing unprofessional for an advocate to draft an affidavit on the instructions of his client.

13. The testimony of Smt. Dhavale shows that she accompanied by Potdar came to the Court of the Sub-Divisional Magistrate on January 7, 1974 at 2.30 p.m. The purpose of their visit is not very clear. At first, her version was that she told the appellant and Agavane that they wanted to have their marriage performed. She then added that they told these lawyers that they wanted to get their marriage registered. They both appeared before the Sub-Divisional Magistrate and verified the affidavit Ex. C-13 to be true to their personal knowledge. When confronted with the portion marked as "AA": "We have today married at Poona as per Hindu rites", she asserted that she and Potdar had not been married according to Hindu rites at Poona on January 7, 1974 or at any time thereafter. She however states that she was living with Potdar as she was under the belief that she had been married to him. The fact remains that she has also changed her surname to Smt. Potdar. It is rather improbable that a Hindu lady like Smt. Potdar would start living with a stranger as husband and wife and also adopt a new surname unless there was a marriage. Both of them were educated persons and they had the power to understand what they were doing and therefore they being the executants of the affidavit must be held bound by the recitals contained therein. The oral evidence adduced by the complainant was not sufficient to rebut the presumption arising from the recitals coupled with the other circumstances appearing.

14. The evidence with regard to the second charge, namely, that the appellant and Agavane were guilty of not giving proper legal advice to Smt. Sonubai is even less convincing. It is quite possible that this old illiterate lady aged about 90 years came to the Sub-Divisional Magistrate's Court with the purpose of executing a gift deed in favour of her grand-daughter Smt. Mangala. There is however no real or substantial evidence to connect the appellant with the affidavit. The testimony of Smt. Sonubai is wholly inconclusive as to the identity of the person who prepared the affidavit. She states

in her examination-in-chief that she had entrusted the work of execution of the gift deed to two advocates and that they represented to her that the affidavit was a gift deed, but added that she would not be able to identify them because she had a weak eyesight and was also hard of hearing for the last 2/3 years and was not able to see or hear properly. She further unequivocally admitted that she never approached the appellant at any time for any work. It is difficult to support the charge of professional misconduct against the appellant on such evidence.

15. It must accordingly be held that the Disciplinary Committee of the Bar Council of India erred in holding the appellant and Agavane guilty of professional misconduct because the evidence adduced by the complainants falls short of the required proof, but the circumstances appearing do give rise to considerable suspicion about the manner in which they have been conducting their affairs, which deflects from the norms of professional ethics.

16. May be, the complainants were not actuated from a purely altruistic motive in lodging the complaint but that does not fully exonerate the appellant and Agavane of the way they have been carrying on their activities. It appears from the order of the Disciplinary Committee that some 12 to 14 advocates practising in the two Courts of the Sub-Divisional Magistrates in the Collectorate of Poona had formed an association called the Poona Collectorate Bar Association, the purpose of which was that the entire work in the Collectorate should be pooled together. To attain that object, the complainants employed servants for collecting work from prospective clients on a percentage of fees to be given to them and the work to be distributed among the members. It further appears that the appellant and Agavane were two junior lawyers who preferred not to become members of the association, but started their practice sitting under a tree in the Court precincts. Presumably, the gentlemen of the bar who were members of the association found that their activities were prejudicial to their interests because they directly got in touch with the clients and did the same kind of work with impunity by adopting similar questionable methods. We can only express the hope that these lawyers will, in future, see to it that such improprieties as those referred to do not recur.

17. The Disciplinary Committee speaks of the 'environments' in which these lawyers work. The complainants have examined four advocates to substantiate the charge against the appellant and Agavane viz. A.D. Ghospurkar, N.L. Thatte, T.S. Pariyani and V.A. Mandake. The evidence of these lawyers shows that their work mainly consists in attestation of witnesses. Their appearances in cases were few and

far between. They either sit in the verandah near the stamp-vendor in front of the Sub-Registrar's office or in the Court compound with the petition-writers or typists. To illustrate this, A.D. Ghospurkar, who is an advocate of 8 years' standing, frankly admits that his main work is to identify parties who come to make affidavits before the Sub-Divisional Magistrates and that his work of conducting cases is negligible. During his 8 years at the bar, he has done nearabout 10 to 12 chapter cases and about 8 cases in other courts. The case presents a dismal picture of the legal profession. We mean no disrespect to the members of the Poona Collectorate Bar. The conditions prevalent are more or less the same everywhere and it is a matter of deep concern that nothing has been done to organize the bar.

18. We regret to say that the complainants themselves are not free from blemish. The Disciplinary Committee of the Bar Council of India observed that the method adopted by the complainants to procure work by employing agents itself amounts to professional misconduct. It deprecates the practice that is prevalent at the Poona Collectorate Bar and observes with regard to complainants :

> This means that the purpose of the Association was to appoint certain touts who would get work for their members and then the work will be distributed among the members. Touting or appointing touts is not consistent with the rules framed under the Advocates Act and such practice would be considered professional misconduct but that is exactly what the Bar Association referred to above intend to do.

We are informed that disciplinary proceedings have since been initiated against the complainants and therefore we refrain from expressing any opinion on the impropriety of their conduct.

19. The Preamble to Chapter II Part VI of the rules lays down that an advocate shall at all times comport himself in a manner befitting his status as an officer of the Court, privileged member of the community and a gentleman. Rule 36 of these rules provides that an advocate shall not solicit work or advertise, either directly or indirectly, whether by circulars, advertisements, touts, personal communications etc. It is a well recognized rule of etiquette in the legal profession that no attempt should be made to advertise oneself or solicit work directly or indirectly. In his *'Brief to Counsel'*, fifth edn., 1962, p. 94, the celebrated author Henry Cecil administered a word of caution :

> Don't go touting for work in any circumstances. There are all sorts of ways of doing this. Don't adopt any of them. If you are going to get on, you will get on without doing that

kind of thing, and if you are not going to get on, the little extra work you get will not either make you successful or counteract the bad impression you will make on many people inside and outside the law.

20. We are constrained to say that the evil of touting has been in existence since ancient times and still is a growing menace, and the bar is open to the accusation of having done nothing tangible to eradicate this unmitigated evil. The persons most affected by this system are the junior lawyers as a class. Some lawyers may well expound unblushingly the doctrine of getting on, getting honour and at last getting honest. If it is generally known that a person however honest has got on and got honour through the patronage of touts, the bar should decline to show such a man any honour or consideration whatsoever. We impress upon the Bar Council of India and the State Bar Councils that if they still take strong action to eradicate this evil, it would lead to a high standard of propriety and professional rectitude which would make it impossible for a tout to turn a penny within the precincts of the law courts.

21. Finally, it is the solemn duty of the Bar Council of India and the State Bar Councils to frame proper schemes for the training of the junior members of the bar, for entrusting work to them, and for their proper guidance so that eventually we have a new generation of efficiently trained lawyers. It is regrettable that even after more than two decades that the Advocates Act was brought on the Statute Book, neither the Bar Council of India nor the State Bar Councils have taken any positive steps towards ameliorating the conditions of the members of the bar, particularly of the junior members. Sub-sections (2) of Sections 6 and 7 of the Act provide that the State Bar Councils and the Bar Council of India may constitute one or more funds in the prescribed manner for the purpose of (*a*) giving financial assistance to organise labour welfare schemes for the indigent, disabled or other advocates, and (*b*) giving legal aid or advice in accordance with the rules made in that behalf. Sub-sections (3) thereof provide that they may receive any grants, donations, gifts or benefactions for the above purposes, which shall be credited to the appropriate fund or funds under those sub-sections. The Bar Council of India and the State Bar Councils hold very large funds, maybe to the tune of rupees one crore and above, but no positive steps have been taken in organizing the legal profession and safeguarding the interests of lawyers in general, particularly the junior members of the bar. It is with a deep sense of anguish that one finds the legal profession in a state of total disarray and for the majority it is a continuous struggle for existence. The hardest hit are the junior members. We expect that the matter will receive the attention that it deserves.

22. In the result, the appeal partly succeeds and is allowed. The order of the Disciplinary Committee of the Bar Council of India holding the appellant and A.N. Agavane guilty of professional misconduct is set aside. The proceedings drawn against them under sub-section (1) of Section 35 of the Advocates Act, 1961 are dropped. We hope and trust that they would not by their conduct or behaviour prove themselves to be unworthy to remain as members of the great profession to which they belong.

23. There shall be no order as to costs.

(1984) 2 Supreme Court Cases 569

(BEFORE D.A. DESAI, O. CHINNAPPA REDDY AND A. VARADARAJAN, JJ.)

VED PRAKASH GUPTA . Appellant;

Versus

M/s DELTON CABLE INDIA (P) LTD. .. Respondent.

Civil Appeal No. 1673 of 1982†, decided on March 8, 1984

Labour and Services — Industrial Disputes Act, 1947 — Section 2(s) — Security Inspector of a factory, held on facts, a workman

The appellant was originally recruited by the respondent as a clerk on a monthly salary of Rs 160. Later he became Chargeman Security in the respondent's factory which is equivalent to a Security Inspector under the Security Officer on a total monthly salary of Rs 581. Substantial part of his work consisted of looking after the security of the factory and its property by deputing watchmen working under him and making entries in registers regarding the visitors as well as the materials entering or going out of the factory premises. There being nothing in writing to show what duties were to be carried out by him, he had to do other items of work such as signing identity cards of workmen, issuing some small items of stores like torch-cells etc. to his subordinate watchmen which could be got from the stores even under the signatures of watchmen and filling up of application forms of other workmen and countersigning them or recommending advances and loans or for promotion of his subordinates. He was, however, not empowered to appoint or dismiss any workman. He was provided telephones for passing on immediate information to other places from the factory gate. The question for determination was whether the appellant was a 'workman' within the meaning of Section 2(s) of the I. D. Act so that reference of dispute under Section 10(1)(c) of that Act relating to dismissal of the appellant from service was proper?

Held:

The substantial duty of the appellant was only that of a Security Inspector at the gate of the factory premises. It was neither managerial nor

†Appeal by special leave from the Judgment and Order dated January 11, 1982 of the Punjab and Haryana High Court in Civil Writ Petition No. 26 of 1982

6. The appeal is, therefore, allowed. The judgments and orders of the appellate court and the trial court stand set aside. The suit stands decreed. The matter is remitted to the trial court for passing final decree in accordance with law. The decree of the trial court stands restored. But, in the circumstances, without costs.

(1997) 9 Supreme Court Cases 694

(BEFORE B.P. JEEVAN REDDY AND S.B. MAJMUDAR, JJ.)

HARISH CHANDER SINGH .. Appellant;

Versus

S.N. TRIPATHI .. Respondent.

Civil Appeal No. 198 of 1976†, decided on January 27, 1997

Advocates Act, 1961 — S. 35 — Professional misconduct — Duping the client by misusing his confidence — Appellant-advocate engaged as a counsel of the complainant to represent him in consolidation proceedings — On appellant's persuasion complainant executing a Mukhtarnama in favour of his junior-Respondent 2 — By the Mukhtarnama complainant giving full power to Respondent 2 to dispose of his property — On that basis Respondent 2 executing a sale deed in respect of the complainant's land in favour of appellant's father — Kutumb register showing that appellant and his father were living in the same house — Complainant alleging that he never intended to authorise appellant's junior to execute any such sale deed — Held, Disciplinary Committee justified in taking the view that the complainant was duped by his advocate, namely, the appellant who had misused the confidence reposed by the complainant in him and had tried to dispose of the complainant's property in favour of his own father — Sentence of suspension from practice for two years cannot be treated to be too harsh or grossly disproportionate in the light of the professional misconduct (Para 8)

Appeal dismissed with costs R-M/AT/17427/S

Advocates who appeared in this case :
Ms Lalita Kohli and Pramod Swarup, Advocates, for the Appellant;
Dr Madan Sharma and R.D Upadhyay, Advocates, for the Respondent.

The Judgment of the Court was delivered by

S.B. MAJMUDAR, J.— The appellant, Harish Chander Singh, has brought in challenge the order passed by the members of the Disciplinary Committee of the Bar Council of India holding him guilty of professional misconduct and suspending him from practice for a period of two years from the date of the communication of the order. The said appeal is filed under Section 38 of the Advocates Act, 1961 read with Order 5 of the Supreme Court Rules, 1966. This appeal was admitted for final hearing and in the meantime the operation of the order under appeal was stayed. Earlier in addition to respondent S.N. Tripathi, President of the Bar Association, Akbarpur, one

† From the Judgment and Order dated 25-11-1975 of the Disciplinary Committee of the Bar Council of India, in B.C.I.Tr. Case No. 29 of 1974 [Original Complaint Case No. 23 of 1972 (U.P.)]

Syed Husain Ahmad was also joined as Respondent 2. He was the co-delinquent along with the appellant. He was also held guilty of professional misconduct on the complaint of the original complainant and was ordered to be reprimanded. His involvement along with the appellant was in connection with the very same transaction brought in challenge by the complainant against both these delinquents. However, the said Syed Husain Ahmad did not challenge the finding of the Disciplinary Committee against him and the sentence imposed against him. At the request of the appellant, therefore, he was permitted to be deleted as second respondent in this appeal. Consequently the sole respondent who has remained in the arena of the contest is the President of the Bar Association who filed the complaint before the State Bar Council on behalf of the original complainant.

2. In order to appreciate the grievance of the appellant it is necessary to note a few introductory facts.

3. One Daya Ram, the original complainant before the State Bar Council, filed a complaint against the appellant as well as the aforesaid co-delinquent Syed Husain Ahmad, both of whom at the relevant time were practising advocates at Akbarpur in Ferozabad District of Uttar Pradesh. In the complaint it was alleged against the delinquents that he had engaged the appellant as his counsel in a case pending before Consolidation Officer, Akbarpur between the complainant and one Bisai. Subsequently he had engaged one Tarakant Tripathi as his counsel. According to the complainant the said case was fixed before the Consolidation Officer for 17-1-1972 and thereafter it was adjourned to 7-2-1972. The appellant who was engaged as his counsel is the resident of Village Jamnipur. The land, in connection with which consolidation proceedings were pending wherein the appellant was engaged by the complainant to represent him, was situated in the same village. The consolidation proceedings then were further adjourned to 21-2-1972. In the meanwhile, in the evening of 17-1-1972 the appellant asked him to appoint some Mukhtar so that he may be spared of the necessity of coming to attend the consolidation case every day. The complainant alleged that at the instance of the appellant Syed Husain Ahmad, Original Respondent 2, the junior of the appellant, was appointed as Mukhtar and a Mukhtarnama was got registered. That the contents of the Mukhtarnama were not read over to him but he proceeded on the word of the appellant and having faith in him executed the Mukhtarnama in favour of his junior. Thereafter, however, the appellant entertained suspicion and on 29-1-1972 he executed the deed cancelling the abovesaid Mukhtarnama and got it registered. It thereafter transpired that the appellant had obtained a sale deed in respect of the property in question in favour of his father from Syed Husain Ahmad, Original Respondent 2, who had acted as Mukhtar of the complainant and as such had purported to sell the said land on behalf of the complainant in favour of the appellant's father. The complainant alleged that it was never his intention to authorise the appellant's junior Syed Husain Ahmad to execute any such deed of transfer in respect of the suit property much less in favour of appellant's father. All that he intended to do was to

execute the Mukhtarnama to enable Original Respondent 2 to do pairwi in the consolidation case. It was, therefore, his complaint before the State Bar Council that he was duped and deceived by both these advocates, namely, Harish Chander Singh and Syed Husain Ahmad, his junior, and that the Mukhtarnama was a fraudulent deed which enabled the appellant to get the land transferred in the name of his father. This complaint was supported by an affidavit. The complaint was registered before the Disciplinary Committee of the Bar Council of Uttar Pradesh. The complaint was sponsored by S.N. Tripathi, President of the Bar Association, Akbarpur, who forwarded the complaint of Daya Ram to the Secretary, Bar Council, Uttar Pradesh, Allahabad and that is how the present respondent was shown as the complainant in the disciplinary proceedings.

4. The appellant resisted the proceedings by filing a written statement. His submission was that he was engaged by the complainant as an advocate in the consolidation case which had originated on an objection made by one Bisai who had alleged that complainant Daya Ram had obtained the sale deed in respect of the disputed property fraudulently and under deception. That the complainant was a literate person and he executed the power of attorney in favour of Syed Husain Ahmad of his own accord and it was duly registered in the Office of Sub-Registrar, Akbarpur, Ferozabad. That thereafter on 25-1-1972 a sale deed was executed by Syed Husain Ahmad in favour of Nand Kishore Singh with full knowledge and participation of the complainant. That he was staying separate from his father and he had no knowledge about the said transaction. That Syed Husain Ahmad was not his junior.

5. So far as Original Respondent 2 Syed Husain Ahmad is concerned, he also filed a written statement through his counsel denying the allegations made in the complaint. However, ultimately during the proceedings Respondent 2 relented and submitted that if he is found guilty of professional misconduct he may be pardoned and that he had acted due to inexperience and on the basis of faith in his senior advocate, the present appellant. Thus Respondent 2 practically admitted the case of the complainant. As the complaint could not be disposed of by the Disciplinary Committee of the State Bar Council within one year it stood transferred to the Bar Council of India. Thereafter the Disciplinary Committee of the Bar Council of India heard the parties, recorded their evidence and ultimately passed the aforesaid order against the appellant and Syed Husain Ahmad, the co-delinquent who is no longer in the arena of contest in the present proceedings as seen above.

6. The learned counsel for the appellant vehemently contended that the order under appeal is not sustainable by evidence on record and is required to be set aside and the appellant is required to be exonerated of the charges levelled against him.

7. We have gone through the evidence on record, both oral and documentary, to which our attention was invited. Having carefully

considered the same we are not able to accept any of the contentions canvassed by the learned counsel for the appellant. The tell-tale circumstances which have emerged on record clearly indicate that the appellant was guilty of professional misconduct. These circumstances run as under:

1. The appellant was admittedly engaged as a counsel of the complainant to represent him in the consolidation proceedings which were pending against him wherein the dispute regarding the very same suit land was on the anvil between the complainant Daya Ram on the one hand and complainant's father's sister's husband Shri Bisai.

2. It is also well established that the appellant persuaded the complainant to execute a Mukhtarnama in favour of Respondent 2 whose evidence showed that he was the appellant's junior and was well known to him and accordingly Mukhtarnama was executed by complainant Daya Ram in favour of Respondent 2.

3. That Respondent 2 executed sale deed in respect of the property in favour of Shri Nand Kishore Singh.

4. Shri Nand Kishore Singh was the father of the appellant.

5. The copy of the Mukhtarnama dated 18-1-1972 shows that the complainant had allegedly given full power to Respondent 2 to dispose of his property.

6. The copy of the sale deed dated 25-1-1972 was executed by Respondent 2 as an agent of complainant in favour of Nand Kishore Singh, father of the appellant.

7. The copy of the Kutumb Register showed that Shri Nand Kishore Singh and the appellant being father and son were living in the same house.

8. All these circumstances well established on record clearly point out an accusing finger to the appellant. The appellant's vain attempt to show that he did not know about the transaction of the sale deed in favour of his father had remained abortive for the simple reason that nothing was brought out on record by him to show that he was in any way having strained relations with his father. Equally a vain attempt was made by the appellant to show that Respondent 2 was not known to him or he was not his junior. There is no reason as to why we should not accept the clear-cut evidence on this aspect as led by Respondent 2 who stated that he was the appellant's junior and he was misguided by him and accordingly he was made to execute the sale deed dated 25-1-1972 acting as Mukhtar of the complainant and by which he tried to sell complainant's land to the appellant's father. All these circumstances well established on record leave no room for doubt that the appellant was clearly guilty of professional misconduct. The Disciplinary Committee was, therefore, right in taking the view that the complainant was duped by his advocate, namely, the appellant who had misused the confidence reposed by the complainant in him and had tried to dispose of the complainant's property in favour of his own father. Under these circumstances the findings

of professional misconduct as recorded in the impugned judgment against the appellant must be held to be well made out on the record of the case and cannot be found fault with from any angle. So far as the sentence of suspension from practice for two years is concerned that also cannot be treated to be too harsh or grossly disproportionate in the light of the professional misconduct. After the matter was fully heard, we tried to get information from the appellant by our order dated 27-2-1996 on the following:

> "Hearing of this appeal is concluded. But before we pronounce our judgment it is necessary to have the following information for making appropriate orders:
>
> 1. Whether the appellant's father Shri Nand Kishore is alive and whether Daya Ram is alive today? If Daya Ram is dead, who are his legal representatives?
>
> 2. Whether the property which was conveyed by Daya Ram through his power of attorney, Shri Syed Husain Ahmad, advocate in favour of the appellant's father Shri Nand Kishore has been cancelled and the property conveyed back to Daya Ram or his heirs, as the case may be, or not?
>
> 3. What has happened to the consolidation proceedings which were pending with respect to the land which was sold in favour of the appellant's father?
>
> The appellant shall file an affidavit stating the information with respect to the above points.
>
> List the matter after six weeks for judgment."

However, the learned counsel for the appellant was not in a position to file any such affidavit or to give any such information. Consequently by our further order dated 16-4-1996 we made it clear that we had no option but to deliver the judgment.

9. However, on further consideration by our order dated 24-4-1996 we directed that notices be issued to — (1) Complainant-Daya Ram; and (2) Nand Kishore Singh calling upon them to show cause as to why we should not pass appropriate orders for setting aside the sale deed dated 25-1-1972 purported to have been executed by Original Respondent 2 Syed Husain Ahmad, power-of-attorney-holder of complainant Daya Ram in favour of the transferee Nand Kishore Singh.

10. Pursuant to the notices issued to them it has transpired that said Nand Kishore Singh as well as Daya Ram are dead since long. In IA No. 1 filed in these proceedings it has been averred that even the impugned sale deed was held to be fictitious and not binding on Daya Ram by authorities entrusted with the task of consolidation of holdings and Daya Ram himself in his lifetime had agreed to sell this very property to third parties who have already obtained a decree for specific performance against Daya Ram and have got the decree executed against the estate of Daya Ram. In view of these latter developments brought to our notice, by our order dated

20-1-1997 we have discharged the notices issued by us earlier on 24-4-1996. Consequently now remains no occasion to pass any order in connection with the impugned sale deed dated 25-1-1972. In the light of our earlier order dated 16-4-1996, therefore, judgment in this appeal has now to be delivered.

11. In view of our findings recorded hereinabove this appeal is liable to fail and is accordingly dismissed with costs. Interim relief granted during the pendency of this appeal will stand vacated.

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(1997) 9 Supreme Court Cases 699

(BEFORE SUHAS C. SEN AND B.N. KIRPAL, JJ.)

GARDEN SILK MILLS LTD. .. Appellant;

Versus

COLLECTOR OF CUSTOMS, BOMBAY .. Respondent.

Civil Appeal No. 2502 of 1988, decided on February 5, 1997

Customs Act, 1962 — S. 25(1) — Notification under, partly exempting rubber blankets imported "for use in the printing industry" — Scope — Blankets imported for use in textile printing units, held, not covered — Hence, not eligible for the benefit of the notification — Noti. No. 169/77-Cus. dated 6-8-1977 — Customs Tariff Act, 1975, Sch. I, Ch. 40 — Words and phrases — "Printing industry" — Does not cover textile industry though engaged in printing of fabrics (Paras 10 and 11)

Rollatainers Ltd v *Union of India*, 1994 Supp (3) SCC 293, *applied*

Appeal dismissed H-M/E/17838/S

Chronological list of cases cited ***on page(s)***

1 1994 Supp (3) SCC 293, *Rollatainers Ltd* v. *Union of India* 700*e*

The Judgment of the Court was delivered by

SEN, J.— The appellants imported Darey Concard Blankets of different sizes. They claimed that they were entitled to the benefit of Notification No. 169/77-Cus. dated 6-8-1977 claiming that the blankets imported by them were for printing fabrics and, therefore, were exempted by the terms of the notification which allowed exemption in respect of rubber blankets falling under Chapter 40 of the First Schedule when imported into India for use in the printing industry. The Assistant Collector held that the goods were for use in the textile industry and, therefore, the benefit of the notification could not be availed of by the appellants.

2. The Collector of Customs on appeal held that the "printing industry" in the notification was broad enough to take in printing done in the textile mills.

3. On further appeal, the Tribunal held that the assessee was using rubber blankets in the textile printing units. Therefore, these rubber blankets were not used in printing presses. It was pointed out that the rubber blankets used by the appellants in the textile printing units were not interchangeable with those used in the printing presses.

statutory provisions for termination of services of a Labour Welfare Officer, the order of termination is liable to be quashed. We, therefore, allow this appeal and set aside the order passed in the writ petition and also in the writ appeal. It is not necessary for the disposal of this appeal to express any opinion as to justification of termination of the service of Shri Prasad and such question therefore has not been taken into consideration. In the facts of the case, there will be, however, no order as to costs. The sum of Rs 2000 directed to be paid to the respondent towards meeting the expenses for stay in Delhi under the order of this Court dated February 26, 1993, shall be retained by him.

1993 Supp (3) Supreme Court Cases 557

(BEFORE KULDIP SINGH AND N.M. KASLIWAL, JJ.)

D. S. DALAL .. Appellant;

Versus

STATE BANK OF INDIA AND OTHERS .. Respondents.

Civil Appeal No. 251 of 1982†, decided on March 18, 1993

Advocates Act, 1961 — Ss. 35, 36 and 38 — Professional misconduct — Firm of Advocates and Solicitors, of which the appellant was one of the partners, was entrusted by the respondent bank with filing of a recovery suit against a private company along with Rs 11,475 and connected documents and papers — Suit filed before Delhi HC returned with objections by the Court Registry — Thereafter suit not refiled — Respondents, who were kept in the dark about the whereabouts of the case, engaging another advocate and coming to know about the true state of affairs — Complaint filed before Bar Council alleging serious professional misconduct and seeking appropriate action against the appellant and his partner — Bar Council of India, after due enquiry, finding appellant and his partner guilty of gross professional misconduct, directing removal of their names from the rolls of advocates of the Bar Council of Delhi and withdrawal of the sanads granted to them — Appellant alone filing an appeal to SC against the decision, his partner having obtained stay of the order from the Bar Council of India in a review petition — Held, there were no grounds to interfere with the order of the Bar Council of India as the reasoning and the conclusions reached therein were proper — Case of the appellant that the records of the suit filed on behalf of the respondents was misplaced by the High Court Registry rejected being an afterthought — Legal practitioner — Professional misconduct

Appeal dismissed V-M/TABG/12036/S

Advocates who appeared in this case :
B. Singh, S.K. Gambhir and Davinder Singh, Advocates, for the Appellant;
R.P. Kapur and Rajiv Kapur, Advocates, for the Respondents.

† From the Judgment and Order dated October 24, 1981 of the Disciplinary Committee of the Bar Council of India, Delhi in B.C.I.T.R. Case No. 28 of 1979

The Judgment of the Court was delivered by

KULDIP SINGH, J.— D.S. Dalal was a practising advocate in Delhi. The Bar Council of India by its order dated October 24, 1981, removed his name from the rolls of advocates of the Bar Council of Delhi and the *sanad* granted to him has been withdrawn. This appeal under Section 30 of the Advocates Act is against the order of the Bar Council of India.

2. The State Bank of India lodged a complaint before the Bar Council of Delhi on September 4, 1978. It was alleged in the complaint that the appellant along with two other advocates was practising under the name and style of "M/s Singh and Company", a firm of advocates and solicitors having their office at 2670, Subzi Mandi, Delhi. It was alleged that the advocates were duly engaged by the Asaf Ali Road branch of the State Bank of India to file a recovery suit against M/s Delhi Flooring (Pvt.) Ltd. for the recovery of Rs 6,12,164.10. "Singh and Company" (the Firm) at that time was represented by Mr D.S. Dalal, Mr B. Singh and Ms V. Singh, Advocates, who were the partners of the said Firm and were conducting cases for and on behalf of the Firm.

3. It is the case of the complainant that in the year 1975, the file relating to the case which was to be filed against M/s Delhi Flooring (Pvt.) Ltd., containing original and valuable documents, was handed over to the Firm by the complainant. Thereafter, the Firm submitted a bill for filing the recovery suit which included the professional fees and other miscellaneous charges. An amount of Rs 11,475 was paid to the Firm on November 15, 1975, for filing the suit which included 1/3rd of the professional fee plus the miscellaneous charges. This was acknowledged by the Firm under a receipt which was placed on the record. Till December 19, 1975, the Firm did not inform the bank as to whether the suit was filed and if so what was the stage of the proceedings. The bank wrote a letter dated December 5, 1975 to the Firm asking it to send a copy of the plaint before December 8, 1975, for signatures and verification failing which the bank would be compelled to withdraw the case from the Firm. At that stage Mr B. Singh, advocate, one of the partners of the Firm, in his letter dated December 15, 1975 informed the bank that the suit had been filed on December 15, 1975 in the High Court of Delhi. Thereafter, the bank appears to have received no communication from the said advocates despite repeated reminders — oral and otherwise — and the bank was kept in the dark about the fate of the case entrusted to the appellant and his associates.

4. As there was no response from the appellant, the bank engaged the services of Mr R.P. Arora, Advocate, in order to find out as to what happened to the suit filed by the appellant and his associates on behalf of the bank. Mr R.P. Arora in his letter dated March 2, 1977, informed the bank that the suit which had been filed on December 15, 1975 was returned by the original branch on January 31, 1976 to the Registry of the

High Court with objections. Mr Arora in his letter dated March 31, 1977 further informed the bank that the entire suit paper-book had been returned to Mr B. Singh, Advocate on July 27, 1976 for removing the objections and thereafter the suit has not been refiled in the Registry of the High Court of Delhi.

5. The complainant, therefore, claimed that the appellant and his associates were guilty of serious professional misconduct as they failed to discharge their professional duties and responsibilities entrusted to them by the bank in its capacity as a client. It was further claimed by the bank that the appellant and his associates had misappropriated the money paid to them for court fee, miscellaneous expenses and one-third of the professional fee. The complainant further stated that even the documents and other papers handed over to the appellant and his associates for filing the suit were not returned. The complainant was originally registered with the Bar Council of Delhi. On September 19, 1979, the Disciplinary Committee of the Bar Council of Delhi transferred the case to the Bar Council of India on the ground that the case had been pending for more than one year. The Bar Council of India issued notices returnable on November 2, 1980. On that date the respondents were not present and as such fresh notices were issued for December 20, 1980. Mr D.S. Dalal, though served was not present on December 20, 1980 and as such ex parte proceedings were ordered. Notice to Mr B. Singh, Advocate was returned with the postal endorsement "refused". He was also ordered to be proceeded ex parte. The case was posted for January 23, 1981 for the evidence of the complainant. On that day the appellant moved an application for setting aside the ex parte order dated December 20, 1980. The ex parte order was set aside conditionally permitting the appellant to participate in the proceedings and the case was adjourned to February 27, 1981. On February 27, 1981, three witnesses were examined in the presence of the appellant and he cross-examined them. Thereafter the case was adjourned from time to time and finally fixed for evidence on August 22, 1981. The appellant again sent an application for adjournment which was rejected. The evidence was concluded, arguments were heard and the order reserved. The Bar Council of India in the impugned order observed as under:

> "From a perusal of the order sheet of the Disciplinary Committee of the Bar Council of Delhi and also of the order sheet before us, it reveals that the respondents have throughout adopted the tactics of non-cooperation purposely with a view to protract the proceedings unnecessarily."

6. It may be mentioned that the complainant had given up its case against Ms V. Singh, Advocate and as such the Bar Council of India ultimately did not proceed against her. So far as Mr B. Singh and Mr D.S. Dalal are concerned, the case against them was proved beyond reasonable

doubt and their names were removed from the rolls of advocates of Bar Council of Delhi and the *sanads* granted to them were ordered to be withdrawn.

7. The appeal before us is by D.S. Dalal. We have been informed that Mr B. Singh, Advocate filed a review petition before the Bar Council of India on October 22, 1989 which is still pending. The Bar Council has also granted stay of the order dated October 24, 1981 with the result that Mr B. Singh is continuing with his legal practice. This appeal was argued before us by Mr B. Singh, Advocate.

8. It is not disputed before us that Mr B. Singh and Mr D.S. Dalal were the main partners of the Firm. It is also not disputed that an amount of Rs 11,475 was received by these advocates towards the filing of the suit and further that the connected documents and papers were received by them. Mr B. Singh, learned counsel for the appellant primarily argued that the suit was filed by the appellant in the Delhi High Court on December 15, 1975 but the record of the suit file was misplaced/lost by the High Court Registry. He further stated that by his letter dated August 20, 1977, he informed the bank about the suit file being not traceable and further that the record of the suit was to be restructured and refiled.

9. We have been taken through the copy of the letter dated August 20, 1977, written by Mr B. Singh on behalf of the Firm to the Regional Manager, State Bank of India, Parliament Street, New Delhi. The relevant paragraph is as under:

> "However, as already intimated two bank cases — one of Delhi Flooring (P) Ltd. of Asaf Ali Road branch and second of J.M.A.I.E. Corporation of Jungpura branch filed by the undersigned in Delhi High Court — have been misplaced/lost by High Court Registry and the record reconstruction petitions have already been given to the branches in March 1976 itself. In case the said suits have not already been got restored through some other learned counsel and the assistance of the undersigned is required for the restoration/ reconstruction then he is willing to cooperate fully without charging any fee and without insisting on the payment of his outstanding bills first. The undersigned can work only when he is allowed to work in terms of his approved schedule of fees and the payment is made of all his bills forthwith."

The letter dated August 20, 1977, quoted above was not produced before the Bar Council of India. It has been placed before us for the first time. Apart from the ipse dixit of the appellant and Mr B. Singh in the above letter, there is no evidence on the record to show that the suit file was misplaced or lost by the High Court Registry. On the other hand, there is cogent and reliable evidence on the record to show that the Delhi High Court Registry returned back the papers to Mr B. Singh for removing the objections raised by it.

10. Mr R.P. Arora, Advocate, appeared as a witness before the Bar Council of India. The relevant part of his evidence is as under:

> "I know the respondents in the case. I was instructed by the complainant in the case to find out as to whether the respondents had filed the suit against the Delhi Flooring (P) Ltd. in the High Court of Delhi which was entrusted by the complainant to the respondents. Accordingly I went to Delhi High Court and made enquiries to find out whether such a suit has been filed. On enquiry I came to know from the registers of the High Court that the suit had been filed on behalf of the complainant against Delhi Flooring (P) Ltd. on December 15, 1975. I found from the records that the office had not registered the suit because of certain objections raised by the office. I also came to know that the entire suit file had been returned to the respondents for complying with the objections and to refile the suit. This was so returned on July 27, 1976. The enquiries that were made by me in the High Court office were during March 1977 and till that date the suit had not been refiled by the respondents."

11. Mr R.P. Arora, Advocate, after examining the records of the Delhi High Court had sent two reports to the State Bank of India. In his report dated March 2, 1977 he stated as under:

> "As desired by you, to know the whereabouts of the above-noted case, I contacted the clerk concerned in the original branch of High Court of Delhi at New Delhi and also inspected the registers of the original suits.
>
> The above-noted case was filed by M/s Singh & Co. on December 15, 1975, but there were certain objections by the original branch and on January 31, 1976 the said case (file) was returned to the registry by the original branch. The register of the registry in respect of the period from January 31, 1976 is not available and I shall let you know the up to date information as to when the said case was returned to M/s Singh & Co., within a short period."

Subsequently, in his report dated March 31, 1977, Mr R.P. Arora, Advocate gave the following information to the bank:

> "I have enquired from the original section of High Court of Delhi at New Delhi, that the file of the above-stated case was returned to Shri B. Singh on July 27, 1976 as the said case was under objections. So far he has not again filed the said case in High Court."

Both the above quoted reports have been proved on the record of the Bar Council of India as evidence. The Bar Council of India on appreciation of the evidence before it came to the conclusion that the charge against the appellant and Mr B. Singh was proved beyond doubt. The Bar Council of India concluded as under:

> "... After having gone through the evidence and the documents produced in the case carefully, we have come to the conclusion that

the complainant had entrusted the suit to be filed against M/s Delhi Flooring (Pvt) Ltd. with the necessary papers and Rs 11,400.74 for expenses etc. to the respondent-advocates. It is also established that the respondents have filed the suit on December 15, 1975 with some objections deliberately and when the papers were returned by the High Court, they had not refiled the suit for a pretty long time and as is established till this day. So, we have no hesitation to conclude that the respondents have misappropriated the amount realised by them from the bank without filing the suit in a proper manner."

12. We have given our thoughtful consideration to the evidence on the record against the appellant. We see no ground to interfere with the order of the Bar Council of India. We agree with the reasoning and the conclusions reached therein.

13. We, therefore, dismiss the appeal. No costs.

1993 Supp (3) Supreme Court Cases 562

(BEFORE KULDIP SINGH AND N.M. KASLIWAL, JJ.)

SIROMAN SINGH .. Appellant;

Versus

STATE OF ORISSA AND OTHERS .. Respondents.

Civil Appeal No. 775 of 1978†, decided on March 17, 1993

Bihar and Orissa Excise Act, 1915 — S. 93(1) (as amended in 1980) — Excise dues under the Act — Recovery of, under S. 3 of Revenue Recovery Act, 1890, as arrears of land revenue, held, not illegal — Revenue Recovery Act, 1890, S. 3

The appellants contended that the excise dues under Section 93(1) of the Orissa Act, being arrears of revenue and not arrears of land-revenue or a sum recoverable as an arrear of land-revenue, could not be recovered under Section 3 of the Revenue Recovery Act, 1890. Since Section 2 of the Bihar and Orissa Excise (Orissa Amendment) Act, 1980 substituted the words 'recovery of arrears of land-revenue' for the words 'recovery of arrears of revenue' in Section 93(1) of the principal Act and provided that the amendment should be deemed always to have been substituted, the said contention is untenable. (Paras 6 and 7)

Lakshmi Prasad Sao v. *Collector and Deputy Commissioner, Singhbhum*, 1979 BLJR 379: 1979 Tax LR 2503 (Pat), *considered*

Appeal dismissed H-M/ATU/12031/S

Advocates who appeared in this case :

R.K. Garg, Senior Advocate (M/s P.D. Sharma and R.L. Saraiwala, Advocates, with him) for the Appellant;

R.K. Mehta, Advocate, for the Respondents.

† From the Judgment and Order dated March 28, 1977 of the Orissa High Court in Original Jurisdiction Case No. 2306 of 1975

rival claims for tenancy rights or the nature of the tenancy are exclusively left to be dealt with by the civil court.

8. We entirely agree that the Division Bench laid down the law correctly. It was followed by another Division Bench in *Guruvappa* v. *Manjappu Hengsu*[2]. No doubt another Division Bench in *Appi Belchadthi* v. *Sheshi Belchadthi*[3] had taken a different view and held that the civil court has jurisdiction to decide the question regarding the tenancy on behalf of the joint family and the Tribunal has no jurisdiction to go into the question. In the light of the above, we hold that law laid in *Appi Belchadthi case*[3] is not a good law. The view we have taken is also consistent with the law laid down by this Court in *Noor Mohd. Khan Ghouse Khan Soudagar* v. *Fakirappa Bharmappa Machenahalli*[4] though arose in execution. Therein the question though was not directly in issue but this Court had held that when exclusive jurisdiction has been conferred on the Tribunal to decide the questions arising under the Act, civil court has no jurisdiction and the question has to be decided only by the Tribunal constituted under the Act.

9. There is yet another ground on which the appellant is not entitled to the relief. Pending the adjudication, rival claims were admittedly made under Section 48-A(5) and the Tribunal had gone independently into the question and reiterated the same view as held in the enquiry under Section 133. Against that decision, the appellant filed Writ Petition No. 4694 of 1977 which was pending when the second appeal was decided by the Division Bench. We are informed that subsequently it was disposed of upholding the view of the Tribunal and it became final. Therefore, having been allowed to become final, it operates as res judicata. In either view, the appeal does not warrant any interference. It is accordingly dismissed. The parties are directed to bear their own costs.

(1994) 2 Supreme Court Cases 64

(BEFORE S. RATNAVEL PANDIAN AND P.B. SAWANT, JJ.)

JOHN D'SOUZA .. Appellant.

Versus

EDWARD ANI .. Respondent.

Civil Appeal No. 3206(NM) of 1993†, decided on December 17, 1993

Advocates Act, 1961 — S. 35(1) — Professional misconduct — Advocate's duty to return the will on demand by the client, her new lawyer and legal representative — Punishment of suspension of practice for one year upheld on account of appellant's failure to do so

2 ILR 1985 Kant 386 (1985) 1 Kant LJ 51

3 (1982) 2 Kant LJ 565

4 (1978) 3 SCC 188 : (1978) 3 SCR 789

† From the Judgment and Order dated June 4, 1990 of the Disciplinary Committee of the Bar Council of India in D.C. Appeal No. 24 of 1990

The appellant, who was an Advocate, drafted a will on behalf of his client who after executing it on 1-7-1968, entrusted it to the appellant. The appellant made an entry to this effect in the register of Wills maintained by him and also gave a receipt dated 5-7-1968 to the testatrix. Sometime after her husband's death in 1974, the testatrix changed her lawyer who requested the appellant in 1978 to return the will. The appellant denied having the will. The testatrix was obliged to make another will on 24-6-1978. The testatrix's son-in-law (the respondent in this present appeal) again demanded the will vide letters dated 4-1-1982 and 15-4-1986 but he did not get any reply from the appellant. The second will executed by the testatrix was probated on 21-2-1984 after her death on 29-10-1983. The respondent who claimed to be legal representative of the testatrix filed a complaint against the appellant with the State Bar Council. The matter ultimately reached the Bar Council of India, which punished the appellant with suspension of practice for a period of one year, vide order dated 4-6-1993. The appeal to the Supreme Court was directed against this order.

Held :

The irresistible conclusion in the circumstances of this case is that the appellant had not returned the will though demands were made first by the testatrix, then by her new lawyer and by the respondent who was also holding the power of attorney from the testatrix when he wrote the first letter and was the executor appointed under the second will. The conduct of the appellant in not returning the will even on demand is unworthy of an advocate belonging to a noble profession. The appellant has no right to withhold the will. He was duty bound to return the said will when demanded because the instrument was entrusted to his custody by the testatrix only on trust. There is no reason, much less compelling reason to interfere with the impugned order of the Disciplinary Committee of the Bar Council of India. (Paras 19 and 20)

Advocates Act, 1961 — S. 38 — Appeal to the Supreme Court — Appeal on question of fact — Considered by the Supreme Court — Appellant charged to have failed to return his client's will — One of the defences taken by him during enquiry was that his records showed that the will had been returned — Evidence considered by the Supreme Court and held, the applicant did not return the will even on demand (Paras 11 and 19)

Trusts Act, 1882 — S. 15 — Care required from a trustee — Appellant, an Advocate, held liable to return his client's will when demanded by the testatrix herself and subsequently by her legal representative on her death — Appellant held liable for professional misconduct — His plea that the will became res nullius because it was revoked by testatrix's subsequent will, rejected (Para 19)

Appeal dismissed K-M/12668/C

Advocates who appeared in this case :

Ram Jethmalani, Senior Advocate (Ms Lata Krishnamurthy, Amani Sahu Paul D'Souza, Advocates, with him) for the Appellant;

Edward Ani, Respondent in person.

The Judgment of the Court was delivered by

S. RATNAVEL PANDIAN, J.— The appellant who is an Advocate in Bangalore practising since 1942 was proceeded against for professional misconduct on the basis of a complaint dated November 7, 1986 lodged by the respondent, Mr Edward Ani with the Karnataka State Bar Council (Bangalore) under Section 35 of the Advocates Act alleging that the appellant with whom a will dated July 1, 1968 executed by his mother-in-

law, Mrs Mary Raymond was entrusted for safe custody against receipt dated July 5, 1968 bearing Serial No. 576 in his register of Wills (marked as Ex. P-1) refused to return that will in spite of two letters dated January 4, 1982 and April 15, 1986 demanding the appellant to hand over the will kept in his custody and that the appellant thereby has committed professional misconduct.

2. The synoptical resumption of the case which has given rise to this appeal may be briefly stated. One, Mr N.E. Raymond and his wife, Mrs Mary Raymond were the clients of the appellant. Mrs Mary Raymond during her lifetime got her will drafted by the appellant and entrusted the same after execution with the appellant in respect of which the appellant had given a receipt dated July 5, 1968 vide Ex. P-1. The fact that the will has been deposited with the appellant is supported by an entry in the register of Wills maintained by the appellant. The executrix had appointed her husband as the executor. Her husband, N.E. Raymond died in the year 1974. Mrs Mary Raymond changed her lawyer, the appellant herein and engaged one Mr George DaCosta as her advocate. According to the respondent, who is none other than the son-in-law of Mrs Mary Raymond and who claims to be the legal representative of her estate that when Mr George DaCosta requested the appellant in 1978 to let him have his client's will, the appellant denied having it. Thereafter, Mrs Mary Raymond was obliged to make another will prepared by Mr George DaCosta on June 24, 1978.

3. It is the case of the respondent that he wrote two letters to the appellant of which one dated January 4, 1982 was sent on behalf of Mrs Mary Raymond under Certificate of Posting from Manchester (U.K.) marked as Ex. P-6 and another letter dated April 15, 1986 by himself under Registered Post with A/D marked as Ex. P-8. Both the letters were addressed to the appellant requesting him to return the will dated July 1, 1968. But the appellant did not reply to both the letters and kept conspicuous silence.

4. The second will executed in 1978 was probated on February 21, 1984 after the death of Mrs Mary Raymond on October 29, 1983.

5. On being aggrieved at the conduct of the appellant in not replying to his letters and returning the will kept in his custody, the respondent filed a complaint dated November 7, 1986 before the Karnataka Bar Council. By a Resolution No. 110 of 1987 on July 12, 1987, the State Council rejected that complaint holding that there was no prima facie case made out. The respondent preferred a revision before the Bar Council of India which by its order dated November 20, 1988 set aside the order of the State Bar Council and allowed the revision holding that there existed prima facie case of misconduct against the respondent (advocate) and remitted the matter to the Disciplinary Committee of the State Council.

6. Pursuant to the order of the Bar Council of India, the parties appeared before the Disciplinary Committee of the State Bar Council. The appellant filed his reply on July 3, 1989 to which the respondent filed his rejoinder on August 12, 1989. The Disciplinary Committee of the State Bar Council by

its order dated June 7, 1990 again held that the respondent was not guilty of professional or other misconduct within the meaning of Section 35 of the Advocates Act, 1961 as alleged by the appellant.

7. Again being dissatisfied with the said order of the Disciplinary Committee, the appellant preferred an appeal before the Disciplinary Committee of the Bar Council of India which by its order dated June 4, 1993, disagreed with the findings of the State Bar Council and allowed the appeal by setting aside the order dated June 7, 1990 and held that "the complainant (the present appellant), has succeeded in proving that the respondent committed professional misconduct and is hereby liable under Section 35 of the Advocates Act, 1961". The Disciplinary Committee further suspended the appellant herein from practice for a period of one year.

8. The appellant filed a Stay Petition No. 24 of 1993 under Section 14(2) of the Advocates Act before the Disciplinary Committee of the Bar Council of India praying to stay the operation of its order dated June 4, 1993 suspending him from practice, so as to enable him to prefer an appeal before this Court. The Disciplinary Committee of the Bar Council of India vide its order dated June 23, 1993 suspended the impugned order for one month from the date of communication of the order.

9. The present appeal has been preferred by the appellant along with an application for stay. When the matter was mentioned on July 20, 1993, this Court stayed the operation of the impugned order.

10. Mr Ram Jethmalani, the learned senior counsel appearing for the appellant after taking us through the relevant documents assailed the impugned findings contending that the respondent has not substantiated the allegations that Mr DaCosta requested the appellant to let him have the will of Mrs Mary Raymond entrusted to him and that the appellant denied of having it. On the other hand, the letter dated May 1, 1990 written by Mr George DaCosta to the Chairman, Disciplinary Committee of Karnataka Bar Council stating, "I should like to clarify my own position and to emphasize and state very clearly that at no time did I make any request of John D'Souza for the return of her 1968 will nor did she require it. There was, therefore, no question arising for Mr John D'Souza having denied being in possession of it. Mr John D'Souza made no such denial ...." unambiguously falsifies the allegations of the respondent.

11. According to Mr Jethmalani, the will in question had been revoked and returned on January 13, 1982 presumably to Mrs Mary Raymond who was then alive. That fact is supported by an endorsement made by the appellant's wife in the register of Wills and that even assuming that the will had not been returned, the appellant cannot be said to have committed any breach of trust by retaining the revoked will which after its revocation had become a mere scrap-paper; that the appellant cannot even by imagination be said to have entertained any dishonest or oblique motive or gained any pecuniary profit by keeping the revoked will which had become *res nullius* and indisputably was a worthless paper having no value.

12. In passing, Mr Jethmalani stated that his client though admits of having received the second letter (Ex. P-8) disputes the demand of will by his alleged first letter dated January 4, 1982 and adds that the respondent has not proved the charges by examining Mr DaCosta.

13. The respondent appearing in person took much pains to sustain the findings of the Disciplinary Committee of the Bar Council of India submitting inter alia, that the appellant who kept the will in his custody was in the nature of a Trustee and as such he was entitled to return the will on demand and that the question of oblique motive or private gain has no relevance. As neither the testatrix, Mrs Mary Raymond nor the respondent, being the legal representative of the estate of the testatrix, had abandoned the will which was their property, it cannot be said that the will had become *res nullius*. He asserts that the appellant should have received the first letter or at least deemed to have received that letter (Ex. P-6) which had been posted from Manchester (U.K.) under Certificate of Posting (Ex. P-6A).

14. According to the respondent, the facts and circumstances of the case have amply proved that the appellant had blatantly violated the relationship of the client and the attorney created under law and betrayed the trust and confidence reposed by the respondent in him.

15. Both parties in support of their respective pleas cited certain decisions which we do not recapitulate here as we have decided to dispose of the matter purely on the facts of the case. However, it may be mentioned that Mr Ram Jethmalani in his reply has given up the argument that the document had become *res nullius* but reiterated his stand on the other grounds.

16. Though the State Bar Council has found that the conduct of the appellant has not amounted to "misconduct much less a professional misconduct to punish the respondent" and that "he has not proved any 'mens rea' " on the part of the appellant in withholding the will and given too much emphasis on the point of delay and the strained relationship between the parties, observed:

> "However we hope the respondent will be hereafter careful in dealing with this type of matters."

17. The Disciplinary Committee of the Bar Council of India after examining the matter in detail disapproved the findings of the State Bar Council holding thus:

> "The Disciplinary Committee of the State Bar Council gave too much emphasis on the point of delay in filing the complaint. It also referred to some strained relations between the parties. We are not inclined to agree with these findings. A mere delay or strained relations between the parties per-se would not make a complaint false. These are the points which should put us on ground while appreciating the contentions raised on behalf of either side. But in a case in which most of the facts are admitted there is little to do except holding that non-return of the property of the complainant does not amount to professional misconduct on the part of the Advocate. The respondent

tried to submit that will had been returned but no convincing evidence to that effect was produced."

18. On the basis of the above findings, the impugned order was passed. The fact that Mr George DaCosta requested the appellant to hand over the will cannot be said to be an afterthought and invented only at the time of filing the complaint. Even in Ex. P-6, it is mentioned that, "Mr George DaCosta requested the appellant to hand over the will of Mrs Mary Raymond prepared in 1968 and held in his safe custody and that it was understood that the appellant denied that the will was in his custody". In the second letter dated April 15, 1986 marked as Ex. P-8 which has been admittedly received by the appellant, the facts of demand made by Mr DaCosta to return the will and the appellant having denied of it are made mention of. In addition, the respondent has stated that he wrote a letter on January 4, 1982 to which there was no reply. The only document on which the appellant attempts to substantiate his case that there was no such demand as well as denial by him is the letter dated May 1, 1990 sent by Mr DaCosta to the State Bar Council. This letter has been sent only after the proceedings before the State Bar Council had been completed but, of course, before the order was passed. However, the order of the State Bar Council did not have any reference to this letter, obviously for the reason that this document was not produced before the proceedings were over. Though Mr Jethmalani has insisted that this letter was filed only on consent, the very fact that the letter did not come into existence earlier to May 1, 1990 and that Mr DaCosta was not examined, demands not to place much reliance on this letter, especially in the teeth of the averments found in Ex. P-6 and Ex. P-8. As pointed out by the Bar Council of India, there was no convincing evidence that the appellant had returned the will. As pleaded by the respondent, the will though revoked was the property of Mrs Mary Raymond and on her death had become his property and that the said document was not abandoned by either of them.

19. It is disheartening to note that the documentary evidence and the circumstances bearing the case leave an irresistible inference that the entry dated January 13, 1982 in the register of Wills should have been manipulated as if the document had been returned. No doubt, in a disciplinary proceeding of this nature, the rule is that the charging party has the burden of proving the charge of misconduct of the respondent. On an overall evaluation of the facts and circumstances of the case we hold that the respondent has proved that the appellant had not returned the will. It has to be remembered, in this connection, that his earlier stand was that he did not have the will. He changed the position later and came out with the case that he had returned it in 1982 and for this purpose he relied upon an endorsement made by his wife in his register of documents. We are left with the irresistible conclusion, in the circumstances, that he had not returned the will though demands were made first by the testatrix, then by her new lawyer and by the respondent who was also holding the power of attorney from the testatrix when he wrote the first letter and was the executor appointed under the second will. The

conduct of the appellant in not returning the will even on demand is unworthy of an advocate belonging to a noble profession. The appellant has no right to withhold the will. On the other hand, he was bound in duty to return the said will when demanded because the instrument was entrusted to his custody by the testatrix, Mrs Mary Raymond only on trust.

20. Under these circumstances, we do not find any reason much less compelling reason to interfere with the impugned order of the Disciplinary Committee of the Bar Council of India. The Appeal is accordingly dismissed and the stay granted by this Court shall stand vacated. No costs

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(1994) 2 Supreme Court Cases 70

(BEFORE B.P. JEEVAN REDDY AND S.P. BHARUCHA, JJ.)

UNION TERRITORY OF PONDICHERRY AND OTHERS .. Appellants;

Versus

P.V. SURESH AND OTHERS .. Respondents.

Civil Appeal Nos. 1543-1630 of 1984† with Civil Appeal Nos. 693 to 695-A of 1985, decided on September 23, 1993

A. **Excise — Liquor vend — Licence for sale of arrack — Judicial intervention in terms of — Licensee to draw supplies exclusively from Govt. depots and also to sell arrack at the price fixed by Govt. — Rate or quantum of supply to be made to licensee revisable even during the licence period under the licence conditions as well as in practice — Rate of supply not mentioned by Govt. at the time of conducting the auction for grant of licence — Rate reduced as a result of which licensee sustaining loss and unable to pay 'kist' (instalments) — Contract alleged to be so constructed that loss was inherent and implicit in it — Held, if so then the contract ought to be modified, otherwise court has no jurisdiction to alter the terms or rewrite the contract between the parties — High Court justified in holding that the contract required to be modified — In the peculiar facts and circumstances kist amount should be revised to such a figure (on the basis of actual supplies made to each shop) as would in all circumstances ensure a margin of 15% of the annual bid — This 15% would include establishment expenses and profit — Since this formula cannot be successfully evolved by the court for lack of relevant material, matter remitted to Govt. for evolving the formula after hearing the parties (Paras 9 to 12)**

B. **Constitution of India — Arts. 136, 133 and 226 — Court's interference in contractual matters — Court cannot alter terms of the contract or rewrite the contract — Court cannot also evolve formula for determining instalments payable under the contract in absence of any material before it (Paras 11 and 12)**

C. **Excise — Liquor vend — Licence for sale of arrack — Rate or quantum of supply of arrack by Govt. to licensee — Revision of — Quantum reduced —**

† From the Judgment and Order dated October 22, 1983 of the Madras High Court in W.P. Nos. 6652, 6767-69, 7600-02, 7710, 7715, 7994, 8038, 8903-05, 8907, 9043-52, 9054-58, 9064, 9299, 9300 to 9306, 9334-36, 9409-10, 9460, 9474, 9504, 9634-37, 9640-56, 9923, 9927 to 9932, 10136-38, 10183-84, 10416, 11093 to 82 and 686 of 1982

Railway Coaches' case[5] neutral factors. This conclusion is strengthened by the expressions we have extracted from the 1951 contract itself.

25. It is manifest in the instant case from the terms of the contracts and transactions, as in the *Railway Coaches case*[5] and as was emphasised by Sikri, C.J. that the property in the materials which are used in the execution of the jobs entrusted to the contractor in this case became the property of the Government before it was used. It is also manifest that there was no possibility of any other materials to be used for the construction as would be manifest from the affidavit and the correspondence and the invoices, and works orders in these transactions. Emphasis was placed before the Tribunal as well as before the High Court of Karnataka on the case of *State of Gujarat* v. *Variety Body Builders*[6] where the court was concerned with the 'bus bodies'. In the 'bus bodies' case, the assessee contractor had continued to have the ownership rights and it was held that the 'bus body' had to be transferred from the contractor to the other party as a result of contract for sale but in the instant case it is manifest that the specified spares and materials were not the properties of the contractor, in the sense that the contractor never had any ownership over these. The conclusion arrived at by us is in consonance with the principles laid down by this Court in the case of *Ram Singh & Sons Engineering Works* v. *C.S.T.*[7]

26. For the reasons aforesaid, we are of the opinion that the High Court of Karnataka was not right in its conclusion on the taxability of the turnover of the spare parts and materials supplied in execution of appellant's job works. As a result except for the item on canteen sales which is not in dispute before us, these appeals are allowed. The necessary adjustments in the assessments should be made. In the facts and circumstances of these cases, the parties will bear their own costs throughout.

(1984) 1 Supreme Court Cases 722

(BEFORE O. CHINNAPPA REDDY, E.S. VENKATARAMIAH AND R.B. MISRA, JJ.)

LT. COL. S.J. CHAUDHARY .. Petitioner ;

Versus

STATE (DELHI ADMINISTRATION) .. Respondent.

6. 38 STC 176 : (1976) 3 SCC 500 : 1976 SCC (Tax) 338
7. 43 STC 195 : (1979) 1 SCC 487 : 1979 SCC (Tax) 71

Criminal Miscellaneous Petition No. 284 of 1984 in Special Leave Petition (Criminal) No. 3000 of 1983, decided on January 17, 1984

Criminal Trial — Practice — Trial before Sessions Court should normally proceed from day-to-day from beginning till end — Advocates after accepting the brief, held, duty bound to attend the trial continuously from day-to-day, failing which the Advocates would commit breach of their professional duty

CMP dismissed R-M/6467/CR

Advocates who appeared in this case :

K.L. Sharma, Senior Advocate (K.K. Mohan and Mrs Geetanjali Mohan, Advocates, with him), for the Petitioner ;

K.G. Bhagat, Additional Solicitor-General (R.D. Agarwal and R.N. Poddar, Advocates, with him), for the Respondent.

ORDER

1. By an order dated December 2, 1983, this Court while dismissing a petition for special leave to appeal filed against an order of the Delhi High Court refusing to grant bail to the petitioner until after examination of Rani Chaudhary as a witness, gave a direction that on the commencement of the trial, it should proceed from day-to-day. Alleging that his two Advocates are not prepared to appear in the case from day-to-day as the trial is likely to be prolonged, the petitioner has filed the present application for modification of the earlier order of this Court by the deletion of the direction that the trial should proceed from day-to-day.

2. We think it is an entirely wholesome practice for the trial to go on from day-to-day. It is most expedient that the trial before the court of Session should proceed and be dealt with continuously from its inception to its finish. Not only will it result in expedition, it will also result in the elimination of manoeuvre and mischief. It will be in the interest of both the prosecution and the defence that the trial proceeds from day-to-day. It is necessary to realise that Sessions cases must not be tried piecemeal. Before commencing a trial, a Sessions Judge must satisfy himself that all necessary evidence is available. If it is not, he may postpone the case, but only on the strongest possible ground and for the shortest possible period. Once the trial commences, he should, except for a very pressing reason which makes an adjournment inevitable, proceed *de die in diem* until the trial is concluded.

3. We are unable to appreciate the difficulty said to be experienced by the petitioner. It is stated that his Advocate is finding it difficult to attend the court from day-to-day. It is the duty of every Advocate, who accepts the brief in a criminal case to attend the trial from day-

to-day. We cannot over-stress the duty of the Advocate to attend to the trial from day-to-day. Having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend. The criminal miscellaneous petition is, therefore, dismissed.

(1984) 1 Supreme Court Cases 724

(BEFORE S. MURTAZA FAZAL ALI, A. VARADARAJAN AND RANGANATH MISRA, JJ.)

SHIV DAYAL SHRIVASTAVA .. Petitioner ;

Versus

UNION OF INDIA .. Respondent.

Writ Petition No. 8991 of 1983†,
decided on February 7, 1984

Labour and Services — Judiciary — Retirement of High Court Judge — Leave encashment — Held, Rule 20-B of All India Services (Leave) Rules, 1955 applicable and Sections 5(3) and 9(1) of High Court Judges (Conditions of Service) Act, 1954 not applicable — Leave — Pay

Held :

The benefit under Rule 20-B of the Leave Rules regarding payment of cash equivalent of leave salary on retirement is applicable to High Court Judges but is not controlled by Chapter II of the Conditions of Service Act. The scheme in Rule 20-B is that the payment would be made suo motu and without any application for it while the leave referred to under the Act is one which has to be asked for and is intended to meet a different situation. For calculating the benefits under Rule 20-B, Section 5(3) of the Act is not relevant and in case in the leave account maintained under Section 4 of the Act leave is due, the benefit under Rule 20-B has to be worked out subject to the upper limit of 180 days, equal to six months. In view of the non-applicability of Chapter II of the Act the manner of calculation indicated in Section 9(1) of the Act would also not apply. (Paras 6 and 7)

Union of India v. Gurnam Singh, (1982) 2 SCC 314 : 1982 SCC (L&S) 236 : AIR 1982 SC 1265 : (1982) 3 SCR 700, extended

The principles governing the cash equivalent of leave would apply not only to the petitioner but also to Judges who have already retired or who may retire hereafter, from the date from which this facility was made available to the members of the Central Services holding the rank of Secretary to the Government of India or its equivalent. (Para 8)

Writ petition allowed R-M/6483/CL

Advocates who appeared in this case :

K. Parasaran, Attorney-General ;
K.G. Bhagat, Additional Solicitor-General (R.N. Poddar, Advocate, with him), for the Respondent.

†Under Article 32 of the Constitution of India

immense misery. She had indicated what was transpiring in her mind to Trishla Kumari, PW 1. The possibility of her committing suicide and implicating the accused persons cannot be ruled out in the facts and circumstances of the case as available on record.

33. For the foregoing reasons, the appeal is dismissed. The judgment of acquittal, along with the findings recorded by the trial court, is maintained.

(2001) 6 Supreme Court Cases 135

(BEFORE K.T. THOMAS, R.P. SETHI AND S.N. PHUKAN, JJ.)

N.G. DASTANE . . Appellant;

Versus

SHRIKANT S. SHIVDE AND ANOTHER . . Respondents.

Civil Appeal No. 3543 of 2001†, decided on May 3, 2001

A. Advocates Act, 1961 — S. 35(1) — "Professional or other misconduct" — Meaning and scope — Misconduct under S. 35(1) is of wider import — Misconduct covers any misdemeanour or misdeed or misbehaviour which obstructs administration of justice such as seeking repeated adjournments on flimsy or frivolous grounds — So also abusing the process of court is misconduct — Tactics of filibuster are also professional misconduct — Words and Phrases — "Professional misconduct", "misconduct"

B. Advocates Act, 1961 — S. 35(1) — "Professional or other misconduct" — Meaning — Seeking repeated adjournments for postponing examination of witnesses who were present in court without making alternative arrangement for their examination falls within the expression "professional or other misconduct" — If Bar Council comes across a genuine case of such misconduct or if a genuine or bona fide complaint of such misconduct is lodged, it is Bar Council's statutory duty to forward the matter to Disciplinary Committee — Expression "reason to believe" is intended only to filter out frivolous complaints — Words and Phrases — "Misconduct", "professional misconduct" — Civil Procedure Code, 1908, Or. 17 R. 1

C. Advocates Act, 1961 — S. 36(2) — Complaint of misconduct on the part of respondent advocates rejected by State Bar Council and in revision by Bar Council of India — Supreme Court finding that a strong prima facie case was made out for Disciplinary Committee of the State Bar Council to proceed with, orders of the State Bar Council and Bar Council of India set aside — In view of long pendency of the matter, the complaint directed to be referred to Bar Council of India

The appellant had filed a complaint before the Judicial Magistrate against some accused for theft of electricity. The accused in the said complaint engaged two advocates viz. Respondents 1 and 2. The respondents filed a joint vakalatnama before the trial court and the trial began in 1993. When the

† From the Judgment and Order dated 2-5-1999 communicated on 20-4-2000 of the Bar Council of India in Rev. Petition No. 15 of 1995

Magistrate posted the case for cross-examination of the appellant on 30-7-1993, the second respondent Advocate sought for an adjournment on the ground that it was not possible to conduct the cross-examination unless all the other witnesses for the prosecution were also present in court. The Judicial Magistrate conceded to the request and posted the case to 23-8-1993. On that day, the appellant and all his witnesses were present in court. But both the respondents sought for an adjournment, the first respondent on the premise that he was busy outside the court, and the second respondent on the premise that "the father of the first respondent's friend expired". The Magistrate again adjourned the case to 13-9-1993 in a casual manner. On that day also the respondents sought for an adjournment but on a flippant reason. The appellant's counsel raised objections against the prayer for adjournment. Nevertheless, the Judicial Magistrate again adjourned the case and posted it to 16-10-1993 which according to the respondents was quite convenient to them. When the appellant presented himself along with all the witnesses on 16-10-1993, the respondents asked for adjournment on the ground that one of the respondent advocates was out of station. The Judicial Magistrate yielded to the request this time also and posted the case to 20-11-1993 peremptorily. On 20-11-1993 the appellant and all his witnesses were again present but the respondents again sought adjournment on the ground that one of the respondents was indisposed and the Magistrate adjourned the case to 4-12-1993. On that day the second respondent sought for an adjournment with a written application on the premise that the first respondent was unable to speak on account of throat infection and continuous cough. The Magistrate again granted adjournment, though this time by ordering that a medical certificate should be produced by the first respondent and cost of Rs 75 should be paid to the appellant. According to the appellant, after the case was adjourned on 4-12-1993, he went out of the courtroom and while he was walking through the corridors of the court complex he happened to come across the first respondent "forcefully and fluently arguing" a matter before another court situated in the same building. It was that sight which caused him to venture to lodge a complaint against both the respondents before the Maharashtra State Bar Council on 27-12-1993. Both the respondents filed a joint reply to the above complaint in which they stated, inter alia, that Respondent 1 was suffering from severe throat infection and temperature and was under medical treatment and that Respondent 1 sought adjournments in all the cases in which prolonged cross-examination was required and he was not in a position to speak continuously because of severe cough problem. They did not say anything about the large number of occasions they sought for adjourning the cross-examination of the complainant. The State Bar Council obtained a report from its Advocate Member. The report stated that he interrogated the parties and understood that "the complaint is without any substance". On that basis the State Bar Council dropped further proceedings against the respondents. The Bar Council of India disposed of the revision petition by holding that the State Bar Council was perfectly justified in passing the impugned order and there was no reason to interfere with the same, that no prima facie case was made out against the respondents and there was no reason to believe that the advocates had committed professional or other misconduct". Disposing of the present appeal, the Supreme Court

Held :

The appellant-complainant has made out a very strong prima facie case for the Disciplinary Committee of the State Bar Council to proceed with. The State Bar Council has abdicated its duties when it was found that there was no prima facie case for the Disciplinary Committee to take up. The Bar Council of India also went woefully wrong in holding that there was no case for revision at all. (Para 24)

Section 35 of the Act indicates that the misconduct referred to therein is of a much wider import. The collocation of the words "guilty of professional or other misconduct" in Section 35(1) of the Advocates Act has been used for the purpose of conferring power on the Disciplinary Committee of the State Bar Council. It is for equipping the Bar Council with binoculars as well as a whip to be on the qui vive for tracing out delinquent advocates who transgress the norms or standards expected of them in the discharge of their professional duties. The central function of the legal profession is to help promotion of administration of justice. Any misdemeanour or misdeed or misbehaviour can become an act of delinquency if it infringes such norms or standards and it can be regarded as misconduct. An advocate abusing the process of court is guilty of misconduct. When witnesses are present in the court for examination the advocate concerned has a duty to see that their examination is conducted. Witnesses who come to the court, on being called by the court, do so as they have no other option, and such witnesses are also responsible citizens who have other work to attend to for eking out a livelihood. They cannot be treated as less respectable to be told to come again and again just to suit the convenience of the advocate concerned. If the advocate has any unavoidable inconvenience it is his duty to make other arrangements for examining the witnesses who are present in the court. Seeking adjournments for postponing the examination of witnesses who are present in court even without making other arrangements for examining such witnesses is a dereliction of an advocate's duty to the court as that would cause much harassment and hardship to the witnesses. Such dereliction if repeated would amount to misconduct of the advocate concerned. Legal profession must be purified from such abuses of the court procedures. Tactics of filibuster, if adopted by an advocate, is also a professional misconduct. (Paras 16 and 20)

A Solicitor, ex p. Law Society, in re, (1912) 1 KB 302 : (1911-13) All ER Rep 202 : 81 LJKB 245; *R.D. Saxena* v. *Balram Prasad Sharma*, (2000) 7 SCC 264; *State of U.P.* v. *Shambhu Nath Singh*, (2001) 4 SCC 667 : 2001 SCC (Cri) 798 : JT (2001) 4 SC 319, *relied on*

George Frier Grahame v. *Attorney-General*, AIR 1936 PC 224, *referred to*

Black's Law Dictionary, *relied on*

When the Bar Council in its wider scope of supervision over the conduct of advocates in their professional duties comes across any instance of such misconduct it is the duty of the Bar Council concerned to refer the matter to its Disciplinary Committee. The expression "reason to believe" is employed in Section 35 of the Act only for the limited purpose of using it as a filter for excluding frivolous complaints against advocates. If the complaint is genuine and if the complaint is not lodged with the sole purpose of harassing an advocate or if it is not actuated by mala fides, the Bar Council has a statutory duty to forward the complaint to the Disciplinary Committee. (Para 22)

Bar Council of Maharashtra v. *M.V. Dabholkar*, (1976) 2 SCC 291 : (1976) 2 SCR 48, *relied on*

In this case the order of the State Bar Council as well as that of the Bar Council of India are set aside and the complaint of the appellant would stand referred to the Disciplinary Committee of the State Bar Council. (Para 24)

As the complaint is now, by virtue of this judgment, pending before the Disciplinary Committee of the State Bar Council, the question is whether it is appropriate that the Bar Council of India takes it up for the purpose of referring it to its Disciplinary Committee. As the misconduct alleged is of the year 1993-94 the ends of justice demand that the Disciplinary Committee of the Bar Council of India should now deal with the complaint. For the purpose it is ordered that the complaint of the appellant would stand referred to the Bar Council of India under Section 36 of the Advocates Act. The said Disciplinary Committee is now directed to adopt such steps as are necessary for the disposal of the complaint in accordance with law and in the light of the observations made above. (Para 26)

[Apart from the question of professional misconduct of the respondents, it was felt that the Judicial Magistrate, who yielded to all the procrastinative tactics, should be made answerable to the High Court so that action could be taken against the Magistrate on the administrative side for such serious laches. The Supreme Court, therefore, called upon the Judicial Magistrate to show cause why the Court should not make adverse remarks against the Magistrate in its judgment. The Magistrate explained that she had only started working as a regular Magistrate just after completing training on 6-7-1993. If so, the Judicial Magistrate would have been a novice in the judicial service. On that ground alone, the Court refrained from recommending any disciplinary action against the Magistrate. (Para 14)]

R-M/AZ/24033/C

Advocates who appeared in this case :
P.H. Parekh and Amit Dhingra, Advocates, for the Appellant;
Vijay S. Kotwal, Senior Advocate (Shakil Ahmed Syed, Advocates, with him) for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (2001) 4 SCC 667 : 2001 SCC (Cri) 798 : JT (2001) 4 SC 319, *State of U.P. v. Shambhu Nath Singh* 143*d*
2. (2000) 7 SCC 264, *R.D. Saxena* v. *Balram Prasad Sharma* 142*f g*
3. (1976) 2 SCC 291 : (1976) 2 SCR 48, *Bar Council of Maharashtra* v. *M.V. Dabholkar* 144*a-b*
4. AIR 1936 PC 224, *George Frier Grahame* v. *Attorney-General* 142*g*
5. (1912) 1 KB 302 : (1911-13) All ER Rep 202 : 81 LJKB 245, *A Solicitor, ex p, Law Society, in re* 142*e-f*

The Judgment of the Court was delivered by

THOMAS, J.— Leave granted.

2. We are much grieved, if not peeved, in noticing how two advocates succeeded in tormenting a witness by seeking numerous adjournments for cross-examining him in the Court of a Judicial Magistrate. On all those days the witness had to be present perforce and at considerable cost to him. It became a matter of deep concern to us when we noticed that the Judicial Magistrate had, on all such occasions, obliged the advocates by granting such

adjournments on the mere asking, to the incalculable inconvenience and sufferings of the witness. When he was convinced that those two advocates were adopting tactics of subterfuge by putting forth untrue excuses every time for postponing cross-examination he demurred. But the Magistrate did not help him. Ultimately when pressed against the wall he moved the State Bar Council for taking disciplinary proceedings against the advocates concerned. But the State Bar Council simply shut its doors informing him that he did not have even a prima facie case against the delinquent advocates. He met the same fate when he moved the Bar Council of India with a revision petition, as the revision petition was axed down at the threshold itself. The exasperated witness, exhausted by all the drubbings, has now come before this Court with this appeal by special leave.

3. The appellant, the aforesaid aggrieved witness, describes himself to be an agriculturist scientist. He claims to have worked as an Advisor in UNO until he retired therefrom. He filed a complaint before the Judicial Magistrate of the First Class, Pune (Maharashtra) against some accused for the offence of theft of electricity. The accused in the said complaint case engaged Advocate Shri Shivde (the first respondent) and his colleague Shri Kulkarni (the second respondent) who were practising in the courts at Pune. The two respondent advocates filed a joint vakalatnama before the trial court and the trial began in 1993. The appellant was examined-in-chief. Thus far there was no problem.

4. The agony of the appellant started when the Magistrate posted the case for cross-examination of the appellant on 30-7-1993. As per the version of the appellant, he had to come down from New York for being cross-examined on that day, but the second respondent advocate sought for an adjournment on the ground that it was not possible to conduct the cross-examination unless all the other witnesses for the prosecution were also present in court. We have no doubt that such a demand was not made in good faith. It was aimed at causing unnecessary harassment to witnesses. No other purpose could be achieved by such demand. Although the court was conscious that insistence of presence of the other witnesses has no legal sanction the Judicial Magistrate conceded to the request and posted the case to 23-8-1993.

5. On that day, the appellant and all his witnesses were present in court. But both the respondents sought for an adjournment, the first respondent on the premise that he was busy outside the court, and the second respondent on the premise that "the father of the first respondent's friend expired". The Judicial Magistrate yielded to that request, apparently in a very casual manner and adjourned the case to 13-9-1993.

6. On that day also the respondents sought for an adjournment but on a flippant reason. The appellant's counsel raised objections against the prayer for adjournment. Nevertheless, the Judicial Magistrate again adjourned the case and posted it to 16-10-1993. We may point out that the said date was

chosen by the court as the respondents represented to the court that the said date was quite convenient to them.

7. The appellant, thoroughly disgusted, had two options before him. One was to get dropped out from the case and the other was to continue to suffer. He had chosen the latter and presented himself along with all the witnesses on 16-10-1993. But alas, the respondents again asked for an adjournment on that day also. This time the adjournment was sought on the ground that one of the respondent advocates was out of station. It seems that the Judicial Magistrate yielded to the request this time also and posted the case to 20-11-1993 peremptorily. It would have been a sad plight to see how the appellant and his witnesses were walking out of the court complex without the case registering even a wee bit of progress in spite of his attending the court on so many days for the purpose of being cross-examined. His opposite party would have laughed in his mind as to how his advocates succeeded in tormenting the complainant by abusing the process of court through securing adjournment after adjournment. The complainant would have wept in his mind for choosing a judicial forum for redressal of his grievance.

8. On 20-11-1993, the appellant and all his witnesses were again present, possibly with the certitude that they would be examined at least now because of the peremptory order passed by the Magistrate on the previous occasion. Unfortunately, the peremptoriness of the order did not create even a ripple on the respondent advocates and they ventured to seek for an adjournment again on the ground that one of the respondent advocates was indisposed. There was not even a suggestion as to what was the inconvenience for the co-advocate. Even so, the Magistrate yielded to that request also and the case was again adjourned to 4-12-1993.

9. The flashpoint in the cauldron of the agony and grievance of the appellant reached on 4-12-1993. He presented himself before the court for being cross-examined, despite all the frets and vexations suffered by him till that day hoping that at least on this occasion the respondents would not concoct any alibi for dodging the cross-examination. But the second respondent who was present in the court sought for an adjournment again with a written application, on the following premise:

> "Advocate Shivde (first respondent) is unable to speak on account of the throat infection and continuous cough. The doctor has advised him to take two weeks' rest.
>
> Hence he is unable to conduct the matter before this Hon'ble Court today. It is therefore prayed that the hearing may kindly be adjourned for three weeks in the interest of justice."

10. The Judicial Magistrate without any qualms or sensitivity succumbed to the said tactics also and granted the adjournment prayed for. The Magistrate did not care even to ask the second respondent why he could not conduct the cross-examination, if his colleague, the first respondent, was so unwell. But the Magistrate felt no difficulty in immediately allowing the request for again adjourning the case. Of course the Magistrate ordered that a

medical certificate should be produced by the first respondent and cost of Rs 75 should be paid to the appellant. A poor solace for the agony inflicted on him.

11. According to the appellant, after the case was adjourned on 4-12-1993, he went out of the courtroom and while he was walking through the corridors of the court complex he happened to come across the first respondent "forcefully and fluently arguing" a matter before another court situated in the same building. It was that sight which caused him to venture to lodge a complaint against both the respondents before the Maharashtra State Bar Council on 27-12-1993. He had narrated the details of his complaint in the petition presented before the State Bar Council and prayed for taking necessary action against the two advocates.

12. Both the respondents filed a joint reply to the above complaint in which they stated, inter alia, that Respondent 1 was suffering from severe throat infection and temperature and was under medical treatment of Dr Manavi and that Respondent 1 sought adjournments in all the cases in which prolonged cross-examination was required and he was not in a position to speak continuously because of severe cough problem. They did not say anything about the large number of occasions they sought for adjourning the cross-examination of the complainant.

13. The State Bar Council obtained a report from its Advocate Member Shri B.E. Avhad. That report says that he interrogated the parties and understood that "the complaint is without any substance". It was on the strength of the said report that the State Bar Council has dropped further proceedings against the respondents. The revision petition was disposed of by the impugned order holding that

> "the Bar Council of Maharashtra was perfectly justified in passing the impugned resolution dated 12-11-1994 and we see no reason to interfere with the same; no prima facie case is made out against the respondents and there is no reason to believe that the advocates had committed professional or other misconduct".

14. When we heard the arguments of Shri P.H. Parekh, learned counsel for the appellant and Shri Vijay S. Kotewal, learned Senior Counsel for the respondents we felt, apart from the question of professional misconduct of the respondents, that the Judicial Magistrate, who yielded to all the procrastinative tactics, should be made answerable to the High Court so that action could be taken against the Magistrate on the administrative side for such serious laches. We, therefore, called upon the said Magistrate to show cause why we shall not make adverse remarks against the Magistrate in our judgment. The said Judicial Magistrate has now explained that she had only started working as a regular Magistrate just after completing training on 6-7-1993. If so, the Judicial Magistrate would have been a novice in the judicial service. On that ground alone, we persuade ourselves to refrain from recommending any disciplinary action against the Magistrate. Be that as it

may, we now proceed to consider whether the acts attributed to the respondents amounted to professional misconduct.

15. Chapter V of the Advocates Act, 1961 (for short "the Act") contains provisions for dealing with the conduct of advocates. The word "misconduct" is not defined in the Act. Section 35 of the Act indicates that the misconduct referred to therein is of a much wider import. This can be noticed from the wording employed in sub-section (1) of that section. It is extracted herein:

> "35. (1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee."

16. The collocation of the words "guilty of professional or other misconduct" has been used for the purpose of conferring power on the Disciplinary Committee of the State Bar Council. It is for equipping the Bar Council with binoculars as well as a whip to be on the qui vive for tracing out delinquent advocates who transgress the norms or standards expected of them in the discharge of their professional duties. The central function of the legal profession is to help promotion of administration of justice. Any misdemeanour or misdeed or misbehaviour can become an act of delinquency if it infringes such norms or standards and it can be regarded as misconduct.

17. In *Black's Law Dictionary* "misconduct" is defined as:

> "A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour; its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness."

18. The expression "professional misconduct" was attempted to be defined by Darling, J., in *A Solicitor, ex p, Law Society, in re*[1] in the following terms:

> "If it is shown that an advocate in the pursuit of his profession has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to say that he is guilty of professional misconduct."

19. In *R.D. Saxena* v. *Balram Prasad Sharma*[2] this Court has quoted the above definition rendered by Darling, J., which was subsequently approved by the Privy Council in *George Frier Grahame* v. *Attorney-General*[3] and then observed thus: (SCC p. 275, para 19)

> "*19.* Misconduct envisaged in Section 35 of the Advocates Act is not defined. The section uses the expression 'misconduct, professional or

1 (1912) 1 KB 302 : (1911-13) All ER Rep 202 : 81 LJKB 245
2 (2000) 7 SCC 264
3 AIR 1936 PC 224

otherwise'. The word 'misconduct' is a relative term. It has to be considered with reference to the subject-matter and the context wherein such term occurs. It literally means wrong conduct or improper conduct."

20. An advocate abusing the process of court is guilty of misconduct. When witnesses are present in the court for examination the advocate concerned has a duty to see that their examination is conducted. We remind that witnesses who come to the court, on being called by the court, do so as they have no other option, and such witnesses are also responsible citizens who have other work to attend to for eking out a livelihood. They cannot be treated as less respectable to be told to come again and again just to suit the convenience of the advocate concerned. If the advocate has any unavoidable inconvenience it is his duty to make other arrangements for examining the witnesses who are present in the court. Seeking adjournments for postponing the examination of witnesses who are present in court even without making other arrangements for examining such witnesses is a dereliction of an advocate's duty to the court as that would cause much harassment and hardship to the witnesses. Such dereliction if repeated would amount to misconduct of the advocate concerned. Legal profession must be purified from such abuses of the court procedures. Tactics of filibuster, if adopted by an advocate, is also a professional misconduct.

21. In *State of U.P.* v. *Shambhu Nath Singh*[4] this Court has deprecated the practice of courts adjourning cases without examination of witnesses when such witnesses are in attendance. We reminded the courts thus:

> "We make it abundantly clear that if a witness is present in court he must be examined on that day. The court must know that most of the witnesses could attend the court only at heavy cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of income. The meagre amount of bhatta (allowance) which a witness may be paid by the court is generally a poor solace for the financial loss incurred by him. It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by presiding officers of the trial courts and it can be reformed by everyone provided the presiding officer concerned has a commitment to duty. No sadistic pleasure in seeing how other persons summoned by him as witnesses are stranded on account of the dimension of his judicial powers can be a persuading factor for granting such adjournments lavishly, that too in a casual manner."

22. When the Bar Council in its wider scope of supervision over the conduct of advocates in their professional duties comes across any instance of such misconduct it is the duty of the Bar Council concerned to refer the matter to its Disciplinary Committee. The expression "reason to believe" is employed in Section 35 of the Act only for the limited purpose of using it as

4 (2001) 4 SCC 667 : 2001 SCC (Cri) 798 : JT (2001) 4 SC 319

a filter for excluding frivolous complaints against advocates. If the complaint is genuine and if the complaint is not lodged with the sole purpose of harassing an advocate or if it is not actuated by mala fides, the Bar Council has a statutory duty to forward the complaint to the Disciplinary Committee.

23. In *Bar Council of Maharashtra* v. *M.V. Dabholkar*[5] a four-Judge Bench of this Court had held that the requirement of "reason to believe" cannot be converted into a formalised procedural roadblock, it being essentially a barrier against frivolous enquiries.

24. In our opinion, the State Bar Council has abdicated its duties when it was found that there was no prima facie case for the Disciplinary Committee to take up. The Bar Council of India also went woefully wrong in holding that there was no case for revision at all. In our considered view the appellant-complainant has made out a very strong prima facie case for the Disciplinary Committee of the State Bar Council to proceed with. We, therefore, set aside the order of the State Bar Council as well as that of the Bar Council of India and we hold that the complaint of the appellant would stand referred to the Disciplinary Committee of the State Bar Council.

25. Section 36(2) of the Advocates Act reads thus:

> "36. (2) Notwithstanding anything contained in this Chapter, the Disciplinary Committee of the Bar Council of India may, either of its own motion or on a report by any State Bar Council or an application made to it by any person interested, withdraw for enquiry before itself any proceedings for disciplinary action against any advocate pending before the Disciplinary Committee of any State Bar Council and dispose of the same."

26. As the complaint is now, by virtue of this judgment, pending before the Disciplinary Committee of the State Bar Council we consider the question whether it is appropriate that the Bar Council of India takes it up for the purpose of referring it to its Disciplinary Committee. As the misconduct alleged is of the year 1993-94 the ends of justice demand that the Disciplinary Committee of the Bar Council of India should now deal with the complaint. For the purpose we order that the complaint of the appellant would stand referred to the Bar Council of India under Section 36 of the Advocates Act. We now direct the said Disciplinary Committee to adopt such steps as are necessary for the disposal of the complaint in accordance with law and in the light of the observations made above.

27. The appeal is disposed of accordingly.

5 (1976) 2 SCC 291 : (1976) 2 SCR 48

Assistant Engineer (Mech.) in Public Works Department within a period of two months of the communication of this order in case the appellants are found suitable in all other respects according to the Rules. Learned counsel appearing on behalf of the State of Karnataka pointed out that there are many other candidates who had secured much higher marks than the appellants in case the above criteria is applied for selection. In view of the fact that appointments under the impugned Rules were made as back as in 1987 and only the present appellants had approached the Tribunal for relief, the case of other candidates cannot be considered as they never approached for redress within reasonable time. We are thus inclined to grant relief only to the present appellants who were vigilant in making grievance and approaching the Tribunal in time. Learned counsel for the State also submitted that the State Government has already framed new rules, and as such we do not find it necessary to quash the Rules under which the present selections were made as they are no longer in existence. No order as to costs.

(1992) 1 Supreme Court Cases 31

(BEFORE T.K. THOMMEN AND R.M. SAHAI, JJ.)

BYRAM PESTONJI GARIWALA .. Appellant;

Versus

UNION BANK OF INDIA AND OTHERS .. Respondents.

Civil Appeal No. 3698 of 1991†, decided on September 20, 1991

Civil Procedure Code, 1908 — Order 23 Rule 3 [as amended by CPC (Amendment) Act, 1976] and Order 3 Rule 1 — Compromise "in writing and signed by the parties" — Held, counsel representing the parties, instead of parties in person, competent to sign the compromise even on implied authority of parties — However, counsel should not ordinarily act on implied authority of parties except when warranted by the exigency of circumstances — Mischief rule of interpretation applied — Interpretation of Statutes

Civil Procedure Code, 1908 — Order 23 Rule 3 and Section 11 — Compromise decree — If not vitiated by fraud, misrepresentation, misunderstanding or mistake, is binding and operates as res judicata as also estoppel between the parties — Validity questioned six years after by means of chamber summons, barred by reason of delay, estoppel and res judicata

Interpretation of Statutes — Presumption — Legislature does not effect any fundamental change in long accepted system of law and practice without using express language to that effect in the statute

† From the Judgment and Order dated November 1, 1990 of the Bombay High Court in Chamber Summons No. 838 of 1990 in Execution Application No. 242 of 1989 in Suit No. 309 of 1972

Interpretation of Statutes — Liberal construction — Should be accorded to statutes relating to remedies and procedure

Jurisprudence — Law — Indian legal system is not a mere copy of English common law — Lacuna if any in the system should be cured by legislature (Paras 31 to 34)

Held :

Considering the traditionally recognised role of counsel in the common law system, and the evil sought to be remedied by Parliament by enacting the C.P.C. (Amendment) Act, 1976, namely, attainment of certainty and expeditious disposal of cases by reducing the terms of compromise to writing signed by the parties, and allowing the compromise decree to comprehend even matters falling outside the subject matter of the suit, but relating to the parties, the legislature cannot, in the absence of express words to such effect, be presumed to have disallowed the parties to enter into a compromise by counsel in their cause or by their duly authorised agents. Accordingly, the words 'in writing and signed by the parties', inserted in Order 23 Rule 3 by the C.P.C. (Amendment) Act, 1976, must be construed in consonance with the language of Order 3 Rule 1. (Para 38)

It has always been universally understood that a party can always act by his duly authorised representative. If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorisation by vakalatnama, act on behalf of his client. Not to recognise such capacity is not only to cause much inconvenience and loss to the parties personally, but also to delay the progress of proceedings in court. Any such presumption would be inconsistent with the legislative object of attaining quick reduction of arrears in court by elimination of uncertainties and enlargement of the scope of compromise. The legislature cannot be presumed to have fundamentally altered the position of counsel or a recognised agent, as traditionally understood in the system of law and practice followed in India and other 'common law countries' without expressly and directly so stating. It is a rule of legal policy that law should be altered deliberately rather than casually. Legislature does not make radical changes in law 'by a sidewind, but only by measured and considered provisions'. (Paras 39, 38, 28 and 29)

Patience Swinfen v. *Lord Chelmsford*, (1860) 5 H&N 890: SC 29 LJ(Ex) 382; *Matthews* v. *Munster*, (1887) 20 QB 141: 57 LJ QB 49; *Rondel* v. *Worsley*, (1967) 1 QB 443: (1966) 1 All ER 467; *(Babu) Sheonandan Prasad Singh* v. *Hakim Abdul Fateh Mohammad Reza*, AIR 1935 PC 119: 62 IA 196: 37 Bom LR 845; *Sourendra Nath Mitra* v. *Tarubala Dasi*, AIR 1930 PC 158: 57 IA 133: 32 Bom LR 645; *Hemanta Kumari Debi* v. *Midnapur Zamindari Co. Ltd.*, AIR 1919 PC 79: 46 IA 240: 22 Bom LR 488; *Ram Juwan* v. *Devendra Nath Gupta*, AIR 1960 MP 280: 1960 Jab LJ 269: 1960 MPLJ 642; *Vishnu Sitaram Auchat* v. *Ramchandra Govind Joshi*, AIR 1932 Bom 466: 34 BLR 849: 139 IC 830; *Jasimuddin Biswas* v. *Bhuban Jelini*, ILR 34 Cal 456; *Ganganand Singh* v. *Rameshwar Singh Bahadur*, AIR 1927 Pat 271: 6 Pat 381: 102 IC 449; *Chengan Souri Nayakam* v. *A.N. Menon*, AIR 1968 Ker 213: 1968 Ker LT 1: 1968 KLJ 62 (FB); *Jiwibai* v. *Ramkuwar Shriniwas Murarka Agarwala*, AIR 1947 Nag 17: 1947 NLJ 1: 229 IC 402 (FB); *Govindammal* v. *Marimuthu Maistry*, AIR 1959 Mad 7: (1958) 2 MLJ 34; *Laxmidas Ranchhoddas* v. *Savitabai Hargovindas Shah*, AIR 1956 Bom 54: 57 Bom LR 988: ILR 1955 Bom 955; *Jamilabai Abdul Kadar* v. *Shankarlal*

Gulabchand, (1975) 2 SCC 609: AIR 1975 SC 2202: 1975 Supp SCR 336; *Monoharbahal Colliery Calcutta* v. *K.N. Mishra*, (1975) 2 SCC 244: AIR 1975 SC 1632: 1975 Lab IC 1082, *referred to*

The Common Law in India, 1960 — The Hamlyn Lectures, Twelfth Series, pp. 1-4, *referred to*

Mohan Bai v. *Jai Kishan*, AIR 1983 Raj 240: 1983 Raj LR 365: 1983 Raj LW 289; *Mohan Bai (Smt)* v. *Smt Jai Kishan*, AIR 1988 Raj 22; *Nadirsha Hirji Baria* v. *Niranjankumar*, (1983) 1 GLR 774; *Kesarla Raghuram* v. *Dr Narasipalle Vasundara*, AIR 1983 AP 32: 1982 Hindu LR 609: (1983) 1 Ren LR 144, *referred to*

Neale v. *Gordon Lennox (Lady)*, 1902 AC 465 (HL); *Shepherd* v. *Robinson*, (1919) 1 KB 474: 88 LJ KB 873, *cited*

Halsbury's Laws of England, 4th edn., Vol. 3, para 1181; *Halsbury's Laws of England*, 4th edn., Vol. 3, para 1183, *referred to*

Francis Bennion's *Statutory Interpretation*, Butterworths, 1984, para 133, *relied on*

National Assistance Board v. *Wilkinson*, (1952) 2 QB 648: (1952) 2 All ER 255, *relied on*

There is no reason to assume that the legislature intended to curtail the implied authority of counsel, engaged in the thick of proceedings in court, to compromise or agree on matters relating to the parties, even if such matters exceed the subject matter of the suit. The relationship of counsel and his party or the recognised agent and his principal is a matter of contract; and with the freedom of contract generally, the legislature does not interfere except when warranted by public policy, and the legislative intent is expressly made manifest. There is no such declaration of policy or indication of intent in the present case. However, it will be prudent for counsel not to act on implied authority except when warranted by the exigency of circumstances demanding immediate adjustment of suit by agreement or compromise and the signature of the party cannot be obtained without undue delay. In these days of easier and quicker communication, such contingency may seldom arise. (Paras 30 and 37)

Rene David, *English Law and French Law* — Tagore Law Lectures, 1980, *referred to*

Statutes relating to remedies and procedure must receive a liberal construction 'especially so as to secure a more effective, a speedier, a simpler, and a less expensive administration of law'. (Para 29)

Crawford's *Statutory Construction*, para 254, *relied on*

In the present case, the notice issued under Order 21 Rule 22 was personally served on the defendant, but he did not appear or show cause why the decree should not be executed. The notice was accordingly made absolute and leave was granted to the plaintiff to execute the decree. The decree passed by the High Court in terms of the compromise was a valid decree. It remained unchallenged. The appellant never raised any doubt as to its validity or genuineness. He had no case that the decree was vitiated by fraud or misrepresentation or his counsel lacked authority to enter into a compromise on his behalf. Nevertheless, after six years he questioned its validity by means of chamber summons. This was an unsuccessful challenge by reason of delay, estoppel or res judicata, and was rightly so held by the High Court. (Paras 41 and 44)

A judgment by consent is intended to stop litigation between the parties just as much as a judgment resulting from a decision of the court at the end of a long drawn out fight. A compromise decree creates an estoppel by judgment. (Para 43)

Shankar Sitaram Sontakke v. *Balkrishna Sitaram Sontakke*, AIR 1954 SC 352: (1955) 1 SCR 9; *Sailendra Narayan Bhanja Deo* v. *State of Orissa*, AIR 1956 SC 346: 1956 SCR

72; *Mohanlal Goenka* v. *Benoy Kishna Mukherjee*, AIR 1953 SC 65: 1953 SCR 377, *relied on*

Spencer-Bower and Turner, *Res Judicata* (2nd end., p. 37), *relied on*

Appeal dismissed R-M/A/10915/C

Advocates who appeared in this case :

Arun Jaitey, Senior Advocate (R.F. Nariman, R. Karanjawala, Ms M. Karanjawala, Ms Nandini Gore and Ms Aditi Choudhary, Advocate, with him) for the Appellant;

V.A. Bobde, Senior Advocate (U.A. Rao and B.R. Agarwala, Advocates, with him) for the Respondents.

The Judgment of the Court was delivered by

THOMMEN, J.— Leave granted.

2. The appellant who is the defendant in Suit No. 309 of 1972 challenges the judgment of the Bombay High Court in Chamber Summons No. 838 of 1990 in Execution Application No. 242 of 1989 whereby the High Court held that the decree made against the defendant in terms of a compromise in writing and signed by counsel representing the parties, but not signed by the parties in person, was valid and binding on the parties, and in the absence of any challenge against the order made under Order XXI Rule 23, Civil Procedure Code allowing execution of the decree, the defendant was no longer entitled to resist execution by recourse to chamber summons. The High Court found that the decree was valid and in accordance with the provisions of Order XXIII Rule 3, as amended by the C.P.C. (Amendment) Act, 1976.

3. The only question which arises for consideration is as regards the construction of Order XXIII Rule 3, CPC. We shall read this provision, as amended by the C.P.C. (Amendment) Act, 1976, bracketing the newly added words:

> "Order XXIII, Rule 3. *Compromise of suit.*— Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, [in writing and signed by the parties] or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit:]
>
> [Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction had been arrived at, the court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the court, for reasons to be recorded, thinks fit to grant such adjournment.]
>
> [*Explanation.*— An agreement or compromise which is void or voidable under the Indian Contract Act, 1872, shall not be deemed to be lawful within the meaning of this rule.]"

4. Mr Arun Jaitley, appearing for the appellant, says that the High Court was wrong in holding that, notwithstanding the amendment of 1976 inserting the words 'in writing and signed by the parties', it was still sufficient if the terms of compromise were reduced to writing and signed by counsel representing the parties, and not necessarily by the parties in person. Any such construction would do violence to the provision as amended in 1976. He says that the object of the amendment was to provide that no agreement or compromise adjusting wholly or in part a pending suit was valid unless such compromise was evidenced in writing and signed by the parties in person. The expression 'parties', he contends, means only parties and none else. To read 'counsel' into that expression, as done by the High Court, is to presume that the legislature failed to say what it intended to say and to attempt to supply the omission by correcting the deficiency. This cannot be done. The legislature, on the other hand, made its intention explicit by providing that an agreement or compromise would form the basis of a decree only if the consensus was reduced to writing and signed by the parties. Neither an agent nor a pleader could act as a substitute for a party to sign the agreement or compromise. A decree based on a compromise not signed by the parties in person is a nullity and is incapable of execution.

5. Mr Jaitley submits that if the legislature had intended to authorise counsel independently to sign the memorandum containing the terms of settlement, and allow a decree to be passed in terms thereof, the legislature would have said so by further adding the words 'or their counsel'. In the absence of any such expression, it cannot be presumed that the legislature intended more than what it said and that 'party' included counsel. This argument, Mr Jaitley says, is fortified by the fact that for the first time the legislature has allowed a decree to be passed on the basis of compromise relating to matters concerning the parties, but extending beyond the subject matter of the suit. Such a wide power to compromise was most unlikely to be left in the hands of counsel, and it is, therefore, necessary to read the provision narrowly so as to read it as it now stands by adopting a strictly literal construction.

6. Mr V.A. Bobde appearing for the respondents, on the other hand, submits that it was always understood that the expression 'party' included his pleader in matters relating to appearance in court, and his counsel in the cause, therefore, has express or implied authority, unless specifically withdrawn or limited by the party, to represent him in court and do whatever is necessary in connection with the conduct of his suit including adjustment of the suit by agreement or compromise. In the absence of any such limitation or restriction of his authority, counsel appearing for a party is fully competent to put his signature to the terms of any com-

promise upon which a decree can be passed in proper compliance with the provisions of Order XXIII Rule 3 as it now stands. Any such decree, he says, is perfectly valid.

7. Mr Bobde submits that in the absence of express words to the contrary, 'party', in the context of proceedings in court, must necessarily include his recognised agent or pleader. This construction is warranted by the provisions of Order III, CPC. That this has been the consistent view adopted by courts in the construction of the expression 'party' in the context of proceedings in court is clear from the decisions of courts, and it is most unlikely that the legislature would have, by the amendment of 1976, limited the scope of 'party' so as to exclude the traditional role of the recognised agent or counsel. The legislative draftsmen are presumed to know the law of the land as it stood then, and, if they had intended to deviate therefrom, they would have explicitly stated so rather than leave it to future judicial construction. The Statement of Objects and Reasons for the amendment, he says, does not support the view canvassed by the appellant.

8. Sub-clause (*iii*) of clause 77 of the Statement of Objects and Reasons concerning the C.P.C. (Amendment) Act, 1976 states:

> "It is provided that an agreement or compromise under Rule 3 should be in writing and signed by the parties. This is with a view to avoiding the setting up of oral agreements or compromises to delay the progress of the suit.
>
> * * *
>
> In view of the words 'so far as it relates to the suit' in Rule 3, a question arises whether a decree which refers to the terms of a compromise in respect of matters beyond the scope of the suit is executable or whether the terms of the decree relating to the matters outside the suit can be enforced only by a separate suit. The amendment seeks to clarify the position."

The Statement of Objects and Reasons indicates that the amendment is intended to clarify that a compromise has to be in writing signed by the parties to avoid delay which might arise from the uncertainties of oral agreements. The amendment has also clarified that the terms of compromise are permitted to include all matters relating to the parties to the suit even if such matters fall outside the subject matter of the suit. The legislature has thus sought to attain certainty and clarity and widen the scope of compromise. The fundamental question is, in the absence of any contrary indication in the Statement of Objects and Reasons, can it be stated that the legislature has intended to exclude a pleader or a recognised agent from the expression 'party' when it has always been

understood, as explicitly stated in Order III Rule 1, that appearance of a party in court may be in person or by his recognised agent or pleader. In the absence of any provision to the contrary, can it be stated that the legislature, when using the expression 'parties' in Rule 3 of Order XXIII, limited it to parties in person and excluded their duly recognised agents or counsel?

9. The role of counsel in court in England is described in *Halsbury's Laws of England*, (4th edn. vol. 3, para 1181) as follows:

> "1181. *Counsel's authority.* At the trial of an action, counsel's authority extends, when it is not expressly limited, to the action and all matters incidental to it and to the conduct of the trial, such as withdrawing the record, challenging a juror, calling or not calling witnesses, cross-examining or not cross-examining witnesses, consenting to a reference to arbitration, a compromise, or a verdict, undertaking to appear, or, on the hearing of a motion for a new trial, consenting to a reduction of damages.
>
> The client's consent is not needed for a matter which is within the ordinary authority of counsel: thus if, in court, in the absence of the client, a compromise or settlement is entered into by counsel whose authority has not been expressly limited, the client is bound. If an action is settled in court in the presence of the client, his consent will be inferred, and he will not be heard to say that he did not understand what was going on ...."

10. The implied authority of counsel in England is, however, confined to matters falling within the subject matter of the suit. In the absence of express authority, counsel cannot enter into compromise on collateral matters:[1]

> "The authority of counsel to compromise is limited to the issues in the action: a compromise by counsel affecting collateral matters will not bind the client, unless he expressly assents; and it may be that a barrister has no authority to reach a binding settlement or compromise out of court."

11. A compromise is, however, not binding and is liable to be set aside in circumstances which would invalidate agreements between the parties:[2]

> "A compromise by counsel will not bind the client, if counsel is not apprised of facts the knowledge of which is essential in reference to the question on which he has to exercise his discretion, for example that the terms accepted had already been rejected by the client. Where counsel enters into a compromise in intended pursuance of terms agreed upon between the clients, and, owing to a

1 *Halsbury's Laws of England*, 4th edn., volume 3, para 1181
2 *Halsbury, id.*, para 1183

misunderstanding, the compromise fails to carry out the intentions of one side, the compromise does not bind the client, and the court will allow the consent to be withdrawn. Where, acting upon instructions to compromise, counsel consents under a misunderstanding to certain terms which do not carry into effect the intentions of counsel and the terms are thought by one party to be more extensive than the other party intends them to be, there is no agreement on the subject-matter of the compromise, and the court will set it aside. But a person who has consented to a compromise will not be allowed to withdraw his consent because he subsequently discovers that he has a good ground of defence."

12. Counsel's consent in certain circumstances such as duress or mistake may not bind the client:[3]

"If counsel's consent is given under duress, the client will not be bound, as when counsel, acting for a client alleged to be of unsound mind but believing him to be of sound mind, consented to certain terms for the withdrawal of Court of Protection proceedings against the client because of his fear of the inconvenience and ill-health likely to arise to the client from confinement.

A compromise or order made by consent by counsel for a minor or other person under disability is not binding on the client, unless it is sanctioned by the court as being for the benefit of the client. The court cannot, however, enforce a compromise on a minor against the opinion of his counsel."

13. One of the early English authorities on this point is *Patience Swinfen* v. *Lord Chelmsford*[4]. Delivering the judgment of the Court, Pollock, C.B., stated:

"... We are of opinion, that although a counsel has complete authority over the suit, the mode of conducting it, and all that is incident to it — such as withdrawing the record, withdrawing a juror, calling no witnesses, or selecting such as, in his discretion, he thinks ought to be called, and other matters which properly belong to the suit and the management and conduct of the trial — we think he has not, by virtue of his retainer in the suit, any power over matters that are collateral to it ...."

14. In *Matthews* v. *Munster*[5] Lord Esher M.R. stated: (QB p. 144)

"... The instances that are given shew that one of the things that counsel may do, so long as the request of the client to him to act as advocate is in force, is to assent to a verdict for a particular amount and upon certain conditions and terms; and the consent of the advo-

3 *Halsbury, ibid.*
4 (1860) 5 H&N 890, 922 : SC 29 LJ (Ex) 382
5 (1887) 20 QB 141, 144 : 57 LJ QB 49

cate to a verdict against his client and the withdrawing of imputations is a matter within the expression 'conduct of the cause and all that is incidental to it'. If the client is in court and desires that the case should go on and counsel refuses, if after that he does not withdraw his authority to counsel to act for him, and acquaint the other side with this, he must be taken to have agreed to the course proposed. This case is a still stronger one, for the client was not present, and it is not pretended that he ever withdrew his authority to counsel, but he now comes forward and asks that because he does not like what has been done it should be set aside as between himself and his opponent. This the court will not do, and this appeal must be dismissed."

See also *Rondel* v. *Worsley*[6] per Lord Denning M.R.

15. If this is the position of counsel in England, Scotland and Ireland, is his position the same in India in the conduct of cases in court? That the answer is affirmative, there is high judicial authority.

16. In *(Babu) Sheonandan Prasad Singh* v. *Hakim Abdul Fateh Mohammad Reza*[7], Lord Atkin, speaking for the Board, states: (AIR p. 121)

> "... As was laid down by this Board in *Sourendra Nath Mitra* v. *Tarubala Dasi*[8] counsel in India have the same implied authority to compromise an action as have counsel in the English courts. But if such authority is invoked to support an agreement of compromise the circumstances must be carefully examined. In the first instance the authority is an actual authority implied from the employment as counsel. It may however be withdrawn or limited by the client: in such a case the actual authority is destroyed or restricted; and the other party if in ignorance of the limitation could only rely upon ostensible authority. In this particular class of contract however the possibility of successfully alleging ostensible authority has been much restricted by the authorities as *Neale* v. *Gordon Lennox (Lady)*[9] and *Shepherd* v. *Robinson*[10] which make it plain that if in fact counsel has had his authority withdrawn or restricted the courts will not feel bound to enforce a compromise made by him contrary to the restriction even though the lack of actual authority is not known to the other party."

17. Lord Atkin emphasises the need to rely on express authority, rather than implied authority, particularly because of easier and quicker communication with the client. He says: (AIR p. 121)

6 (1967) 1 QB 443, 502 : (1966) 1 All ER 467
7 AIR 1935 PC 119, 121 : 62 IA 196 : 37 Bom LR 845
8 57 IA 133 : AIR 1930 PC 158 : 32 Bom LR 645
9 1902 AC 465 (HL)
10 (1919) 1 KB 474 : 88 LJ KB 873

"... In their Lordships' experience both in this country and in India it constantly happens, indeed it may be said that it more often happens, that counsel do not take upon themselves to compromise a case without receiving express authority from their clients for the particular terms; and that this position in each particular case is mutually known between the parties.

In such cases the parties are relying not on implied but on an express authority given ad hoc by the client."

18. However, collateral matters were understood to be beyond the scope of compromise. Lord Atkin said: (AIR p. 122)

"If the facts are as their Lordships assume, the matter compromised was in their opinion collateral to the suit and not only would it not be binding on the parties, but it would in any case be a matter in respect of which the court in pursuance of Order XXIII, Rule 3, should not make a decree."

19. Referring to the role of counsel in India and comparing him with his counterpart in Britain, Lord Atkin in *Sourendra Nath Mitra* v. *Tarubala Dasi*[8], says: (AIR p. 161)

"... Their Lordships regard the power to compromise a suit as inherent in the position of an advocate in India. The considerations which have led to this implied power being established in the advocates of England, Scotland and Ireland, apply in equal measure to India. It is a power deemed to exist because its existence is necessary to effectuate the relations between advocate and client, to make possible the duties imposed upon the advocate by his acceptance of the cause of his client."

20. Counsel's power to compromise is vital to the defence of his party while engaged on his behalf in the thick of a legal battle in court. Lord Atkin observes[8]: (AIR p. 161)

"The advocate is to conduct the cause of his client to the utmost of his skill and understanding. He must in the interests of his client be in the position, hour by hour, almost minute by minute, to advance this argument, to withdraw that; he must make the final decision whether evidence is to be given or not on any question of fact; skill in advocacy is largely the result of discrimination. These powers in themselves almost amount to powers of compromise: one point is given up that another may prevail. But in addition to these duties, there is from time to time thrown upon the advocate, the responsible task of deciding whether in the course of a case he shall accept an offer made to him, or on his part shall make an offer on his client's behalf to receive or pay something less than the full claim or the full possible liability. Often the decision must be made at once."

21. Emphasising the apparent authority of counsel, and the *raison d'etre* of such authority being the paramount interest of his client, and not an appendage of office, Lord Atkin states:[8] (AIR p. 161)

> "The apparent authority is derived from the known existence of the implied authority ....
>
> ... First, the implied authority of counsel is not an appendage of office, a dignity added by the courts to the status of barrister or advocate at law. It is implied in the interests of the client, to give the fullest beneficial effect to his employment of the advocate. Secondly, the implied authority can always be countermanded by the express directions of the client. No advocate has actual authority to settle a case against the express instructions of his client. If he considers such express instructions contrary to the interests of his client, his remedy is to return his brief.
>
> Their Lordships are unable to see why the above considerations should not apply to an advocate in India, whose duties to his client in the conduct of a suit in no wise differ from those of advocates in England, Scotland and Ireland ...."

22. Counsel's role in entering into a compromise has been traditionally understood to be confined to matters within the scope of the suit. However, a compromise decree may incorporate not only matters falling within the subject matter of the suit, but also other matters which are collateral to it. The position before the amendment in 1976 was that, in respect of the former, the decree was executable, but in respect of the latter, it was not executable, though admissible as judicial evidence of its contents.

23. Referring to Section 375 of the Code of Civil Procedure (Act 14 of 1882), (similar to Order XXIII Rule 3 CPC as it stood prior to the amendment of 1976), Lord Buckmaster, in *Hemanta Kumari Debi* v. *Midnapur Zamindari Co. Ltd.*[11] states: (AIR p. 81)

> "... In the first place, it is plain that the agreement or compromise, in whole and not in part, is to be recorded, and the decree is then to confine its operation to so much of the subject matter of the suit as is dealt with by the agreement .... Although the operative part of the decree would be properly confined to the actual subject matter of the then existing litigation the decree taken as a whole would include the agreement. This in fact is what the decree did in the present case. It may be that as a decree it was incapable of being executed outside the lands of the suit, but that does not prevent its being received in evidence of its contents."

24. In *Ram Juwan* v. *Devendra Nath Gupta*[12] the High Court states: (AIR p. 282)

11 AIR 1919 PC 79 : 46 IA 240 : 22 Bom LR 488
12 AIR 1960 MP 280 : 1960 Jab LJ 269 : 1960 MPLJ 642

"Where a consent decree contains terms that do not relate to the suit, ... such terms cannot be enforced in execution of the decree but they may be enforced as a contract by a separate suit."

See also *Vishnu Sitaram Auchat* v. *Ramchandra Govind Joshi*[13] and *Jasimuddin Biswas* v. *Bhuban Jelini*[14].

25. In *Ganganand Singh* v. *Rameshwar Singh Bahadur*[15] the High Court points out that a consent decree does not stand on a higher footing than a contract between the parties. The Court always has the jurisdiction to set aside a consent decree upon any ground which will invalidate an agreement between the parties. In the absence of any such ground, the consent decree is binding on the parties.

26. Courts in India have consistently recognised the traditional role of lawyers and the extent and nature of their implied authority to act on behalf of their clients. Speaking for a Full Bench of the Kerala High Court in *Chengan Souri Nayakam* v. *A.N. Menon*[16] K.K. Mathew, J. (as he then was) observed: (AIR p. 215)

"The construction of a document appointing an agent is different from the construction of a vakalat appointing counsel. In the case of an agent the document would be construed strictly and the agent would have only such powers as are conferred expressly or by necessary implication. In the case of counsel the rule is otherwise because there we are dealing with a profession where well known rules have crystallised through usage. It is on a par with a trade where the usage becomes an additional term of the contract, if not contrary to the general law or excluded by express agreement."

About the special position of the advocate, the learned Judge stated: (AIR p. 216)

"... Counsel has a tripartite relationship; one with the public, another with the court, and the third with his client. That is a unique feature. Other professions or callings may include one or two of these relationships but no other has the triple duty. Counsel's duty to the public is unique in that he has to accept all work from all clients in courts in which he holds himself out as practising, however unattractive the case or the client."

See also *Jiwibai* v. *Ramkumar Shriniwas Murarka Agarwala*[17], *Govindammal* v. *Marimuthu Maistry*[18] and *Laxmidas Ranchhoddas* v. *Savitabai Hargovindas Shah*[19].

13 AIR 1932 Bom 466 : 34 BLR 849 : 139 IC 830
14 ILR 34 Cal 456
15 AIR 1927 Pat 271 : 6 Pat 381 : 102 IC 449
16 AIR 1968 Ker 213 : 1968 Ker LT 1 : 1968 KLJ 62 (FB)
17 AIR 1947 Nag 17 : 1947 NLJ 1 : 229 IC 402 (FB)
18 AIR 1959 Mad 7 : (1958) 2 MLJ 34
19 AIR 1956 Bom 54 : 57 Bom LR 988 : ILR 1955 Bom 955

27. These principles were affirmed by this Court in *Jamilabai Abdul Kadar* v. *Shankarlal Gulabchand*[20]. Referring to a number of decisions on the point, V.R. Krishna Iyer, J. observes: (SCC p. 619, para 16)

> "... Those who know how courts and counsel function will need no education on the jurisprudence of lawyer's position and powers. Of course, we hasten to enter a caveat. It is perfectly open to a party, like any other principal, to mark out in the vakalat or by particular instructions forbidden areas or expressly withhold the right to act in sensitive matters, the choice being his, as the master. If the lawyer regards these fetters as inconsistent with his position, he may refuse or return the brief. But absent speaking instructions to the contrary, the power to act takes in its wings the right and duty to save a client by settling the suit if and *only* if he does so bona fide in the interests and for the advantage of his client."
>
> (emphasis in original)

See also *Monoharbahal Colliery Calcutta* v. *K.N. Mishra*[21].

28. After the amendment of 1976, a consent decree, as seen above, is executable in terms thereof even if it comprehends matters falling outside the subject matter of the suit, but concerning the parties. The argument of the appellant's counsel is that the legislature has intended that the agreement or compromise should be signed by the parties in person, because the responsibility for compromising the suit, including matters falling outside its subject matter, should be borne by none but the parties themselves. If this contention is valid, the question arises why the legislature has, presumably being well aware of the consistently followed practice of the British and Indian courts, suddenly interfered with the time-honoured role of lawyers in the conduct of cases without specifically so stating, but by implication? Can the legislature be presumed to have fundamentally altered the position of counsel or a recognised agent, as traditionally understood in the system of law and practice followed in India and other 'common law countries' without expressly and directly so stating? There is no indication in preparatory work such as the 54th report of the Law Commission dated February 6, 1973 or in the Statement of Objects and Reasons or in the words employed by the legislature that the concept of 'agents and pleaders' of Order III, CPC was in any manner altered. There is no warrant for any such presumption.

29. It is a rule of legal policy that law should be altered deliberately rather than casually. Legislature does not make radical changes in law 'by a sidewind, but only by measured and considered provisions'. (Francis Bennion's *Statutory Interpretation*, Butterworths, 1984, para 133). As

20 (1975) 2 SCC 609 : 1975 Supp SCR 336 : AIR 1975 SC 2202
21 (1975) 2 SCC 244 : AIR 1975 SC 1632 : 1975 Lab IC 1082

stated by Lord Devlin in *National Assistance Board* v. *Wilkinson*[22]: (QB p. 661)

> "It is a well established principle of construction that a statute is not to be taken as effecting a fundamental alteration in the general law unless it uses words that point unmistakably to that conclusion."

Statutes relating to remedies and procedure must receive a liberal construction 'especially so as to secure a more effective, a speedier, a simpler, and a less expensive administration of law'. See Crawford's *Statutory Construction*, para 254. The object of the amendment was to provide an appropriate remedy to expedite proceedings in court. That object must be borne in mind by adopting a purposive construction of the amended provisions. The legislative intention being the speedy disposal of cases with a view to relieving the litigants and the courts alike of the burden of mounting arrears, the word 'parties' must be so construed as to yield a beneficent result, so as to eliminate the mischief the legislature had in mind.

30. There is no reason to assume that the legislature intended to curtail the implied authority of counsel, engaged in the thick of proceedings in court, to compromise or agree on matters relating to the parties, even if such matters exceed the subject matter of the suit. The relationship of counsel and his party or the recognised agent and his principal is a matter of contract; and with the freedom of contract generally, the legislature does not interfere except when warranted by public policy, and the legislative intent is expressly made manifest. There is no such declaration of policy or indication of intent in the present case. The legislature has not evinced any intention to change the well recognised and universally acclaimed common law tradition of an ever alert, independent and active bar with freedom to manoeuvre with force and drive for quick action in a battle of wits typical of the adversarial system of oral hearing which is in sharp contrast to the inquisitorial traditions of the 'civil law' of France and other European and Latin American countries where written submissions have the pride of place and oral arguments are considered relatively insignificant. (See Rene David, *English Law and French Law* — Tagore Law Lectures, 1980). 'The civil law' is indeed equally efficacious and even older, but it is the product of a different tradition, culture and language; and there is no indication, whatever, that Parliament was addressing itself to the task of assimilating or incorporating the rules and practices of that system into our own system of judicial administration.

31. The Indian legal system is the product of history. It is rooted in our soil; nurtured and nourished by our culture, languages and traditions;

22 (1952) 2 QB 648 : (1952) 2 All ER 255

fostered and sharpened by our genius and quest for social justice; reinforced by history and heritage: it is not a mere copy of the English common law; though inspired and strengthened, guided and enriched by concepts and precepts of justice, equity and good conscience which are indeed the hallmark of the common law. In the words of M.C. Setalvad:[23]

> "... the common law of England with its statutory modifications and the doctrines of the English courts of equity has deeply coloured and influenced the laws and the system of judicial administration of a whole sub-continent inhabited by nearly four hundred million people. The law and jurisprudence of this vast community and its pattern of judicial administration are in many matters different from those of England in which they had their roots and from which they were nurtured. Yet they bear the unmistakable impress of their origin. The massive structure of Indian law and jurisprudence resembles the height, the symmetry and the grandeur of the common and statute law of England. In it one sees English law in the distant perspective of a new atmosphere and a strange clime."

Speaking of the common law in the wider sense, the learned author continues:

> "... But the English brought into India not only the mass of legal rules strictly known as the common law but also their traditions, outlook and techniques in establishing, maintaining and developing the judicial system. When, therefore, I speak of the common law in India I have in view comprehensively all that is of English origin in our system of law. In that wide meaning the expression will include not only what in England is known strictly as the common law but also its traditions, some of the principles underlying the English statute law, the equitable principles developed in England in order to mitigate the rigours of the common law and even the attitudes and methods pervading the British system of the administration of justice."

32. After the attainment of independence and the adoption of the Constitution of India, judicial administration and the constitution of the law courts remained fundamentally unchanged, except in matters such as the abolition of appeals to the Privy Council, the constitution of the Supreme Court of India as the apex court, the conferment of writ jurisdiction on all the High Courts, etc. The concept, structure and organisation of courts, the substantive and procedural laws, the adversarial system of trial and other proceedings and the function of judges and lawyers remained basically unaltered and rooted in the common law traditions in contradistinction to those prevailing in the civil law or other systems of law.

23 *The Common Law in India*, 1960 — The Hamlyn Lectures, Twelfth Series, pp. 1-4

33. In our own system of judicial administration, if strains have developed and cracks have appeared by the stresses and pressures of the time; if aberrations have become too obvious to be ignored or too deep-rooted to be corrected by an internal mechanism; if the traditional role of the legal profession requires urgent legislative scrutiny with a view to remedying the defects and strengthening and safeguarding the system; it is a matter exclusively for Parliament to consider; but the amendment in question is not addressed to that purpose.

34. Aberrations there always have been in every system of administration; but whether they are merely peripheral or transient in character — mere ripples on a placid pool — or symptomatic of deeper malady requiring structural modification by prompt legislative intervention is a matter of grave significance for the jurists, sociologists and political scientists to ponder over.

35. So long as the system of judicial administration in India continues unaltered, and so long as Parliament has not evinced an intention to change its basic character, there is no reason to assume that Parliament has, though not expressly, but impliedly reduced counsel's role or capacity to represent his client as effectively as in the past. On a matter of such vital importance, it is most unlikely that Parliament would have resorted to implied legislative alteration of counsel's capacity or status or effectiveness. In this respect, the words of Lord Atkin in *Sourendra*[8] comparing the Indian advocate with the advocate in England, Scotland and Ireland, are significant: (AIR p. 161)

> "There are no local conditions which make it less desirable for the client to have the full benefit of an advocate's experience and judgment. One reason, indeed, for refusing to imply such a power would be a lack of confidence in the integrity or judgment of the Indian advocate. No such considerations have been or indeed could be advanced, and their Lordships mention them but to dismiss them."

36. Similar is the view expressed by the Rajasthan High Court in *Mohan Bai* v. *Jai Kishan*[24]; *Mohan Bai (Smt)* v. *Smt Jai Kishan*[25] and by the Gujarat High Court in *Nadirsha Hirji Baria* v. *Niranjankumar alias Nireshkumar Dharamchand Shah*[26]. A contrary view has been expressed by the Andhra Pradesh High Court in *Kesarla Raghuram* v. *Dr Narasipalle Vasundara*[27], and it does not commend itself to us.

37. We may, however, hasten to add that it will be prudent for counsel not to act on implied authority except when warranted by the

24 AIR 1983 Raj 240 : 1983 Raj LR 365 : 1983 Raj LW 289
25 AIR 1988 Raj 22
26 (1983) 1 GLR 774
27 AIR 1983 AP 32 : 1982 Hindu LR 609 : (1983) 1 Ren LR 144

exigency of circumstances demanding immediate adjustment of suit by agreement or compromise and the signature of the party cannot be obtained without undue delay. In these days of easier and quicker communication, such contingency may seldom arise. A wise and careful counsel will no doubt arm himself in advance with the necessary authority expressed in writing to meet all such contingencies in order that neither his authority nor integrity is ever doubted. This essential precaution will safeguard the personal reputation of counsel as well as uphold the prestige and dignity of the legal profession.

38. Considering the traditionally recognised role of counsel in the common law system, and the evil sought to be remedied by Parliament by the C.P.C. (Amendment) Act, 1976, namely, attainment of certainty and expeditious disposal of cases by reducing the terms of compromise to writing signed by the parties, and allowing the compromise decree to comprehend even matters falling outside the subject matter of the suit, but relating to the parties, the legislature cannot, in the absence of express words to such effect, be presumed to have disallowed the parties to enter into a compromise by counsel in their cause or by their duly authorised agents. Any such presumption would be inconsistent with the legislative object of attaining quick reduction of arrears in court by elimination of uncertainties and enlargement of the scope of compromise.

39. To insist upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience, especially in the case of non-resident persons. It has always been universally understood that a party can always act by his duly authorised representative. If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorisation by vakalatnama, act on behalf of his client. Not to recognise such capacity is not only to cause much inconvenience and loss to the parties personally, but also to delay the progress of proceedings in court. If the legislature had intended to make such a fundamental change, even at the risk of delay, inconvenience and needless expenditure, it would have expressly so stated.

40. Accordingly, we are of the view that the words 'in writing and signed by the parties', inserted by the C.P.C. (Amendment) Act, 1976, must necessarily mean, to borrow the language of Order III Rule 1 CPC:

> "any appearance, application or act in or to any court, required or authorized by law to be made or done by a party in such court, may except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, *or by his*

recognized agent, or by a pleader, appearing, applying or acting as the case may be, on his behalf :

Provided that any such appearance shall, if the court so directs, be made by the party in person." (emphasis supplied)

41. In the present case, the notice issued under Order XXI Rule 22 was personally served on the defendant, but he did not appear or show cause why the decree should not be executed. The notice was accordingly made absolute by order dated January 23, 1990 and leave was granted to the plaintiff to execute the decree. The decree passed by the High Court on June 18, 1984 in terms of the compromise was a valid decree and it constituted res judicata. As stated by this Court in *Shankar Sitaram Sontakke* v. *Balkrishna Sitaram Sontakke*[28]: (AIR p. 355)

"... It is well settled that a consent decree is as binding upon the parties thereto as a decree passed by invitum. The compromise having been found not to be vitiated by fraud, misrepresentation, misunderstanding or mistake, the decree passed thereon has the binding force of 'res judicata'."

42. S.R. Das, C.J., in *Sailendra Narayan Bhanja Deo* v. *State of Orissa*[29], states: (AIR p. 351)

"... a judgment by consent or default is as effective an estoppel between the parties as a judgment whereby the court exercises its mind on a contested case ...."

43. A judgment by consent is intended to stop litigation between the parties just as much as a judgment resulting from a decision of the court at the end of a long drawn out fight. A compromise decree creates an estoppel by judgment. As stated by Spencer-Bower and Turner in *Res Judicata,* (2nd edn., page 37):

"Any judgment or order which in other respects answers to the description of a res judicata is nonetheless so because it was made in pursuance of the consent and agreement of the parties .... Accordingly, judgments, orders, and awards by consent have always been held no less efficacious as estoppels than other judgments, orders, or decisions, though doubts have been occasionally expressed whether, strictly, the foundation of the estoppel in such cases is not representation by conduct, rather than res judicata.

* * * "

See also *Mohanlal Goenka* v. *Benoy Kishna Mukherjee*[30].

44. The consent decree made on June 18, 1984 remained unchallenged. None questioned it. The appellant never raised any doubt

28 AIR 1954 SC 352 : (1955) 1 SCR 9
29 AIR 1956 SC 346 : 1956 SCR 72
30 AIR 1953 SC 65 : 1953 SCR 377

as to its validity or genuineness. He had no case that the decree was vitiated by fraud or misrepresentation or his counsel lacked authority to enter into a compromise on his behalf. Nevertheless, after six years he questioned its validity by means of chamber summons. This was an unsuccessful challenge by reason of delay, estoppel or res judicata, and was rightly so held by the High Court.

45. Accordingly, we see no merit in this appeal. It is dismissed. However, in the circumstances of the case, we do not make any order as to costs.

(1992) 1 Supreme Court Cases 49

(BEFORE KULDIP SINGH AND M.M. PUNCHHI, JJ.)

NETHALA POTHURAJU AND OTHERS .. Appellants;

Versus

STATE OF ANDHRA PRADESH .. Respondent.

Criminal Appeal No. 538 of 1983†, decided on September 11, 1991

Penal Code, 1860 — Sections 149, 141 & 34 and 302 — Though trial court convicting more than five persons under Sections 302 r/w 149 but High Court on appeal acquitting some of them as a result of which the total number of convicted accused reduced to less than five and thus Section 149 becoming inapplicable — Held, accused can still be convicted with the aid of Section 34 if the facts justify the same — Held on facts, the remaining accused acted in furtherance of their common intention of causing death of the deceased — Hence their conviction altered to that under Sections 302 r/w 34

Penal Code, 1860 — Sections 149 and 34 — On Section 149 becoming inapplicable owing to acquittal of some accused, held, the rest can be convicted with the aid of Section 34 if common intention established

Seven persons A-1 to A-7 were tried for the offences under Sections 147, 148, 323, 379 and 302 read with Section 149 IPC on the allegations of causing death of the deceased. The trial court convicted A-1 to A-6 under Sections 148 and 302 read with Section 149 IPC and sentenced them to imprisonment for life. On appeal the High Court confirmed the conviction and sentence of A-1 to A-3 but set aside the conviction and sentence of A-4 to A-6. The Supreme Court granted leave to appeal on the limited question of applicability of Section 149.

Held :

The appellants being only three in number, there was no question of their forming an unlawful assembly within the meaning of Section 141 IPC. It is not the prosecution case that apart from the seven accused persons there were some other unidentified persons who were involved in the crime. The High

† From the Judgment and Order dated April 6, 1982 of the Andhra Pradesh High Court in Crl. A. No. 469 of 1981

(2013) 11 Supreme Court Cases 435

(BEFORE R.M. LODHA AND ANIL R. DAVE, JJ.)

NARAIN PANDEY .. Appellant;

Versus

PANNALAL PANDEY .. Respondent.

Civil Appeal No. 6363 of 2004*, decided on December 10, 2012

A. **Evidence Act, 1872 — Ss. 137, 146 and 138 — Non-rebuttal of evidence — Oral submissions — Held, do not amount to rebuttal — Respondent neither cross-examined witnesses on relevant points nor offered himself for cross-examination in respect of affidavit filed in support of his reply — Held, mere oral submissions unsupported by oral or documentary evidence would not dilute serious charges of professional misconduct and unsettle well founded findings based on evidence on record — Findings of disciplinary committee BCUP restored — Advocates Act, 1961, S. 35**
(Paras 9 and 11)

B. **Advocates Act, 1961 — Ss. 35, 36 and 38 — Professional misconduct — Advocate filing vakalatnamas without authority and later on filing fictitious compromises — Punishment — Nature and objectives of — Legal profession being a noble profession, held, award of punishment for professional misconduct is a delicate and sensitive exercise — It has twin objectives of deterrence and correction — Held, leniency in punishment where respondent advocate found guilty of grave and serious professional misconduct would amount to compromise with purity and dignity of legal profession which in turn affect faith and respect of people in rule of law — In the circumstances of case, respondent advocate is suspended from practise for a period of three years (Paras 13 and 15 to 20)**

Partly allowing the appeal, the Supreme Court

Held :

The consideration of the matter by the Disciplinary Committee, BCI is clearly flawed. It overlooked the most vital aspect that seven witnesses tendered in evidence by the complainant had stated clearly and unequivocally that the respondent advocate had filed forged and fabricated vakalatnamas on their behalf and they had not filed any compromise in the Consolidation Court. The respondent advocate had not at all cross-examined these witnesses on the above aspect although they were cross-examined on other aspects. There was ample documentary evidence as well which proved the allegations made in the complaint that the respondent advocate had filed forged and fabricated vakalatnamas as well as compromises in diverse proceedings before the Consolidation Court. The Disciplinary Committee, BCI accepted the oral submission of the respondent advocate (the appellant therein) without realising that the respondent even did not offer himself for cross examination in respect of the affidavit that he filed in support of his reply. As a matter of fact, the

* From the Judgment and Order dated 20-6-2004 of the Disciplinary Committee of Bar Council of India in DC Appeal No. 67 of 2002

respondent advocate did not tender any evidence whatsoever in rebuttal. Mere oral submission unsupported by oral or documentary evidence on behalf of the respondent advocate did not justify reversal of thorough and well-considered finding by the Disciplinary Committee, BCUP on analysis of the oral and documentary evidence let in by the complainant in support of the complaint. (Para 9)

The findings recorded by the Disciplinary Committee, BCUP that the respondent advocate was involved in a very serious professional misconduct by filing vakalatnamas without any authority and later on filing fictitious compromises which adversely affected the interest of the parties concerned deserve to be restored. (Para 11)

The respondent advocate was involved in a very serious professional misconduct by filing vakalatnamas without any authority and later on filing fictitious compromises. The professional misconduct committed by the respondent is extremely grave and serious. He has indulged in mischief-making. An advocate found guilty of having filed vakalatnamas without authority and then filing fictitious compromises without any authority deserves punishment commensurate with the degree of misconduct that meets the twin objectives—deterrence and correction. Fraudulent conduct of a lawyer cannot be viewed leniently lest the interest of the administration of justice and the highest traditions of the Bar may become casualty. By showing undue sympathy and leniency in a matter such as this where the advocate has been found guilty of grave and serious professional misconduct, the purity and dignity of the legal profession will be compromised. Any compromise with the purity, dignity and nobility of the legal profession is surely bound to affect the faith and respect of the people in the rule of law. Moreover, the respondent advocate had been previously found to be involved in a professional misconduct and he was reprimanded. Having regard to all these aspects, it would be just and proper if the respondent advocate is suspended from practise for a period of three years from the date of this judgment. (Para 20)

Bar Council of Maharashtra v. *M.V. Dabholkar*, (1975) 2 SCC 702; *V.C. Rangadurai* v. *D. Gopalan*, (1979) 1 SCC 308; *M. Veerabhadra Rao* v. *Tek Chand*, 1984 Supp SCC 571; *Dhanraj Singh Choudhary* v. *Nathulal Vishwakarma*, (2012) 1 SCC 741 : (2012) 1 SCC (Civ) 385 : (2012) 1 SCC (Cri) 761 : (2012) 1 SCC (L&S) 316, *relied on*

'*The Practice of Law is a Public Utility*' '*The Lawyer, The Public and Professional Responsibility*' by F. Raymond Marks *et al* Chicago American Bar Foundation, 1972, pp. 288-89, *cited*

PK-M/51179/SV

Advocates who appeared in this case :
Anantha Narayana M.G. and R.D. Upadhyay, Advocates, for the Appellant;
Dinesh Kr. Garg, Advocate, for the Respondent.

Chronological list of cases cited ***on page(s)***

1. (2012) 1 SCC 741 : (2012) 1 SCC (Civ) 385 : (2012) 1 SCC (Cri) 761 : (2012) 1 SCC (L&S) 316. *Dhanraj Singh Choudhary* v. *Nathulal Vishwakarma* 442*f-g*, 443*a-b*
2. 1984 Supp SCC 571. *M. Veerabhadra Rao* v. *Tek Chand* 442*a-b*, 442*d*, 442*e*
3. (1979) 1 SCC 308, *V.C. Rangadurai* v. *D. Gopalan* 440*g-h*, 443*a*
4. (1975) 2 SCC 702, *Bar Council of Maharashtra* v. *M.V. Dabholkar* 440*b-c*, 442*c-d*

The Judgment of the Court was delivered by

R.M. LODHA, J.— The complainant is in appeal under Section 38 of the Advocates Act, 1961 (for short "the 1961 Act") aggrieved by the judgment and order dated 20-6-2004 passed by the Disciplinary Committee of the Bar Council of India.

2. The appellant filed a complaint against the respondent, an advocate practising in Tehsil Gyanpur, District Sant Rabidass Nagar, Bhadohi under Section 35 of the 1961 Act before the Bar Council of Uttar Pradesh (for short "BCUP") alleging that he is involved in a number of false cases by forging and fabricating documents including settlement documents without the knowledge of the parties in the Consolidation Court. The complainant alleged that besides the cases of other people, in the case of the complainant also without his knowledge and other co-khatedars, the respondent filed a compromise deed by forging and fabricating their signatures and obtained orders from the Consolidation Court. The complainant gave the details of four cases in this regard. The complainant also stated in the complaint that the respondent has been earlier held guilty of professional misconduct and, in this regard, referred to the judgment in *Diwakar Prasad Shukla* v. *Panna Lal Pandey*. The complainant prayed that the respondent be proceeded against for professional misconduct and be punished by cancelling his licence to practice.

3. The complaint was referred to its Disciplinary Committee by BCUP. The respondent filed written statement to the complaint and denied the allegations made in the complaint. In his reply, the respondent denied that he has forged signatures or created any fictitious compromise documents. He set up the plea that the complaint has been filed against him due to enmity.

4. The complainant filed his affidavit in support of the complaint and in the course of enquiry examined seven witnesses. The complainant also produced documentary evidence. On the other hand, although the respondent filed his affidavit in support of the reply but he neither offered himself for cross-examination nor did he let in any evidence in opposition to the complaint and in support of his reply.

5. The Disciplinary Committee, BCUP considered the evidence tendered by the complainant at quite some length and observed that all the witnesses produced by the complainant had supported the allegations made in the complaint; the witnesses had stated that compromises which were filed by the respondent advocate were not signed by them and they had never engaged the respondent as their advocate to conduct their cases in the Consolidation Court. The Disciplinary Committee, BCUP also observed that the respondent advocate did not cross-examine the witnesses of the complainant on this point. On careful analysis of the evidence, the Disciplinary Committee, BCUP concluded as follows:

> "From the above discussion and from the perusal of documents it is clear that accused advocate is involved in a very serious professional misconduct by filing vakalatnamas without any authority and later on

filing fictitious compromise which adversely affect the interest of the parties concerned...."

6. Insofar as the respondent's past conduct was concerned, the Disciplinary Committee, BCUP noted thus:

"From the perusal of judgment passed by the State Bar Council and the Bar Council of India, it is established that the State Bar Council had taken lenient view by reprimanding the accused advocate which was modified by the Bar Council of India who affirmed the reprimand order and also imposed Rs 1000 as costs, failing which accused advocate will be suspended for a period of six months. The matter involved in the said case is that the accused advocate had filed a fictitious compromise in the Court of Consolidation Officer. Present complaint is also about farzy (fabricated) vakalatnama and fictitious compromise."

7. The Disciplinary Committee, BCUP having regard to the respondent's previous professional misconduct and the finding that he was involved in a very serious professional misconduct by filing vakalatnamas without any authority and later on filing fictitious compromises, passed an order dated 28-5-2002 debarring him from practise for a period of seven years from the date of the judgment.

8. The respondent advocate challenged the order of the Disciplinary Committee, BCUP in appeal under Section 37 of the 1961 Act before the Disciplinary Committee of the Bar Council of India (BCI). The Disciplinary Committee, BCI heard the parties and held that the respondent herein (the appellant therein) had acted negligently in the matters before the Chakbandi Officer. However, the Disciplinary Committee, BCI did not agree with the finding of the Disciplinary Committee, BCUP that the advocate had forged the signatures. The Disciplinary Committee, BCI, accordingly, modified the order of punishment and reprimanded him and also imposed a cost of Rs 1000 to be paid by him to BCI towards the Advocates Welfare Fund and if the amount was not paid within one month from the date of the receipt of the order he would be suspended from practising for a period of six months. The order passed by the Disciplinary Committee, BCI on 20-6-2004 is the subject-matter of appeal.

9. The consideration of the matter by the Disciplinary Committee, BCI is clearly flawed. It overlooked the most vital aspect that seven witnesses tendered in evidence by the complainant had stated clearly and unequivocally that the respondent advocate had filed forged and fabricated vakalatnamas on their behalf and they had not filed any compromise in the Consolidation Court. The respondent advocate had not at all cross-examined these witnesses on the above aspect although they were cross-examined on other aspects. There was ample documentary evidence as well which proved the allegations made in the complaint that the respondent advocate had filed forged and fabricated vakalatnamas as well as compromises in diverse proceedings before the Consolidation Court.

10. The Disciplinary Committee, BCI accepted the oral submission of the respondent advocate (the appellant therein) without realising that the respondent even did not offer himself for cross-examination in respect of the affidavit that he filed in support of his reply. As a matter of fact, the respondent advocate did not tender any evidence whatsoever in rebuttal. Mere oral submission unsupported by oral or documentary evidence on behalf of the respondent advocate did not justify reversal of thorough and well-considered finding by the Disciplinary Committee, BCUP on analysis of the oral and documentary evidence let in by the complainant in support of the complaint. It is true that the complainant and the respondent advocate are uncle and nephew and some dispute regarding the property amongst the family members of the appellant and the respondent was going on but on that basis the well-reasoned and carefully written finding recorded by the Disciplinary Committee, BCUP was not liable to be reversed by the Disciplinary Committee, BCI.

11. The finding recorded by the Disciplinary Committee, BCI, "this Committee on perusal of the allegations made in the complaint does not agree with the findings of appearing on behalf of both the sides and forging the signatures arrived at by the Disciplinary Committee of the State Bar Council of Uttar Pradesh and the order wherein the appellant is debarred from practise for seven years" cannot be sustained.

12. On careful consideration of the entire material placed on record, we are of the considered view that the findings recorded by the Disciplinary Committee, BCUP that the respondent advocate was involved in a very serious professional misconduct by filing vakalatnamas without any authority and later on filing fictitious compromises which adversely affected the interest of the parties concerned deserve to be restored and we order accordingly.

13. The question now is of award of just and proper punishment. As noted above, the Disciplinary Committee, BCUP debarred the respondent from practise for a period of seven years. The Disciplinary Committee, BCI in the impugned order while holding that the respondent should have been careful in dealing with the matters before the Chakbandi Officer and that he had acted negligently modified the order of punishment awarded by the Disciplinary Committee, BCUP and reprimanded the respondent advocate (the appellant therein) and also imposed costs and default punishment, as noted above.

14. The award of punishment for professional misconduct is a delicate and sensitive exercise. The Bar Council of India Rules, as amended from time to time, have been made by the BCI in exercise of its rule-making powers under the 1961 Act. Chapter II, Part VI deals with standards of professional conduct and etiquette. Its Preamble reads as under:

> "An advocate shall, at all times, *comport* himself in a manner befitting his status as an officer of the court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person, who is not a member of the Bar, or for a member of the Bar in his

non professional capacity may still be improper for an advocate. Without prejudice to the generality of the foregoing obligation, an advocate shall fearlessly uphold the interest of his client, and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit. The rules [hereinafter] mentioned contain canons of conduct and etiquette adopted as general guides; yet the specific mention thereof shall not be construed as a denial of the existence of others equally imperative though not specifically mentioned." (emphasis in original)

15. The matters relating to professional misconduct of advocates under the 1961 Act have reached this Court from time to time. It is not necessary to deal with all such cases: reference to some of the cases shall suffice.

16. In *Bar Council of Maharashtra* v. *M.V. Dabholkar*[1] a seven-Judge Bench of this Court was concerned with an appeal filed under Section 38 of the 1961 Act by the Bar Council of Maharashtra and the main controversy therein centred around the meaning of the expression "person aggrieved". While dealing with the said controversy, V.R. Krishna Iyer, J. in his concurring opinion made the following weighty observations with regard to the Bar and its members: (SCC p. 718, para 52)

> "52. The Bar is not a private guild, like that of 'barbers, butchers and candlestick-makers' but, by bold contrast, a public institution committed to public justice and pro bono publico service. The grant of a monopoly licence to practice law is based on three assumptions: (*1*) There is a socially useful function for the lawyer to perform, (*2*) The lawyer is a professional person who will perform that function, and (*3*) His performance as a professional person is regulated by himself not more formally, by the profession as a whole. The central function that the legal profession must perform is nothing less than the administration of justice ('*The Practice of Law is a Public Utility*' '*The Lawyer, The Public and Professional Responsibility*' by F. Raymond Marks *et al* Chicago American Bar Foundation, 1972, pp. 288-89). A glance at the functions of the Bar Council, and it will be apparent that a rainbow of public utility duties, including legal aid to the poor, is cast on these bodies in the national hope that the members of this monopoly will serve society and keep to canons of ethics befitting an honourable order. If pathological cases of member misbehaviour occur, the reputation and credibility of the Bar suffer a mayhem and who, but the Bar Council, is more concerned with and sensitive to this potential disrepute the few black sheep bring about? The official heads of the Bar i.e. the Attorney General and the Advocates General too are distressed if a lawyer 'stoops to conquer' by resort to soliciting, touting and other corrupt practices."

17. In *V.C. Rangadurai* v. *D. Gopalan*[2] a majority judgment in an appeal filed under Section 38 of the 1961 Act speaking through V.R. Krishna Iyer, J. observed as follows: (SCC pp. 311-13, paras 4-6 & 11-12)

1 (1975) 2 SCC 702
2 (1979) 1 SCC 308

"4. Law is a noble profession, true; but it is also an elitist profession. Its ethics, in practice, (not in theory, though) leave much to be desired, if viewed as a profession *for the people*. When the Constitution under Article 19 enables professional expertise to enjoy a privilege and the Advocates Act confers a monopoly, the goal is not assured income but commitment to the people — the common people whose hunger, privation and hamstrung human rights need the advocacy of the profession to change the existing order into a Human Tomorrow. This desideratum gives the clue to the direction of the penance of a deviant geared to correction. Serve the people free and expiate your sin, is the hint.

5. Law's nobility as a profession lasts only so long as the members maintain their commitment to integrity and service to the community. Indeed, the monopoly conferred on the legal profession by Parliament is coupled with a responsibility a responsibility towards the people, especially the poor. Viewed from this angle, every delinquent who deceives his common client deserves to be frowned upon. This approach makes it a reproach to reduce the punishment, as pleaded by the learned counsel for the appellant.

6. But, as we have explained at the start, every punishment, however has a functional duality — deterrence and correction. Punishment for professional misconduct is no exception to this 'social justice' test. In the present case, therefore, from the punitive angle, the deterrent component persuades us not to interfere with the suspension from practice reduced 'benignly' at the appellate level to one year. From the correctional angle, a gesture from the Court may encourage the appellant to turn a new page. He is not too old to mend his ways. He has suffered a litigative ordeal, but more importantly he has a career ahead. To give him an opportunity to rehabilitate himself by changing his ways, resisting temptations and atoning for the serious delinquency, by a more zealous devotion to people's causes like legal aid to the poor, may be a step in the correctional direction.

* * *

11. Wide as the power may be, the order must be germane to the Act and its purposes, and latitude cannot transcend those limits. Judicial 'Legisputation' to borrow a telling phrase of J. Cohen* is not legislation but application of a given legislation to new or unforeseen needs and situations broadly falling within the statutory provision. In that sense, 'interpretation is inescapably a kind of legislation'*. This is not legislation stricto sensu but application, and is within the court's province.

12. We have therefore sought to adapt the punishment of suspension to serve two purposes injury and expiation. We think the ends of justice will be served best in this case by directing suspension plus a

* Ed.: Dickerson: *The Interpretation and Application of Statutes*, p. 238.

provision for reduction on an undertaking to this Court to serve the poor for a year. Both are orders within this Court's power."

(emphasis in original)

18. In *M. Veerabhadra Rao* v. *Tek Chand*[3] a three-Judge Bench of this Court considered the relevant provisions contained in the Bar Council of India Rules with reference to standards of professional conduct and etiquette and also sub-section (3) of Section 35 of the 1961 Act. In para 28 of the Report, this Court observed thus: (SCC p. 586)

"*28.* Adjudging the adequate punishment is a ticklish job and it has become all the more ticklish in view of the miserable failure of the peers of the appellant on whom jurisdiction was conferred to adequately punish a derelict member. To perform this task may be an unpalatable and onerous duty. We, however, do not propose to abdicate our function howsoever disturbing it may be."

18.1. Then in para 30 this Court observed that the legal profession was monopolistic in character and this monopoly itself inheres certain high traditions which its members are expected to upkeep and uphold. The Court then referred to the decision of this Court in *M.V. Dabholkar*[1] and observed as follows: (*Tek Chand case*[3], SCC p. 588)

"*30.* ... If these are the high expectations of what is described as a noble profession, its members must set an example of conduct worthy of emulation. If any of them falls from that high expectation, the punishment has to be commensurate with the degree and gravity of the misconduct."

18.2. Then in para 31 of the Report this Court held as under: (*Tek Chand case*[3], SCC pp. 588-89)

"*31.* Having given the matter our anxious consideration, looking to the gravity of the misconduct and keeping in view the motto that the punishment must be commensurate with the gravity of the misconduct, we direct that the appellant M. Veerabhadra Rao shall be suspended from practice for a period of five years that is up to and inclusive of 31-10-1989. To that extent we vary the order both of the Disciplinary Committee of the State Bar Council as well as the Disciplinary Committee of the Bar Council of India."

19. In a recent decision of this Court in *Dhanraj Singh Choudhary* v. *Nathulal Vishwakarma*[4] this Court speaking through one of us (R.M. Lodha, J.) in para 23 of the Report observed as follows: (SCC p. 747)

"*23.* The legal profession is a noble profession. It is not a business or a trade. A person practising law has to practise in the spirit of honesty and not in the spirit of mischief-making or money-getting. An advocate's

3 1984 Supp SCC 571

1 *Bar Council of Maharashtra* v. *M.V. Dabholkar*, (1975) 2 SCC 702

4 (2012) 1 SCC 741 : (2012) 1 SCC (Civ) 385 : (2012) 1 SCC (Cri) 761 : (2012) 1 SCC (L&S) 316

attitude towards and dealings with his client have to be scrupulously honest and fair."

19.1. In para 24 the observations made in *V.C. Rangadurai*[2] were quoted and then in para 25 of the Report the Court held as under: (*Nathulal Vishwakarma case*[4], SCC p. 747)

> "25. Any compromise with the law's nobility as a profession is bound to affect the faith of the people in the rule of law and, therefore, unprofessional conduct by an advocate has to be viewed seriously. A person practising law has an obligation to maintain probity and high standard of professional ethics and morality."

19.2. The Court in para 32 (p. 748) observed that the punishment for professional misconduct has twin objectives — deterrence and correction.

20. In the light of the above legal position, we now consider the question of punishment. We have restored the finding of the Disciplinary Committee, BCUP viz. that the respondent advocate was involved in a very serious professional misconduct by filing vakalatnamas without any authority and later on filing fictitious compromises. The professional misconduct committed by the respondent is extremely grave and serious. He has indulged in mischief-making. An advocate found guilty of having filed vakalatnamas without authority and then filing fictitious compromises without any authority deserves punishment commensurate with the degree of misconduct that meets the twin objectives — deterrence and correction. Fraudulent conduct of a lawyer cannot be viewed leniently lest the interest of the administration of justice and the highest traditions of the Bar may become casualty. By showing undue sympathy and leniency in a matter such as this where the advocate has been found guilty of grave and serious professional misconduct, the purity and dignity of the legal profession will be compromised. Any compromise with the purity, dignity and nobility of the legal profession is surely bound to affect the faith and respect of the people in the rule of law. Moreover, the respondent advocate had been previously found to be involved in a professional misconduct and he was reprimanded. Having regard to all these aspects, in our view, it would be just and proper if the respondent advocate is suspended from practise for a period of three years from today. We order accordingly.

21. The order passed by the Disciplinary Committee, BCI is modified and the respondent advocate is awarded punishment for his professional misconduct, as indicated above. The civil appeal is allowed to that extent with no order as to costs.

22. The Registrar shall send copies of the order to the Secretary, State Bar Council, Uttar Pradesh and the Secretary, Bar Council of India immediately.

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2 *V.C. Rangadurai* v. *D. Gopalan*, (1979) 1 SCC 308

4 *Dhanraj Singh Choudhary* v. *Nathulal Vishwakarma*, (2012) 1 SCC 741 : (2012) 1 SCC (Civ) 385 : (2012) 1 SCC (Cri) 761 : (2012) 1 SCC (L&S) 316

(2004) 5 Supreme Court Cases 689

(BEFORE V.N. KHARE, C.J. AND S.B. SINHA AND S.H. KAPADIA, JJ.)

NORATANMAL CHOURARIA . . Appellant;

Versus

M.R. MURLI AND ANOTHER . . Respondents.

Civil Appeal No. 5476 of 1999†, decided on April 16, 2004

A. **Advocates Act, 1961 — Ss. 35 & 38 — Misconduct — Meaning — Professional or other misconduct — Should ordinarily be determined qua profession — Quantum of punishment should be determined by applying the test of proportionality and having regard to the nature of acts complained of — Complaint of misconduct made against advocate-landlord by tenant during pendency of rent control proceedings initiated by the former against the latter in which the former appeared not as an advocate but as a litigant-in-person — Having regard to absence of any follow-up action on the part of the complainant-tenant in respect of the alleged criminal act, Disciplinary Committee of Bar Council of India took the view that the acts and omissions alleged against the advocate litigant were unreliable — Held on facts, Supreme Court's interference not called for**

B. **Advocates Act, 1961 — S. 38 — Appeal — Though Supreme Court's jurisdiction under S. 38 is wide but findings of Disciplinary Committee of Bar Council of India are entitled to great weight**

A rent control proceeding was initiated by the respondent landlord, an advocate, against the appellant tenant. While the proceeding was pending in the Small Cause Court, the appellant filed a complaint before the State Bar Council against the first respondent alleging the following acts of omission and commission constituting misconduct: (*1*) On 8-10-1993 when the appellant came out of the court hall after attending the appeal pending there, the first respondent allegedly came from behind and hit him on his back and ran away. (*2*) On 26-10-1993 while the appellant was coming out of the court hall, the first respondent accompanied by some rowdy elements threatened to kill him. The matter was allegedly reported to the police on the same day. (*3*) On 1-3-1995 when the Judge left for his chamber during the lunch break and while the appellant was leaving the court hall along with his advocate the first respondent kicked him on the knee of his left leg in the courtroom with an intention to cause injury and further asked him not to appear in the court for evidence. The Disciplinary Committee of the State Bar Council initiated proceedings but the matter was later transferred to the Disciplinary Committee of the Bar Council of India. The Disciplinary Committee of the Bar Council of India noticed that in relation to the aforementioned acts of omission and commission on the part of the respondents, no criminal proceeding was initiated by filing a complaint petition by the appellant. No charge-sheet had also been filed by the police in relation to the occurrence dated 26-10-1993 wherefor an FIR had been lodged. It was further accepted that the first respondent had not been appearing in the aforementioned rent control proceedings as an advocate but as a party-in-person. Having regard to the fact that till the date of passing of the impugned order neither the appellant

† From the Judgment and Order dated 27-2-1999 of the Disciplinary Committee of the Bar Council of India in BCITR No. 73 of 1997

produced any document to substantiate any follow-up action on his part in respect of the complaint filed by him before the police authority, nor did he file any private complaint, the Committee was prima facie of the view that the factum of occurrence of the said incidents was not reliable. Further, it was noticed that the first respondent appeared in the said litigation not as an advocate but as a litigant-in-person. In the appeal before the Supreme Court it was submitted on behalf of the appellant that under Section 35 of the Advocates Act an advocate on the roll of the Bar Council can be proceeded against for committing any misconduct which may not be confined to professional misconduct; that the acts alleged in the complaint were not expected of a member of the legal profession and, thus, the same must be held to be acts of misconduct; and that the Bar Council grossly erred in passing the impugned order.

Dismissing the appeal, the Supreme Court

Held :

No case has been made out for interfering with the impugned order of the Bar Council. (Para 22)

Misconduct has not been defined in the Advocates Act, 1961. Misconduct, inter alia, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, "improper behaviour, intentional wrongdoing or deliberate violation of a rule or standard of behaviour". Misconduct is said to be a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law. (Paras 7 and 8)

Delhi Cloth & General Mills Co. Ltd. v. *Workmen*, (1969) 2 LLJ 755 : AIR 1970 SC 919 (SC); *State of Punjab* v. *Ram Singh, Ex-Constable*, (1992) 4 SCC 54 : 1992 SCC (L&S) 793 : (1992) 21 ATC 435, *relied on*

Probodh Kumar Bhowmick v. *University of Calcutta*, (1994) 2 Cal LJ 456; *B.C. Chaturvedi* v. *Union of India*, (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44, *cited*

Section 35 of the Advocates Act, however, refers to imposition of punishment for professional or other misconduct. A member of the legal profession which is a noble one is expected to maintain a standard in a dignified and determined manner. The standard required to be maintained by the member of the legal profession must be commensurate with the nobility thereof. A lawyer is obligated to observe those norms which make him worthy of the confidence of the community in him as an officer of the court. (Para 11)

Bar Council of Maharashtra v. *M.V. Dabholkar*, (1976) 2 SCC 291 : AIR 1976 SC 242, *relied on*

D, an Advocate of the Supreme Court, Re, AIR 1956 SC 102 : (1955) 2 SCR 1006 : 1956 Cri LJ 280, *referred to*

Although the power of the Bar Council is not limited, the thrust of charge must be such which would necessitate initiation of disciplinary proceedings. A professional or other misconduct committed by a member of the profession should ordinarily be judged qua profession. To determine the quantum of punishment which may be imposed on an advocate, the test of proportionality shall be applied which would also depend upon the nature of the acts complained of. No universal rule thus can be laid down as regards initiation of a proceeding for misconduct of a member of the profession. (Para 12)

'M', an Advocate, Re, AIR 1957 SC 149 : 1957 Cri LJ 300, *relied on*

The Disciplinary Committee had considered the conduct of the appellant in order to judge as to whether the acts on the part of the respondents amount to misconduct. In this case there was absolutely no reason as to why the appellant did not make any complaint to the State Bar Council immediately of the incidents which took place on 8-10-1993 and 26-10-1993. If his contention to the effect that in relation to the incident dated 26-10-1993 he had lodged a first information report, there was absolutely no reason as to why he did not pursue the same seriously. It is, as has been noticed by the Bar Council of India, accepted that the police filed final forms but despite the same the appellant did not file any protest petition or initiate any other proceeding before the criminal court. In relation to the incident dated 1-3-1995 which allegedly took place inside the courtroom it was expected of the appellant or his advocate, who is said to be a retired District Judge, to bring the same to the notice of the court. Even in relation to the incidents that allegedly occurred on 8-10-1993 and 26-10-1993 no complaint was made before the presiding officer of the court. No proceeding was initiated in relation to the purported incident on 1-3-1995. In the aforementioned fact situation, the findings of the Bar Council cannot be said to be so irrational meriting interference by the Supreme Court. (Paras 15 to 17)

'M', an Advocate, Re, AIR 1957 SC 149 : 1957 Cri LJ 300; *Hikmat Ali Khan* v. *Ishwar Prasad Arya*, (1997) 3 SCC 131; *N.G. Dastane* v. *Shrikant S. Shivde*, (2001) 6 SCC 135, *distinguished*

'G' a Senior Advocate of the Supreme Court, Re, AIR 1954 SC 557 : 1954 Cri LJ 1410, *cited*

The Disciplinary Committee of the Bar Council of India is a statutory body. At the first instance the duty to arrive at a finding of facts in respect of a complaint made against a member of the legal profession is upon it. The Supreme Court although enjoys extensive and wide jurisdiction under Section 38 of the Act, the opinion of the Bar Council shall carry great weight. (Para 14)

R-M/29970/C

Advocates who appeared in this case :
S.B. Upadhyay, R.R. Dubey and Shiv Mangal Sharma, Advocates, for the Appellant;
T. Raja, Advocate, for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (2001) 6 SCC 135, *N.G. Dastane* v. *Shrikant S. Shivde* 693*d*, 697*d-e*
2. (1997) 3 SCC 131, *Hikmat Ali Khan* v. *Ishwar Prasad Arya* 693*d*, 697*c-d*
3. (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44, *B.C. Chaturvedi* v. *Union of India* 695*c-d*
4. (1994) 2 Cal LJ 456, *Probodh Kumar Bhowmick* v. *University of Calcutta* 695*c-d*
5. (1992) 4 SCC 54 : 1992 SCC (L&S) 793 : (1992) 21 ATC 435, *State of Punjab* v. *Ram Singh, Ex-Constable* 694*b-c*
6. (1976) 2 SCC 291 : AIR 1976 SC 242, *Bar Council of Maharashtra* v. *M.V. Dabholkar* 695*e*
7. (1969) 2 LLJ 755 : AIR 1970 SC 919 (SC), *Delhi Cloth & General Mills Co. Ltd.* v. *Workmen* 694*a b*
8. AIR 1957 SC 149 : 1957 Cri LJ 300, *'M', an Advocate, Re* 696*a*, 697*b c*
9. AIR 1956 SC 102 : (1955) 2 SCR 1006 : 1956 Cri LJ 280, *D, an Advocate of the Supreme Court, Re* 693*b-c*
10. AIR 1954 SC 557 : 1954 Cri LJ 1410, *'G' a Senior Advocate of the Supreme Court, Re* 696*a*

The Judgment of the Court was delivered by

S.B. SINHA, J.—

Introduction

1. An order of the Bar Council of India dated 27-2-1999 passed in BCITR No. 73 of 1997 refusing to enquire into a complaint of purported misconduct on the part of the respondent herein is in question in this appeal preferred by the appellant herein under Section 38 of the Advocates Act, 1961.

Background facts

2. The relationship between the respondents and the appellant herein is that of landlords and tenant. A rent control proceeding was initiated by the respondents against the appellant. While the rent control proceeding was pending in the Small Cause Court, they allegedly misconducted themselves by reason of the following acts of omission and commission:

(*1*) On 8-10-1993 when the appellant came out of the court hall of the said court after attending the appeal pending there, the first respondent allegedly came from behind and hit him on his back and ran away.

(*2*) On 26-10-1993 while the appellant was coming out of the court hall, the first respondent accompanied by some rowdy elements threatened to kill him. The matter was allegedly reported to the police on the same day.

(*3*) On 1-3-1995 when the learned Xth Judge left for his chamber during the lunch break and while the appellant was leaving the court hall along with his advocate Shri S. Vijayranjan, the first respondent kicked him on the knee of his left leg in the courtroom with an intention to cause injury and further asked him not to appear in the court for evidence.

3. The Disciplinary Committee of the Bar Council of Tamil Nadu upon receipt of the said complaint of the appellant herein initiated a proceeding. The matter ultimately appeared to have been transferred to the Disciplinary Committee of the Bar Council of India.

Impugned order of the Bar Council

4. The Disciplinary Committee of the Bar Council of India noticed that in relation to the aforementioned acts of omission and commission on the part of the respondents, no criminal proceeding was initiated by filing a complaint petition by the appellant. No charge-sheet had also been filed by the police in relation to the occurrence dated 26-10-1993 wherefor an FIR had been lodged. It was further accepted that the first respondent had not been appearing in the aforementioned rent control proceedings as an advocate but as a party-in-person. Having regard to the fact that till the date of passing of the impugned order neither the appellant herein produced any document to substantiate any follow-up action on his part in respect of the complaint filed

by him before the police authority, nor did he file any private complaint, the Committee was prima facie of the view that the factum of occurrence of the said incidents is not reliable. Further, it was noticed that the first respondent appeared in the said litigation not as an advocate but as a litigant-in-person.

Submissions

5. Mr S.B. Upadhyay, learned counsel appearing on behalf of the appellant, inter alia, would submit that under Section 35 of the Advocates Act an advocate on the roll of the Bar Council can be proceeded against for committing any misconduct which may not be confined to professional misconduct; the Bar Council grossly erred in passing the impugned order. Strong reliance in support of the said contention has been placed on a decision of this Court in *D, an Advocate of the Supreme Court, Re*[1]. The learned counsel would contend that having regard to the facts that the first respondent assaulted the complainant, asked him not to proceed with the case and on the third occasion kicked him as a result whereof he fell down are clear pointers to the fact that such acts are not expected of a member of the legal profession and, thus, the same must be held to be acts of misconduct. Learned counsel in support of the said contention relied upon *Hikmat Ali Khan* v. *Ishwar Prasad Arya*[2] and *N.G. Dastane* v. *Shrikant S. Shivde*[3]. Our attention has also been drawn to the preamble of the Bar Council of India Rules.

6. Mr T. Raja, learned counsel appearing on behalf of the respondents would, on the other hand, submit that the appellant herein had been harassing the respondent by initiating false cases and in fact the complaint in question against the respondents is the eighth one and no relief had been granted in the other seven complaints. Mr Raja would urge that it is improbable that if an act of the nature complained of had taken place in a courtroom, the same would not be brought to the notice of the presiding officer. Neither any private complaint having been filed nor any proceeding in the criminal courts having been initiated by the appellant herein and further no evidence in support thereof having been produced before the Bar Council, the learned counsel would contend that the impugned orders should not be interfered with by this Court.

Misconduct

7. Misconduct has not been defined in the Advocates Act, 1961. Misconduct, inter alia, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or

1 AIR 1956 SC 102 : (1955) 2 SCR 1006 : 1956 Cri LJ 280
2 (1997) 3 SCC 131
3 (2001) 6 SCC 135

unintentionally. It means, "improper behaviour, intentional wrongdoing or deliberate violation of a rule or standard of behaviour".

8. Misconduct is said to be a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law.

9. In *Delhi Cloth & General Mills Co. Ltd.* v. *Workmen*[4] Shah, J. stated that misconduct spreads over a wide and hazy spectrum of industrial activity; the most seriously subversive conducts rendering an employee wholly unfit for employment to mere technical default covered thereby.

10. This Court in *State of Punjab* v. *Ram Singh, Ex-Constable*[5] noticed: (SCC pp. 57-58, paras 5-6)

> "5. Misconduct has been defined in *Black's Law Dictionary*, 6th Edn. at p. 999 thus:
>
> > 'A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness.'
>
> Misconduct in office has been defined as:
>
> > 'Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office-holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.'
>
> Aiyar, P. Ramanatha: *Law Lexicon*, Reprint Edn., 1987, at p. 821 defines 'misconduct' thus:
>
> > 'The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful

4 (1969) 2 LLJ 755 : AIR 1970 SC 919 (SC)
5 (1992) 4 SCC 54 : 1992 SCC (L&S) 793 : (1992) 21 ATC 435

behaviour or neglect by a public officer, by which the rights of a party have been affected.'

a 6. Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule *b* of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires *c* to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

(See also *Probodh Kumar Bhowmick* v. *University of Calcutta*[6] and *B.C. Chaturvedi* v. *Union of India*[7].)

11. Section 35 of the Advocates Act, however, refers to imposition of *d* punishment for professional or other misconduct. A member of the legal profession which is a noble one is expected to maintain a standard in a dignified and determined manner. The standard required to be maintained by the member of the legal profession must be commensurate with the nobility thereof. A lawyer is obligated to observe those norms which make him worthy of the confidence of the community in him as an officer of the court. *e* This Court in *Bar Council of Maharashtra* v. *M.V. Dabholkar*[8] observed: (SCC p. 300, para 20)

"The high moral tone and the considerable public service the Bar is associated with and its key role in the developmental and dispute-processing activities and, above all, in the building up of a just society and constitutional order, has earned for it a monopoly to practise law and *f* an autonomy to regulate its own internal discipline."

12. Although the power of the Bar Council is not limited, the thrust of charge must be such which would necessitate initiation of disciplinary proceedings. A professional or other misconduct committed by a member of the profession should ordinarily be judged qua profession. To determine the quantum of punishment which may be imposed on an advocate, the test of *g* proportionality shall be applied which would also depend upon the nature of the acts complained of. No universal rule thus can be laid down as regards initiation of a proceeding for misconduct of a member of the profession.

h 6 (1994) 2 Cal LJ 456
7 (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44
8 (1976) 2 SCC 291 : AIR 1976 SC 242

13. In *'M', an Advocate, Re*[9] however, this Court emphasised the requirement of maintaining a high standard stating: (AIR p. 163, para 14)

> "As has been laid down by this Court in *'G' a Senior Advocate of the Supreme Court, Re*[10] the Court, in dealing with cases of professional misconduct is 'not concerned with ordinary legal rights, but with the special and rigid rules of professional conduct expected of and applied to a specially privileged class of persons who, because of their privileged status, are subject to certain disabilities which do not attach to other men and which do not attach even to them in a non-professional character ... he (a legal practitioner) is bound to conduct himself in a manner befitting the high and honourable profession to whose privileges he has so long been admitted; and if he departs from the high standards which that profession has set for itself and demands of him in professional matters, he is liable to disciplinary action'."

Application of the principle to the present case

14. The Disciplinary Committee of the Bar Council of India is a statutory body. At the first instance the duty to arrive at a finding of facts in respect of a complaint made against a member of the legal profession is upon it. This Court although enjoys extensive and wide jurisdiction under Section 38 of the Act, the opinion of the Bar Council shall carry great weight. The appellant herein had lodged a complaint with the State Bar Council on 5-3-1995 in relation to the 3 incidents that allegedly occurred on 8-10-1993, 26-10-1993 and 1-3-1995.

15. The Disciplinary Committee had considered the conduct of the appellant herein in order to judge as to whether the acts on the part of the respondents amount to misconduct.

16. There was absolutely no reason as to why the appellant did not make any complaint to the State Bar Council immediately of the incidents which took place on 8-10-1993 and 26-10-1993. If his contention to the effect that in relation to the incident dated 26-10-1993 he had lodged a first information report, there was absolutely no reason as to why he did not pursue the same seriously. It is, as has been noticed by the Bar Council of India, accepted that the police filed final forms but despite the same the appellant did not file any protest petition or initiate any other proceeding before the criminal court. In relation to the incident dated 1-3-1995 which allegedly took place inside the courtroom it was expected of the appellant or his advocate, who is said to be a retired District Judge, to bring the same to the notice of the court. Even in relation to the incidents that allegedly occurred on 8-10-1993 and 26-10-1993 no complaint was made before the presiding officer of the court. No proceeding was initiated in relation to the purported incident on 1-3-1995.

9 AIR 1957 SC 149 : 1957 Cri LJ 300
10 AIR 1954 SC 557 : 1954 Cri LJ 1410

17. Can in the aforementioned fact situation, the findings of the Bar Council be said to be so irrational meriting interference by this Court, is the question. We are of the opinion that it is not. We may further place on record that on a query made by us to Mr Upadhyay as to whether any other incident had taken place after 1-3-1995, the learned counsel categorically stated that no such incident had thereafter taken place. We are, therefore, of the opinion that the matter need not be pursued further.

Case-laws

18. Let us now consider the decision of this Court cited at the Bar. In *'M', an Advocate*[9] this Court was dealing with a case where an advocate who had been appearing in person had been an accused before a Magistrate where his conduct was found to be such which amounted to commission of professional misconduct. He continuously and persistently attempted to hold up the trial and did everything in his power to bring the administration of justice in contempt. In the aforementioned fact situation, it was held that the High Court was right in taking action against the advocate concerned.

19. In *Hikmat Ali Khan* v. *Ishwar Prasad Arya*[2] the advocate concerned assaulted his opponents with a knife. He was prosecuted and found guilty of commission of an offence under Section 307 IPC. In the aforementioned situation, it was held that the advocate deserves the extraordinary punishment of removal of his name from the State roll of advocates.

20. In *N.G. Dastane* v. *Shrikant S. Shivde*[3] an advocate in order to defend one of the accused persons before a Magistrate sought for adjournments repeatedly and on 4-12-1993 an adjournment was sought on the premise that he was unable to speak on account of a throat infection and continuous cough but the complainant came across the said advocate "forcefully and fluently" arguing a matter before another court situated in the same building. Thereafter, a complaint was lodged wherein a prima facie case was found to have been made out. This Court directed the Bar Council of India to deal with the complaint.

21. The aforesaid decisions of this Court are not applicable to the facts of the present case.

Conclusion

22. We are, therefore, of the opinion that no case has been made out for interfering with the impugned order.

23. This appeal is dismissed. But in the facts of the case there shall be no order as to costs.

THE SUPREME COURT CASES

(2001) 6 SCC

(2001) 6 Supreme Court Cases 1

(BEFORE K.T. THOMAS AND Y.K. SABHARWAL, JJ.)

SHAMBHU RAM YADAV .. Appellant;

Versus

HANUMAN DAS KHATRY .. Respondent.

Civil Appeal No. 6768 of 2000†, decided on July 26, 2001

A. **Advocates Act, 1961 — Ss. 44, 37 and 35 — Review by Disciplinary Committee of Bar Council of India of the punishment awarded — Different view on same set of facts, held, not permitted — Where respondent Advocate had been disbarred permanently for the misconduct of suggesting in a letter to his client that client should send him Rs 10,000 for illegal gratification of the Judge concerned and all facts and circumstances had been taken into account, including advanced age of advocate and 50 years' unblemished record, held, in review Disciplinary Committee erred in concluding that the respondent had no intention of bribing the Judge and reducing the punishment to a reprimand because of the respondent's age (80 years) and hitherto clean record**

B. **Advocates Act, 1961 — S. 35 — Professional misconduct — To communicate to a client that a particular Judge is open to bribery and suggest that the client should part with money (Rs 10,000 in this case) to be passed on to the Judge, held, is a serious misconduct**

C. **Administration of Justice — Disciplinary bodies, held, are the guardians of the due administration of justice and the public interest**

D. **Advocates — Generally — Must function within the law — Advocates, held, are obliged to strive to secure justice for their clients, if it is legally possible — Advocates are not supposed to encourage dishonesty and corruption — Advocates owe duty not only to courts, but to society, which has a vital public interest in the due administration of justice**

† From the Judgment and Order dated 4-6-2000 of the Disciplinary Committee of the Bar Council of India, in RP No. 11 of 1999 in DCA No. 22 of 1997

E. **Advocates — Generally — Credibility and reputation of profession, held, depends on the manner in which advocates conduct themselves**

F. **Advocates Act, 1961 — S. 36 — Duty of Bar Councils as disciplinary bodies — Held, it is the onerous duty of the disciplinary bodies of the legal profession to ensure that advocates adhere to the high standards set for them, to take appropriate action against delinquents and thereby protect the credibility and reputation of the profession, as well as the vital public interest in the due administration of justice — Professional Councils — Disciplinary bodies — Credibility of both, held, depends on how cases of delinquency involving serious misconduct are handled**

G. **Advocates — Advocates Act, 1961 — S. 35 — Misconduct — Punishment — Held, must be commensurate with the seriousness of the misconduct — Criminal trial — Sentence — Should be proportionate to gravity of offence**

The appellant had filed a complaint against the respondent, an advocate, on the grounds of professional misconduct. The allegation was that the respondent *H* had written a letter to a client that he had been informed by another client that a particular Judge took bribes and that the client had obtained several favourable orders from the said Judge through bribery; that unless the client, addressee of the advocate respondent's letter, could influence the Judge in any other way the client should send him, the advocate, Rs 10,000 so that the case could be decided in his favour. The respondent did not deny writing the letter and pleaded that the service of the Judge in question had since been terminated on account of accepting illegal gratification; that it had been his duty to inform the client of the facts; that ultimately the money had not been sent.

The State Bar Council found the respondent guilty of professional misconduct and suspended him from practising for a period of two years. The respondent appealed against this order to the Bar Council of India, which enhanced the punishment, directing by order dated 31-7-1999 that his name be struck off from the roll of advocates altogether. The respondent then filed a review petition under Section 44 of the Advocates Act; the petition was allowed and the punishment of reprimand was substituted. The Disciplinary Committee of the Bar Council of India, allowing the review petition, noted that the letter "was not an offer on the side of the delinquent advocate to bribe a Judge"; that it was merely "a reply to the query put by his client"; that the respondent was an old man of 80 years and had a clean record up till the incident complained of.

Allowing the appeal, with costs and restoring the order debarring the respondent, the Supreme Court

Held :

The legal profession is not a trade or business. It is a noble profession. Members belonging to this profession have not to encourage dishonesty and corruption but have to strive to secure justice for their clients, if it is legally possible. The credibility and reputation of the profession depends upon the manner in which the members of the profession conduct themselves. There is a heavy responsibility on those on whom duty has been vested under the Advocates Act, 1961 to take disciplinary action when the credibility and reputation of the profession comes under a cloud on account of acts of omission and commission by any member of the profession. (Para 1)

The original order has been reviewed on non-existent grounds. All the factors taken into consideration in the impugned order were already on record and were considered by the Committee when it passed the order dated 31-7-1999. The power of review has not been exercised by applying well-settled principles governing the exercise of such power. It is evident that the reasons and facts on the basis whereof the order was reviewed had all been taken into consideration by the earlier Committee. The relevant portion of the letter written by the advocate had been reproduced in the earlier order. From that quotation it was evident that the said Committee noticed that the advocate was replying to a letter received from his client. It is not in dispute that the respondent had not produced the letter received by him from his client to which the admitted letter was sent requiring his client to send Rs 10,000 for payment as bribe to the Judge concerned. (Para 7)

There is no basis for the Disciplinary Committee for coming to the conclusion that the respondent "had no intention to bribe the Judge". There is nothing on the record to suggest it. The earlier order had taken into consideration all relevant factors for coming to the conclusion that the advocate was totally unfit to be a lawyer having written such a letter and punishment lesser than debarring him permanently cannot be imposed. The exercise of power of review does not empower a Disciplinary Committee to modify the earlier order passed by another Disciplinary Committee taking a different view of the same set of facts. (Para 7)

The respondent was indeed guilty of a serious misconduct by writing to his client the letter. Members of the legal profession are officers of the court. Besides courts, they also owe a duty to the society which has a vital public interest in the due administration of justice. The said public interest is required to be protected by those on whom the power has been entrusted to take disciplinary action. The disciplinary bodies are guardians of the due administration of justice. They have requisite power and rather a duty while supervising the conduct of the members of the legal profession, to inflict appropriate penalty when members are found to be guilty of misconduct. Considering the nature of the misconduct, the penalty of permanent debarment had been imposed on the respondent which without any valid ground has been modified in exercise of power of review. It is the duty of the Bar Councils to ensure that lawyers adhere to the required standards and on failure, to take appropriate action against them. The credibility of a Council including its disciplinary body in respect of any profession whether it is law, medicine, accountancy or any other vocation depends upon how they deal with cases of delinquency involving serious misconduct which has a tendency to erode the credibility and reputation of the said profession. The punishment, of course, has to be commensurate with the gravity of the misconduct. (Para 8)

It is evident that the earlier Committee, on consideration of all relevant facts, came to the conclusion that the advocate was not worthy of remaining in the profession. The age factor and the factor of number of years put in by the respondent were taken into consideration by the Committee when removal from the roll of the State Council was directed. It is evident that the Bar Council considered that a high standard of morality is required from lawyers, more so from a person who has put in 50 years in the profession. One expects from such a person a very high standard of morality and unimpeachable sense of legal and ethical propriety. Since the Bar Councils under the Advocates Act have been

entrusted with the duty of guarding the professional ethics, they have to be more sensitive to the potential disrepute on account of action of a few black sheep which may shake the credibility of the profession and thereby put at stake other members of the Bar. (Para 9)

A-M/24355/CR

Advocates who appeared in this case :
Ashok Mathur, Advocate, for the Appellant;
B.D. Sharma, Vidya Sagar K., N. Vyas and Ms Deep Shikha Bharti, Advocates, for the Respondent.

The Judgment of the Court was delivered by

Y.K. SABHARWAL, J. Legal profession is not a trade or business. It is a noble profession. Members belonging to this profession have not to encourage dishonesty and corruption but have to strive to secure justice to their clients, if it is legally possible. The credibility and reputation of the profession depends upon the manner in which the members of the profession conduct themselves. There is a heavy responsibility on those on whom duty has been vested under the Advocates Act, 1961 to take disciplinary action when the credibility and reputation of the profession comes under a clout (*sic* cloud) on account of acts of omission and commission by any member of the profession.

2. In this appeal while issuing notice this Court had stayed till further orders the impugned order passed by the Disciplinary Committee of the Bar Council of India. We admit the appeal and heard learned counsel for the parties. On facts, there is not much dispute. The facts material for the decision of this appeal briefly are as follows:

A complaint filed by the appellant against the respondent Advocate before the Bar Council of Rajasthan was referred to the Disciplinary Committee constituted by the State Bar Council. In substance, the complaint was that the respondent while appearing as a counsel in a suit pending in a civil court wrote a letter to Mahant Rajgiri, his client inter alia stating that another client of his has told him that the Judge concerned accepts bribe and he has obtained several favourable orders from him in his favour; if he can influence the Judge through some other gentleman, then it is a different thing, otherwise he should send to him a sum of Rs 10,000 so that through the said client the suit is got decided in his (Mahant Rajgiri's) favour. The letter further stated that if Mahant can personally win over the Judge on his side then there is no need to spend money. This letter is not disputed. In reply to the complaint, the respondent pleaded that the services of the Presiding Judge were terminated on account of illegal gratification and he had followed the norms of professional ethics and brought these facts to the knowledge of his client to protect his interest and the money was not sent by his client to him. Under these circumstances it was urged that the respondent had not committed any professional misconduct.

3. The State Bar Council noticing that the respondent had admitted the contents of the letter came to the conclusion that it constitutes misconduct. In the order the State Bar Council stated that keeping in view the interest of the litigating public and the legal profession such a practice whenever found has to be dealt with in an appropriate manner. Holding the respondent guilty of misconduct under Section 35 of the Advocates Act, the State Bar Council suspended him from practice for a period of two years with effect from 15-6-1997.

4. The respondent challenged the aforesaid order before the Disciplinary Committee of the Bar Council of India. By order dated 31-7-1999 the Disciplinary Committee of the Bar Council of India comprising of three members enhanced the punishment and directed that the name of the respondent be struck off from the roll of advocates, thus debarring him permanently from the practice. The concluding paragraph of the order dated 31-7-1999 reads thus:

> "In the facts and circumstances of the case, we also heard the appellant as to the punishment since the advocate has considerable standing in the profession. He has served as an advocate for 50 years and it was not expected of him to indulge in such a practice of corrupting the judiciary or offering bribe to the Judge and he admittedly demanded Rs 10,000 from his client and he orally stated that subsequently order was passed in his client's favour. This is enough to make him totally unfit to be a lawyer by writing the letter in question. We cannot impose any lesser punishment than debarring him permanently from the practice. His name should be struck off from the roll of advocates maintained by the Bar Council of Rajasthan. Hereafter the appellant will not have any right to appear in any court of law, tribunal or before any authority. We also impose a cost of Rs 5000 on the appellant which should be paid by the appellant to the Bar Council of India which has to be paid within two months."

5. The respondent filed a review petition under Section 44 of the Advocates Act against the order dated 31-7-1999. The review petition was allowed and the earlier order modified by substituting the punishment already awarded permanently debarring him with one of reprimanding him. The impugned order was passed by the Disciplinary Committee comprising of three members of which two were not members of the earlier Committee which had passed the order dated 31-7-1999.

6. The review petition was allowed by the Disciplinary Committee for the reasons, which, in the words of the Committee, are these:

> "(*1*) The Committee was under the impression as if it was the petitioner who had written a letter to his client calling him to bribe the Judge. But a perusal of the letter shows that the petitioner has simply given a reply to the query put by his client regarding the conduct of the Judge and as such it remained a fact that it was not an offer on the side of the delinquent advocate to bribe a Judge. This vital point which touches

the root of the controversy seems to have been ignored at the time of the passing of the impugned order.

(2) The petitioner is an old man of 80 years. He had joined the profession in the year 1951 and during such a long innings of his profession, it was for the first time that he conducted himself in such an irresponsible manner although he had no intention to bribe.

(3) The Committee does not approve the writing of such a letter on the part of the lawyer to his client but keeping in view the age and the past clean record of the petitioner in the legal profession the Committee is of the view that it would not be appropriate to remove the advocate permanently from the roll of advocates.... The Committee is of the considered view that ends of justice would be met in case the petitioner is reprimanded for the omission he had committed. He is warned by the Committee that he should not encourage such activities in life and he should be careful while corresponding with his client.

In view of the aforesaid observations, the review petition is accepted and the earlier judgment of the Committee dated 31-7-1999 is modified to the extent and his suspension for life is revoked and he is only reprimanded."

7. We have perused the record. The original order has been reviewed on non-existent grounds. All the factors taken into consideration in the impugned order were already on record and were considered by the Committee when it passed the order dated 31-7-1999. The power of review has not been exercised by applying well-settled principles governing the exercise of such power. It is evident that the reasons and facts on the basis whereof the order was reviewed had all been taken into consideration by the earlier Committee. The relevant portion of the letter written by the advocate had been reproduced in the earlier order. From that quotation it was evident that the said Committee noticed that the advocate was replying to a letter received from his client. It is not in dispute that the respondent had not produced the letter received by him from his client to which the admitted letter was sent requiring his client to send Rs 10,000 for payment as bribe to the Judge concerned. We are unable to understand as to how the Committee came to the conclusion that any vital point in regard to the letter had been ignored at the time of the passing of the order dated 31-7-1999. The age and the number of years the advocate had put in had also been noticed in the order dated 31-7-1999. We do not know how the Committee has come to the conclusion that the respondent "had no intention to bribe the Judge". There is nothing on the record to suggest it. The earlier order had taken into consideration all relevant factors for coming to the conclusion that the advocate was totally unfit to be a lawyer having written such a letter and punishment lesser than debarring him permanently cannot be imposed. The exercise of power of review does not empower a Disciplinary Committee to modify the earlier order passed by another Disciplinary Committee taking a different view of the same set of facts.

8. The respondent was indeed guilty of a serious misconduct by writing to his client the letter as aforesaid. Members of the legal profession are officers of the court. Besides courts, they also owe a duty to the society which has a vital public interest in the due administration of justice. The said public interest is required to be protected by those on whom the power has been entrusted to take disciplinary action. The disciplinary bodies are guardians of the due administration of justice. They have requisite power and rather a duty while supervising the conduct of the members of the legal profession, to inflict appropriate penalty when members are found to be guilty of misconduct. Considering the nature of the misconduct, the penalty of permanent debarment had been imposed on the respondent which without any valid ground has been modified in exercise of power of review. It is the duty of the Bar Councils to ensure that lawyers adhere to the required standards and on failure, to take appropriate action against them. The credibility of a Council including its disciplinary body in respect of any profession whether it is law, medicine, accountancy or any other vocation depends upon how they deal with cases of delinquency involving serious misconduct which has a tendency to erode the credibility and reputation of the said profession. The punishment, of course, has to be commensurate with the gravity of the misconduct.

9. In the present case, the earlier order considering all relevant aspects directed expulsion of the respondent from the profession which order could not be lightly modified while deciding a review petition. It is evident that the earlier Committee, on consideration of all relevant facts, came to the conclusion that the advocate was not worthy of remaining in the profession. The age factor and the factor of number of years put in by the respondent were taken into consideration by the Committee when removal from the roll of the State Council was directed. It is evident that the Bar Council considered that a high standard of morality is required from lawyers, more so from a person who has put in 50 years in the profession. One expects from such a person a very high standard of morality and unimpeachable sense of legal and ethical propriety. Since the Bar Councils under the Advocates Act have been entrusted with the duty of guarding the professional ethics, they have to be more sensitive to the potential disrepute on account of action of a few black sheep which may shake the credibility of the profession and thereby put at stake other members of the Bar. Considering these factors, the Bar Council had inflicted in its earlier order the condign penalty. Under these circumstances, we have no hesitation in setting aside the impugned order dated 4-6-2000 and restoring the original order of the Bar Council of India dated 31-7-1999.

10. The appeal is thus allowed in the above terms with costs quantified at Rs 10,000.

immense misery. She had indicated what was transpiring in her mind to Trishla Kumari, PW 1. The possibility of her committing suicide and implicating the accused persons cannot be ruled out in the facts and circumstances of the case as available on record.

33. For the foregoing reasons, the appeal is dismissed. The judgment of acquittal, along with the findings recorded by the trial court, is maintained.

(2001) 6 Supreme Court Cases 135

(BEFORE K.T. THOMAS, R.P. SETHI AND S.N. PHUKAN, JJ.)

N.G. DASTANE . . Appellant;

Versus

SHRIKANT S. SHIVDE AND ANOTHER . . Respondents.

Civil Appeal No. 3543 of 2001†, decided on May 3, 2001

A. Advocates Act, 1961 — S. 35(1) — "Professional or other misconduct" — Meaning and scope — Misconduct under S. 35(1) is of wider import — Misconduct covers any misdemeanour or misdeed or misbehaviour which obstructs administration of justice such as seeking repeated adjournments on flimsy or frivolous grounds — So also abusing the process of court is misconduct — Tactics of filibuster are also professional misconduct — Words and Phrases — "Professional misconduct", "misconduct"

B. Advocates Act, 1961 — S. 35(1) — "Professional or other misconduct" — Meaning — Seeking repeated adjournments for postponing examination of witnesses who were present in court without making alternative arrangement for their examination falls within the expression "professional or other misconduct" — If Bar Council comes across a genuine case of such misconduct or if a genuine or bona fide complaint of such misconduct is lodged, it is Bar Council's statutory duty to forward the matter to Disciplinary Committee — Expression "reason to believe" is intended only to filter out frivolous complaints — Words and Phrases — "Misconduct", "professional misconduct" — Civil Procedure Code, 1908, Or. 17 R. 1

C. Advocates Act, 1961 — S. 36(2) — Complaint of misconduct on the part of respondent advocates rejected by State Bar Council and in revision by Bar Council of India — Supreme Court finding that a strong prima facie case was made out for Disciplinary Committee of the State Bar Council to proceed with, orders of the State Bar Council and Bar Council of India set aside — In view of long pendency of the matter, the complaint directed to be referred to Bar Council of India

The appellant had filed a complaint before the Judicial Magistrate against some accused for theft of electricity. The accused in the said complaint engaged two advocates viz. Respondents 1 and 2. The respondents filed a joint vakalatnama before the trial court and the trial began in 1993. When the

† From the Judgment and Order dated 2-5-1999 communicated on 20-4-2000 of the Bar Council of India in Rev. Petition No. 15 of 1995

Magistrate posted the case for cross-examination of the appellant on 30-7-1993, the second respondent Advocate sought for an adjournment on the ground that it was not possible to conduct the cross-examination unless all the other witnesses for the prosecution were also present in court. The Judicial Magistrate conceded to the request and posted the case to 23-8-1993. On that day, the appellant and all his witnesses were present in court. But both the respondents sought for an adjournment, the first respondent on the premise that he was busy outside the court, and the second respondent on the premise that "the father of the first respondent's friend expired". The Magistrate again adjourned the case to 13-9-1993 in a casual manner. On that day also the respondents sought for an adjournment but on a flippant reason. The appellant's counsel raised objections against the prayer for adjournment. Nevertheless, the Judicial Magistrate again adjourned the case and posted it to 16-10-1993 which according to the respondents was quite convenient to them. When the appellant presented himself along with all the witnesses on 16-10-1993, the respondents asked for adjournment on the ground that one of the respondent advocates was out of station. The Judicial Magistrate yielded to the request this time also and posted the case to 20-11-1993 peremptorily. On 20-11-1993 the appellant and all his witnesses were again present but the respondents again sought adjournment on the ground that one of the respondents was indisposed and the Magistrate adjourned the case to 4-12-1993. On that day the second respondent sought for an adjournment with a written application on the premise that the first respondent was unable to speak on account of throat infection and continuous cough. The Magistrate again granted adjournment, though this time by ordering that a medical certificate should be produced by the first respondent and cost of Rs 75 should be paid to the appellant. According to the appellant, after the case was adjourned on 4-12-1993, he went out of the courtroom and while he was walking through the corridors of the court complex he happened to come across the first respondent "forcefully and fluently arguing" a matter before another court situated in the same building. It was that sight which caused him to venture to lodge a complaint against both the respondents before the Maharashtra State Bar Council on 27-12-1993. Both the respondents filed a joint reply to the above complaint in which they stated, inter alia, that Respondent 1 was suffering from severe throat infection and temperature and was under medical treatment and that Respondent 1 sought adjournments in all the cases in which prolonged cross-examination was required and he was not in a position to speak continuously because of severe cough problem. They did not say anything about the large number of occasions they sought for adjourning the cross-examination of the complainant. The State Bar Council obtained a report from its Advocate Member. The report stated that he interrogated the parties and understood that "the complaint is without any substance". On that basis the State Bar Council dropped further proceedings against the respondents. The Bar Council of India disposed of the revision petition by holding that the State Bar Council was perfectly justified in passing the impugned order and there was no reason to interfere with the same, that no prima facie case was made out against the respondents and there was no reason to believe that the advocates had committed professional or other misconduct". Disposing of the present appeal, the Supreme Court

Held :

The appellant-complainant has made out a very strong prima facie case for the Disciplinary Committee of the State Bar Council to proceed with. The State Bar Council has abdicated its duties when it was found that there was no prima facie case for the Disciplinary Committee to take up. The Bar Council of India also went woefully wrong in holding that there was no case for revision at all. (Para 24)

Section 35 of the Act indicates that the misconduct referred to therein is of a much wider import. The collocation of the words "guilty of professional or other misconduct" in Section 35(1) of the Advocates Act has been used for the purpose of conferring power on the Disciplinary Committee of the State Bar Council. It is for equipping the Bar Council with binoculars as well as a whip to be on the qui vive for tracing out delinquent advocates who transgress the norms or standards expected of them in the discharge of their professional duties. The central function of the legal profession is to help promotion of administration of justice. Any misdemeanour or misdeed or misbehaviour can become an act of delinquency if it infringes such norms or standards and it can be regarded as misconduct. An advocate abusing the process of court is guilty of misconduct. When witnesses are present in the court for examination the advocate concerned has a duty to see that their examination is conducted. Witnesses who come to the court, on being called by the court, do so as they have no other option, and such witnesses are also responsible citizens who have other work to attend to for eking out a livelihood. They cannot be treated as less respectable to be told to come again and again just to suit the convenience of the advocate concerned. If the advocate has any unavoidable inconvenience it is his duty to make other arrangements for examining the witnesses who are present in the court. Seeking adjournments for postponing the examination of witnesses who are present in court even without making other arrangements for examining such witnesses is a dereliction of an advocate's duty to the court as that would cause much harassment and hardship to the witnesses. Such dereliction if repeated would amount to misconduct of the advocate concerned. Legal profession must be purified from such abuses of the court procedures. Tactics of filibuster, if adopted by an advocate, is also a professional misconduct. (Paras 16 and 20)

A Solicitor, ex p. Law Society, in re, (1912) 1 KB 302 : (1911-13) All ER Rep 202 : 81 LJKB 245; *R.D. Saxena* v. *Balram Prasad Sharma*, (2000) 7 SCC 264; *State of U.P.* v. *Shambhu Nath Singh*, (2001) 4 SCC 667 : 2001 SCC (Cri) 798 : JT (2001) 4 SC 319, *relied on*

George Frier Grahame v. *Attorney-General*, AIR 1936 PC 224, *referred to*

Black's Law Dictionary, *relied on*

When the Bar Council in its wider scope of supervision over the conduct of advocates in their professional duties comes across any instance of such misconduct it is the duty of the Bar Council concerned to refer the matter to its Disciplinary Committee. The expression "reason to believe" is employed in Section 35 of the Act only for the limited purpose of using it as a filter for excluding frivolous complaints against advocates. If the complaint is genuine and if the complaint is not lodged with the sole purpose of harassing an advocate or if it is not actuated by mala fides, the Bar Council has a statutory duty to forward the complaint to the Disciplinary Committee. (Para 22)

Bar Council of Maharashtra v. *M.V. Dabholkar*, (1976) 2 SCC 291 : (1976) 2 SCR 48, *relied on*

In this case the order of the State Bar Council as well as that of the Bar Council of India are set aside and the complaint of the appellant would stand referred to the Disciplinary Committee of the State Bar Council. (Para 24)

As the complaint is now, by virtue of this judgment, pending before the Disciplinary Committee of the State Bar Council, the question is whether it is appropriate that the Bar Council of India takes it up for the purpose of referring it to its Disciplinary Committee. As the misconduct alleged is of the year 1993-94 the ends of justice demand that the Disciplinary Committee of the Bar Council of India should now deal with the complaint. For the purpose it is ordered that the complaint of the appellant would stand referred to the Bar Council of India under Section 36 of the Advocates Act. The said Disciplinary Committee is now directed to adopt such steps as are necessary for the disposal of the complaint in accordance with law and in the light of the observations made above. (Para 26)

[Apart from the question of professional misconduct of the respondents, it was felt that the Judicial Magistrate, who yielded to all the procrastinative tactics, should be made answerable to the High Court so that action could be taken against the Magistrate on the administrative side for such serious laches. The Supreme Court, therefore, called upon the Judicial Magistrate to show cause why the Court should not make adverse remarks against the Magistrate in its judgment. The Magistrate explained that she had only started working as a regular Magistrate just after completing training on 6-7-1993. If so, the Judicial Magistrate would have been a novice in the judicial service. On that ground alone, the Court refrained from recommending any disciplinary action against the Magistrate. (Para 14)]

R-M/AZ/24033/C

Advocates who appeared in this case :
P.H. Parekh and Amit Dhingra, Advocates, for the Appellant;
Vijay S. Kotwal, Senior Advocate (Shakil Ahmed Syed, Advocates, with him) for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (2001) 4 SCC 667 : 2001 SCC (Cri) 798 : JT (2001) 4 SC 319, *State of U.P. v. Shambhu Nath Singh* 143*d*
2. (2000) 7 SCC 264, *R.D. Saxena* v. *Balram Prasad Sharma* 142*f g*
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4. AIR 1936 PC 224, *George Frier Grahame* v. *Attorney-General* 142*g*
5. (1912) 1 KB 302 : (1911-13) All ER Rep 202 : 81 LJKB 245, *A Solicitor, ex p, Law Society, in re* 142*e-f*

The Judgment of the Court was delivered by

THOMAS, J.— Leave granted.

2. We are much grieved, if not peeved, in noticing how two advocates succeeded in tormenting a witness by seeking numerous adjournments for cross-examining him in the Court of a Judicial Magistrate. On all those days the witness had to be present perforce and at considerable cost to him. It became a matter of deep concern to us when we noticed that the Judicial Magistrate had, on all such occasions, obliged the advocates by granting such

adjournments on the mere asking, to the incalculable inconvenience and sufferings of the witness. When he was convinced that those two advocates were adopting tactics of subterfuge by putting forth untrue excuses every time for postponing cross-examination he demurred. But the Magistrate did not help him. Ultimately when pressed against the wall he moved the State Bar Council for taking disciplinary proceedings against the advocates concerned. But the State Bar Council simply shut its doors informing him that he did not have even a prima facie case against the delinquent advocates. He met the same fate when he moved the Bar Council of India with a revision petition, as the revision petition was axed down at the threshold itself. The exasperated witness, exhausted by all the drubbings, has now come before this Court with this appeal by special leave.

3. The appellant, the aforesaid aggrieved witness, describes himself to be an agriculturist scientist. He claims to have worked as an Advisor in UNO until he retired therefrom. He filed a complaint before the Judicial Magistrate of the First Class, Pune (Maharashtra) against some accused for the offence of theft of electricity. The accused in the said complaint case engaged Advocate Shri Shivde (the first respondent) and his colleague Shri Kulkarni (the second respondent) who were practising in the courts at Pune. The two respondent advocates filed a joint vakalatnama before the trial court and the trial began in 1993. The appellant was examined-in-chief. Thus far there was no problem.

4. The agony of the appellant started when the Magistrate posted the case for cross-examination of the appellant on 30-7-1993. As per the version of the appellant, he had to come down from New York for being cross-examined on that day, but the second respondent advocate sought for an adjournment on the ground that it was not possible to conduct the cross-examination unless all the other witnesses for the prosecution were also present in court. We have no doubt that such a demand was not made in good faith. It was aimed at causing unnecessary harassment to witnesses. No other purpose could be achieved by such demand. Although the court was conscious that insistence of presence of the other witnesses has no legal sanction the Judicial Magistrate conceded to the request and posted the case to 23-8-1993.

5. On that day, the appellant and all his witnesses were present in court. But both the respondents sought for an adjournment, the first respondent on the premise that he was busy outside the court, and the second respondent on the premise that "the father of the first respondent's friend expired". The Judicial Magistrate yielded to that request, apparently in a very casual manner and adjourned the case to 13-9-1993.

6. On that day also the respondents sought for an adjournment but on a flippant reason. The appellant's counsel raised objections against the prayer for adjournment. Nevertheless, the Judicial Magistrate again adjourned the case and posted it to 16-10-1993. We may point out that the said date was

chosen by the court as the respondents represented to the court that the said date was quite convenient to them.

7. The appellant, thoroughly disgusted, had two options before him. One was to get dropped out from the case and the other was to continue to suffer. He had chosen the latter and presented himself along with all the witnesses on 16-10-1993. But alas, the respondents again asked for an adjournment on that day also. This time the adjournment was sought on the ground that one of the respondent advocates was out of station. It seems that the Judicial Magistrate yielded to the request this time also and posted the case to 20-11-1993 peremptorily. It would have been a sad plight to see how the appellant and his witnesses were walking out of the court complex without the case registering even a wee bit of progress in spite of his attending the court on so many days for the purpose of being cross-examined. His opposite party would have laughed in his mind as to how his advocates succeeded in tormenting the complainant by abusing the process of court through securing adjournment after adjournment. The complainant would have wept in his mind for choosing a judicial forum for redressal of his grievance.

8. On 20-11-1993, the appellant and all his witnesses were again present, possibly with the certitude that they would be examined at least now because of the peremptory order passed by the Magistrate on the previous occasion. Unfortunately, the peremptoriness of the order did not create even a ripple on the respondent advocates and they ventured to seek for an adjournment again on the ground that one of the respondent advocates was indisposed. There was not even a suggestion as to what was the inconvenience for the co-advocate. Even so, the Magistrate yielded to that request also and the case was again adjourned to 4-12-1993.

9. The flashpoint in the cauldron of the agony and grievance of the appellant reached on 4-12-1993. He presented himself before the court for being cross-examined, despite all the frets and vexations suffered by him till that day hoping that at least on this occasion the respondents would not concoct any alibi for dodging the cross-examination. But the second respondent who was present in the court sought for an adjournment again with a written application, on the following premise:

> "Advocate Shivde (first respondent) is unable to speak on account of the throat infection and continuous cough. The doctor has advised him to take two weeks' rest.
>
> Hence he is unable to conduct the matter before this Hon'ble Court today. It is therefore prayed that the hearing may kindly be adjourned for three weeks in the interest of justice."

10. The Judicial Magistrate without any qualms or sensitivity succumbed to the said tactics also and granted the adjournment prayed for. The Magistrate did not care even to ask the second respondent why he could not conduct the cross-examination, if his colleague, the first respondent, was so unwell. But the Magistrate felt no difficulty in immediately allowing the request for again adjourning the case. Of course the Magistrate ordered that a

medical certificate should be produced by the first respondent and cost of Rs 75 should be paid to the appellant. A poor solace for the agony inflicted on him.

11. According to the appellant, after the case was adjourned on 4-12-1993, he went out of the courtroom and while he was walking through the corridors of the court complex he happened to come across the first respondent "forcefully and fluently arguing" a matter before another court situated in the same building. It was that sight which caused him to venture to lodge a complaint against both the respondents before the Maharashtra State Bar Council on 27-12-1993. He had narrated the details of his complaint in the petition presented before the State Bar Council and prayed for taking necessary action against the two advocates.

12. Both the respondents filed a joint reply to the above complaint in which they stated, inter alia, that Respondent 1 was suffering from severe throat infection and temperature and was under medical treatment of Dr Manavi and that Respondent 1 sought adjournments in all the cases in which prolonged cross-examination was required and he was not in a position to speak continuously because of severe cough problem. They did not say anything about the large number of occasions they sought for adjourning the cross-examination of the complainant.

13. The State Bar Council obtained a report from its Advocate Member Shri B.E. Avhad. That report says that he interrogated the parties and understood that "the complaint is without any substance". It was on the strength of the said report that the State Bar Council has dropped further proceedings against the respondents. The revision petition was disposed of by the impugned order holding that

> "the Bar Council of Maharashtra was perfectly justified in passing the impugned resolution dated 12-11-1994 and we see no reason to interfere with the same; no prima facie case is made out against the respondents and there is no reason to believe that the advocates had committed professional or other misconduct".

14. When we heard the arguments of Shri P.H. Parekh, learned counsel for the appellant and Shri Vijay S. Kotewal, learned Senior Counsel for the respondents we felt, apart from the question of professional misconduct of the respondents, that the Judicial Magistrate, who yielded to all the procrastinative tactics, should be made answerable to the High Court so that action could be taken against the Magistrate on the administrative side for such serious laches. We, therefore, called upon the said Magistrate to show cause why we shall not make adverse remarks against the Magistrate in our judgment. The said Judicial Magistrate has now explained that she had only started working as a regular Magistrate just after completing training on 6-7-1993. If so, the Judicial Magistrate would have been a novice in the judicial service. On that ground alone, we persuade ourselves to refrain from recommending any disciplinary action against the Magistrate. Be that as it

may, we now proceed to consider whether the acts attributed to the respondents amounted to professional misconduct.

15. Chapter V of the Advocates Act, 1961 (for short "the Act") contains provisions for dealing with the conduct of advocates. The word "misconduct" is not defined in the Act. Section 35 of the Act indicates that the misconduct referred to therein is of a much wider import. This can be noticed from the wording employed in sub-section (1) of that section. It is extracted herein:

> "35. (1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee."

16. The collocation of the words "guilty of professional or other misconduct" has been used for the purpose of conferring power on the Disciplinary Committee of the State Bar Council. It is for equipping the Bar Council with binoculars as well as a whip to be on the qui vive for tracing out delinquent advocates who transgress the norms or standards expected of them in the discharge of their professional duties. The central function of the legal profession is to help promotion of administration of justice. Any misdemeanour or misdeed or misbehaviour can become an act of delinquency if it infringes such norms or standards and it can be regarded as misconduct.

17. In *Black's Law Dictionary* "misconduct" is defined as:

> "A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour; its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness."

18. The expression "professional misconduct" was attempted to be defined by Darling, J., in *A Solicitor, ex p, Law Society, in re*[1] in the following terms:

> "If it is shown that an advocate in the pursuit of his profession has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to say that he is guilty of professional misconduct."

19. In *R.D. Saxena* v. *Balram Prasad Sharma*[2] this Court has quoted the above definition rendered by Darling, J., which was subsequently approved by the Privy Council in *George Frier Grahame* v. *Attorney-General*[3] and then observed thus: (SCC p. 275, para 19)

> "*19.* Misconduct envisaged in Section 35 of the Advocates Act is not defined. The section uses the expression 'misconduct, professional or

1 (1912) 1 KB 302 : (1911-13) All ER Rep 202 : 81 LJKB 245
2 (2000) 7 SCC 264
3 AIR 1936 PC 224

otherwise'. The word 'misconduct' is a relative term. It has to be considered with reference to the subject-matter and the context wherein such term occurs. It literally means wrong conduct or improper conduct."

20. An advocate abusing the process of court is guilty of misconduct. When witnesses are present in the court for examination the advocate concerned has a duty to see that their examination is conducted. We remind that witnesses who come to the court, on being called by the court, do so as they have no other option, and such witnesses are also responsible citizens who have other work to attend to for eking out a livelihood. They cannot be treated as less respectable to be told to come again and again just to suit the convenience of the advocate concerned. If the advocate has any unavoidable inconvenience it is his duty to make other arrangements for examining the witnesses who are present in the court. Seeking adjournments for postponing the examination of witnesses who are present in court even without making other arrangements for examining such witnesses is a dereliction of an advocate's duty to the court as that would cause much harassment and hardship to the witnesses. Such dereliction if repeated would amount to misconduct of the advocate concerned. Legal profession must be purified from such abuses of the court procedures. Tactics of filibuster, if adopted by an advocate, is also a professional misconduct.

21. In *State of U.P.* v. *Shambhu Nath Singh*[4] this Court has deprecated the practice of courts adjourning cases without examination of witnesses when such witnesses are in attendance. We reminded the courts thus:

> "We make it abundantly clear that if a witness is present in court he must be examined on that day. The court must know that most of the witnesses could attend the court only at heavy cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of income. The meagre amount of bhatta (allowance) which a witness may be paid by the court is generally a poor solace for the financial loss incurred by him. It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by presiding officers of the trial courts and it can be reformed by everyone provided the presiding officer concerned has a commitment to duty. No sadistic pleasure in seeing how other persons summoned by him as witnesses are stranded on account of the dimension of his judicial powers can be a persuading factor for granting such adjournments lavishly, that too in a casual manner."

22. When the Bar Council in its wider scope of supervision over the conduct of advocates in their professional duties comes across any instance of such misconduct it is the duty of the Bar Council concerned to refer the matter to its Disciplinary Committee. The expression "reason to believe" is employed in Section 35 of the Act only for the limited purpose of using it as

4 (2001) 4 SCC 667 : 2001 SCC (Cri) 798 : JT (2001) 4 SC 319

a filter for excluding frivolous complaints against advocates. If the complaint is genuine and if the complaint is not lodged with the sole purpose of harassing an advocate or if it is not actuated by mala fides, the Bar Council has a statutory duty to forward the complaint to the Disciplinary Committee.

23. In *Bar Council of Maharashtra* v. *M.V. Dabholkar*[5] a four-Judge Bench of this Court had held that the requirement of "reason to believe" cannot be converted into a formalised procedural roadblock, it being essentially a barrier against frivolous enquiries.

24. In our opinion, the State Bar Council has abdicated its duties when it was found that there was no prima facie case for the Disciplinary Committee to take up. The Bar Council of India also went woefully wrong in holding that there was no case for revision at all. In our considered view the appellant-complainant has made out a very strong prima facie case for the Disciplinary Committee of the State Bar Council to proceed with. We, therefore, set aside the order of the State Bar Council as well as that of the Bar Council of India and we hold that the complaint of the appellant would stand referred to the Disciplinary Committee of the State Bar Council.

25. Section 36(2) of the Advocates Act reads thus:

> "36. (2) Notwithstanding anything contained in this Chapter, the Disciplinary Committee of the Bar Council of India may, either of its own motion or on a report by any State Bar Council or an application made to it by any person interested, withdraw for enquiry before itself any proceedings for disciplinary action against any advocate pending before the Disciplinary Committee of any State Bar Council and dispose of the same."

26. As the complaint is now, by virtue of this judgment, pending before the Disciplinary Committee of the State Bar Council we consider the question whether it is appropriate that the Bar Council of India takes it up for the purpose of referring it to its Disciplinary Committee. As the misconduct alleged is of the year 1993-94 the ends of justice demand that the Disciplinary Committee of the Bar Council of India should now deal with the complaint. For the purpose we order that the complaint of the appellant would stand referred to the Bar Council of India under Section 36 of the Advocates Act. We now direct the said Disciplinary Committee to adopt such steps as are necessary for the disposal of the complaint in accordance with law and in the light of the observations made above.

27. The appeal is disposed of accordingly.

5 (1976) 2 SCC 291 : (1976) 2 SCR 48

(2012) 9 Supreme Court Cases 512

(BEFORE P. SATHASIVAM AND RANJAN GOGOI, JJ.)

CENTRAL BUREAU OF INVESTIGATION, HYDERABAD .. Appellant;

Versus

K. NARAYANA RAO .. Respondent.

Criminal Appeal No. 1460 of 2012*, decided on September 21, 2012

A. Advocates — Duties — Legal opinion rendered by advocate — Negligent or improper legal advice or opinion — Criminal liability for, when may be fastened — Criminal conspiracy to defraud Bank — Panel Advocate of Bank when can be made liable for such criminal conspiracy — Need for evidence to show that lawyer in question aided or abetted the other conspirators — Held, although a lawyer owes an unremitting loyalty to client's interests, however, merely because his legal opinion may not be acceptable (in present case respondent Panel Advocate had been given ownership documents of conspirators' pledged properties, for vetting), he cannot be fastened with criminal prosecution in absence of tangible evidence that he had aided or abetted other conspirators — At the most, he may be liable for gross negligence or professional misconduct if established by evidence — In present case, there being no such tangible evidence against respondent, criminal proceedings against him, held, rightly quashed — Advocates Act, 1961, Ss. 35 and 36

B. Criminal Procedure Code, 1973 — S. 482 — Inherent powers of High Court — Quashment in cases of economic offences/commercial transactions, breach of trust, cheating — When justified — Conspiracy to defraud Bank by improper sanctioning and disbursement of housing loans

— Panel Advocate of Bank (respondent) sought to be implicated in said conspiracy on basis of legal advice given by him i.e. alleged false opinion about ownership of properties against which loans were given — Absence of evidence of abetting or aiding of conspiracy to defraud Bank — Respondent's name not mentioned in FIR but charge-sheet showing him as an accused for giving false legal opinion as Bank's Panel Advocate, but statements of witnesses not making specific reference to respondent's role in conspiracy — Held, liability of advocate who gave a legal opinion would arise only when such advocate could be shown to have been an active participant in a plan or conspiracy to defraud the Bank — In present case, there was no evidence to prove respondent was abetting or aiding original conspirators — Thus, respondent cannot be charged for said conspiracy to defraud Bank along with other conspirators — High Court's order quashing criminal proceedings, upheld — Penal Code, 1860 — Ss. 120-B, 107 to 109 and 419, 409, 420, 467, 468 and 471 — Prevention of Corruption Act, 1988, S. 13(2) r/w S. 13(1)(d)

* Arising out of SLP (Crl.) No. 6975 of 2011. From the Judgment and Order dated 9-7-2010 of the High Court of Andhra Pradesh at Hyderabad in Crl. Petition No. 2347 of 2008

C. Tort Law — Negligence — Professional negligence — Liability for — When attracted — Standard of requisite skill applicable — Held, a professional's only assurance which can be given by implication is that: (1) he is possessed of the requisite skill in that branch of profession which he is practising, and (2) while undertaking performance of the task entrusted to him, he would exercise his skill with reasonable competence — A professional may thus be held liable for negligence on one of the two findings viz. either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess — Consumer Protection Act, 1986, Ss. 2(1)(o) & (g)

Dismissing the appeal, the Supreme Court

Held :

The only allegation against the respondent Panel Advocate is that he submitted false legal opinion to the Bank in respect of the housing loans in the capacity of a panel advocate and did not point out actual ownership of the properties. The respondent was not named in the FIR. The allegations in the FIR are that A-1 to A-4 conspired together and cheated the Bank to the tune of Rs 1.27 crores. It is further seen that the offences alleged against A-1 to A-4 are the offences punishable under Sections 120-B, 419, 420, 467, 468 and 471 IPC and Section 13(2) read with Section 13(1)(*d*) of the Prevention of Corruption Act, 1988. It is not in dispute that the respondent is a practising advocate and he has experience in giving legal opinion and has conducted several cases for other banks also including the Bank concerned herein. The only allegation against him is that he submitted false legal opinion about the genuineness of the properties in question. However, it is the definite stand of the respondent herein that he has rendered legal scrutiny reports in all the cases after perusing the documents submitted by the Bank. It is also his claim that rendition of legal opinion cannot be construed as an offence. He further pointed out that it is not possible for the panel advocate to investigate the genuineness of the documents and in the present case, he only perused the contents and concluded whether the title was conveyed through a document or not. The respondent herein, as a panel advocate, verified the documents supplied by the Bank and rendered his opinion. He was furnished with xerox copies of the documents by the Bank and very few original documents, as well as xerox copies of death certificate, legal heirship certificate, encumbrance certificate, for his perusal and opinion. It is his definite claim that he perused those documents and only after that he rendered his opinion. He also advised the Bank to obtain encumbrance certificate for the period from 21-4-2003 till date. In the same way, he furnished legal scrutiny reports in respect of other cases also. (Paras 20 and 21)

The respondent advocate's name was not mentioned in the FIR. Only in the charge-sheet, has the respondent been shown as A-6 stating that he submitted false legal opinion to the Bank in respect of the housing loans in the capacity of a panel advocate and did not point out actual ownership of the properties in question. Though statements of several witnesses have been enclosed along with the charge sheet, they speak volumes about others. However, there is no specific reference to the role of the present respondent along with the main conspirators. The High Court while quashing the criminal proceedings in respect of the respondent herein has gone into the allegations in the charge sheet and the

materials placed on record for his scrutiny and arrived at a conclusion that the same do not disclose any criminal offence committed by the respondent. It also concluded that there is no material to show that the respondent herein joined hands with A 1 to A 3 for giving false opinion. In the absence of direct material, the respondent cannot be implicated as one of the conspirators for the offences punishable under Section 420 read with Section 109 IPC. The High Court has also opined that even after critically examining the entire material, it does not disclose any criminal offence committed by the respondent. A roving enquiry is not needed, however, it is the duty of the court to find out whether there is any prima facie material available against the person who has been charged with an offence under Section 420 read with Section 109 IPC. (Paras 25 and 26)

In the banking sector in particular, rendering of legal opinion for granting of loans has become an important component of an advocate's work. In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skills. A lawyer does not tell his client that he shall win the case in all circumstances. Likewise a physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task entrusted to him, he would be exercising his skill with reasonable competence. This is what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of the two findings viz. either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. (Para 27)

Jacob Mathew v. *State of Punjab*, (2005) 6 SCC 1 : 2005 SCC (Cri) 1369; *Pandurang Dattatraya Khandekar* v. *Bar Council of Maharashtra*, (1984) 2 SCC 556 : 1984 SCC (Cri) 335, *relied on*

Therefore, the liability against an opining advocate arises only when the lawyer was an active participant in a plan to defraud the Bank. In the given case, there is no evidence to prove that A 6 was abetting or aiding the original conspirators. However, it is beyond doubt that a lawyer owes an "unremitting loyalty" to the interests of the client and it is the lawyer's responsibility to act in a manner that would best advance the interest of the client. Merely because his opinion may not be acceptable, he cannot be muleted with the criminal prosecution, particularly, in the absence of tangible evidence that he associated with other conspirators. At the most, he may be liable for gross negligence or professional misconduct if it is established by acceptable evidence, and cannot be charged for the offence under Sections 420 and 109 IPC along with other conspirators without proper and acceptable link between them. It is further made clear that if there is a link or evidence to connect him with the other conspirators for causing loss to the institution, undoubtedly, the prosecuting authorities are entitled to proceed under criminal prosecution. Such tangible materials are lacking in the case of the respondent herein. (Paras 30 and 31)

Thus, there is no prima facie case for proceeding in respect of the charges alleged insofar as the respondent herein is concerned. The conclusion of the High

Court in quashing the criminal proceedings is upheld and the stand taken by CBI is rejected. (Para 32)

K. Narayana Rao v. *State of A.P.*, Criminal Petition No. 2347 of 2008, order dated 9-7-2010 (AP), *affirmed*

D. **Criminal Procedure Code, 1973 — Ss. 227, 228 and 209 — Framing of charge/Discharge of accused — Exercise of jurisdiction — Scope — Explained — Held, Judicial Magistrate enquiring into a case is not to act as a mere post office and has to arrive at a conclusion whether the case before him is fit for commitment of accused to Court of Session — He is entitled to sift and weigh materials on record, but only to see whether there is sufficient evidence for commitment, not whether there is sufficient evidence for conviction — If Magistrate finds no prima facie evidence or evidence placed on record is totally unworthy of credit, it is his duty to discharge accused at once — While exercising jurisdiction under S. 227, Magistrate should not make a roving enquiry into pros and cons of the matter or weigh the evidence as if he were conducting a trial**

Held :

At the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, in that event, it is not open to the court to say that there is no sufficient ground for proceeding against the accused. A Judicial Magistrate enquiring into a case under Section 209 CrPC is not to act as a mere post office and has to arrive at a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. On the other hand, if the Magistrate finds that there is no prima facie evidence or the evidence placed is totally unworthy of credit, it is his duty to discharge the accused at once. It is also settled law that while exercising jurisdiction under Section 227 CrPC, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. This provision was introduced in CrPC to avoid wastage of public time and to save the accused from unavoidable harassment and expenditure. While analysing the role of the respondent herein (A-6) from the charge-sheet and the materials supplied along with it, the above principles have to be kept in mind. (Para 15)

State of Bihar v. *Ramesh Singh*, (1977) 4 SCC 39 : 1977 SCC (Cri) 533; *P. Vijayan* v. *State of Kerala*, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488; *Sajjan Kumar* v. *CBI*, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371; *Mahavir Prashad Gupta* v. *State (NCT of Delhi)*, (2000) 8 SCC 115 : 2000 SCC (Cri) 1453, *relied on*

Rupan Deol Bajaj v. *Kanwar Pal Singh Gill*, (1995) 6 SCC 194 : 1995 SCC (Cri) 1059, *considered*

State of Haryana v. *Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426; *State of Bihar* v. *Murad Ali Khan*, (1988) 4 SCC 655 : 1988 SCC (Cri) 27, *referred to*

E. **Penal Code, 1860 — Ss. 120-A and 120-B — Criminal conspiracy — Elements of — Basis for extending criminal liability to co-conspirators — Held, essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both — Direct evidence to prove conspiracy is rarely available — Accordingly, the circumstances proved before and after**

the occurrence have to be considered to decide about complicity of the accused — Offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference not supported by cogent and acceptable evidence

Held :

The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence. (Para 24)

Shivnarayan Laxminarayan Joshi v. *State of Maharashtra*, (1980) 2 SCC 465 : 1980 SCC (Cri) 493, *referred to*

B-D/50789/CVR

Advocates who appeared in this case :

U.P. Raval, Additional Solicitor General (Rajiv Nanda, Ms Padmalakshmi Nigam and Arvind Kr. Sharma, Advocates) for the Appellant:

R. Venkataramani, Senior Advocate (Ashok Panigrahi, Aljo Joseph and Surajit Bhaduri, Advocates) for the Respondent.

Chronological list of cases cited ***on page(s)***

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3. Criminal Petition No. 2347 of 2008, order dated 9-7-2010 (AP), *K. Narayana Rao* v. *State of A.P.* 517*a-b*, 517*h*
4. (2005) 6 SCC 1 : 2005 SCC (Cri) 1369, *Jacob Mathew* v. *State of Punjab* 531*e*
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11. (1977) 4 SCC 39 : 1977 SCC (Cri) 533, *State of Bihar* v. *Ramesh Singh* 519*g-h*, 520*a*

The Judgment of the Court was delivered by

P. SATHASIVAM, J.— Leave granted. This appeal is directed against the final judgment and order dated 9-7-2010 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in *K. Narayana Rao* v. *State of A.P.*[1] whereby the High Court allowed the petition filed by the respondent herein under Section 482 of the Code of Criminal Procedure, 1973 (in short "the Code") and quashed the criminal proceedings pending against him in CC No. 44 of 2007 (Crime No. 36 of 2005) on the file of the Special Judge for CBI Cases, Hyderabad.

Brief facts

2. According to the prosecution, based on an information, on 30-11-2005, CBI, Hyderabad registered an FIR being No. RC 32(A) of 2005 against Shri P. Radha Gopal Reddy (A-1) and Shri Udaya Sankar (A-2), the then Branch Manager and the Assistant Manager, respectively of Vijaya Bank, Narayanaguda Branch, Hyderabad, for the commission of offences punishable under Sections 120-B, 419, 420, 467, 468 and 471 read with Section 109 of the Penal Code, 1860 (in short "IPC") and Section 13(2) read with Section 13(1)(*d*) of the Prevention of Corruption Act, 1988 for abusing their official position as public servants and for having conspired with private individuals viz. Shri P.Y. Kondala Rao (A-3), the builder and Shri N.S. Sanjeeva Rao (A-4) and other unknown persons for defrauding the Bank by sanctioning and disbursement of housing loans to 22 borrowers in violation of the Bank's rules and guidelines and thereby caused wrongful loss of Rs 1.27 crores to the Bank and corresponding gain for themselves. In furtherance of the said conspiracy, A-2 conducted the pre-sanction inspection in respect of 22 housing loans and A-1 sanctioned the same.

3. After completion of the investigation, CBI filed charge-sheet along with the list of witnesses and the list of documents against all the accused persons. In the said charge-sheet, Shri K. Narayana Rao, the respondent herein, who is a legal practitioner and a panel advocate for Vijaya Bank, was also arrayed as A-6. The duty of the respondent herein as a panel advocate was to verify the documents and to give legal opinion. The allegation against him is that he gave false legal opinion in respect of 10 housing loans. It has been specifically alleged in the charge-sheet that the respondent herein (A-6) and Mr K.C. Ramdas (A-7), the valuer have failed to point out the actual ownership of the properties and to bring out the ownership details and names of the apartments in their reports and also the falsity in the permissions for construction issued by the municipal authorities.

4. Being aggrieved, the respondent herein (A-6) filed a petition being Criminal Petition No. 2347 of 2008 under Section 482 of the Code before the High Court of Andhra Pradesh at Hyderabad for quashing of the criminal proceedings in CC No. 44 of 2007 on the file of the Special Judge for CBI Cases, Hyderabad. By the impugned judgment and order dated 9-7-2010[1],

1 Criminal Petition No. 2347 of 2008, order dated 9-7-2010 (AP)

the High Court quashed the proceedings insofar as the respondent herein (A-6) is concerned. Being aggrieved, CBI, Hyderabad filed this appeal by way of special leave.

5. Heard Mr H.P. Raval, learned Additional Solicitor General for the appellant CBI and Mr R. Venkataramani, learned Senior Counsel for the respondent (A-6).

6. After taking us through the allegations in the charge-sheet presented before the Special Court and all other relevant materials, the learned ASG has raised the following contentions:

(*i*) The High Court while entertaining the petition under Section 482 of the Code has exceeded its jurisdiction. The powers under Section 482 are inherent which are to be exercised in exceptional and extraordinary circumstances. The power being extraordinary has to be exercised sparingly, cautiously and in exceptional circumstances;

(*ii*) The High Court has committed an error in holding that no material had been gathered by the investigating agency against the respondent herein (A-6) that he had conspired with the remaining accused for committing the offence; and

(*iii*) There is no material on record to show that the respondent herein (A-6) did not verify the originals pertaining to housing loans before giving legal opinion and intentionally changed the pro forma and violated the Bank's circulars.

7. On the other hand, Mr Venkataramani, learned Senior Counsel for the respondent (A-6), after taking us through the charge-sheet and the materials placed before the respondent for seeking legal opinion, submitted that he has not committed any offence much less an offence punishable under Section 120-B read with Sections 419, 420, 467, 468, 471 and 109 IPC and Section 13(2) read with Section 13(1)(*d*) of the Prevention of Corruption Act, 1988. He further submitted that based on the documents placed, the respondent herein after perusing and on satisfying himself, furnished his legal opinion for which he cannot be implicated as one of the conspirators for the offence punishable under Section 420 read with Section 109 IPC.

8. We have carefully perused all the relevant materials and considered the rival submissions.

9. In order to appreciate the stand of CBI and the defence of the respondent, it is necessary to refer the specific allegations in the charge-sheet. The respondent herein has been arrayed as Accused 6 in the charge-sheet and the allegations against him are as under:

"20. Investigation revealed that legal opinions in respect of all these 10 loans have been given by Panel Advocate Shri K. Narayana Rao (A-6) and valuation reports were given by approved valuer Shri V.C. Ramdas (A-7). Both, the advocate and the valuer, have failed to point out the actual ownership of the property and failed to bring out the ownership details and names of the apartments in their reports. They have also failed to point out the falsehood in the construction permission issued by the municipal authorities.

* * *

28. Investigation revealed that the municipal permissions submitted to the Bank were also fake.

29. Expert of the Finger Print Bureau confirmed that the thumb impressions available on the questioned 22 title deeds pertain to A-3, A-4 and A-5.

30. The above facts disclose that Shri P. Radha Gopal Reddy (A-1) and Shri M. Udaya Sankar (A-2) entered into criminal conspiracy with A-3 and abused their official position as public servants by violating the Bank norms and in the process caused wrongful gain to A-3 to the extent of Rs 1,00,68,050 and corresponding wrongful loss to the Bank in sanctioning 22 housing loans. Shri P.Y. Kondal Rao (A-3) registered false sale deeds in favour of borrowers using impostors as site owners, produced false municipal permissions and cheated the Bank in getting the housing loans. He is liable for conspiracy, cheating, forgery for the purpose of cheating and for using forged documents as genuine. Shri B. Ramanaji Rao (A-4) and Shri R. Sai Sita Rama Rao (A-5) impersonated as site owners and executed the false sale deeds. They are liable for impersonation, conspiracy, cheating, forging a valuable security and forgery for the purpose of cheating. Shri K. Narayana Rao (A-6) submitted false legal opinions and Shri K.C. Ramdas (A-7) submitted false valuation reports about the genuineness of the properties in collusion with A-3 for sanction of the loans by Vijaya Bank, Narayanaguda Branch, Hyderabad and abetted the crime. Shri A.V. Subba Rao (A-8) managed verification of salary slips of the borrowers of 12 housing loans in collusion with A-3 and abetted the crime.

* * *

33. In view of the above, Accused A-1, A-2, A-3, A-4, A-5, A-6, A-7 and A-8 are liable for offences punishable under Section 120-B read with Sections 419, 420, 467, 468, 471 and 109 read with Section 420 IPC and Section 13(2) read with Section 13(1)(*d*) of the Prevention of Corruption Act and substantive offences thereof."

10. With the above details, let us consider whether there is prima facie allegation(s) and material(s) in order to pursue the trial against the respondent herein. In the same way, we have to see whether the reasoning and the ultimate conclusion of the High Court in quashing the charge-sheet against the respondent herein (A-6) is sustainable. We are conscious of the power and jurisdiction of the High Court under Section 482 of the Code for interfering with the criminal prosecution at the threshold.

11. Mr Raval, learned ASG in support of his contentions relied on the following decisions:

(*i*) *State of Bihar* v. *Ramesh Singh*[2],

(*ii*) *P. Vijayan* v. *State of Kerala*[3], and

2 (1977) 4 SCC 39 : 1977 SCC (Cri) 533

3 (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488

(*iii*) *Sajjan Kumar* v. *CBI*[4].

12. The first decision in *Ramesh Singh*[2] relates to interpretation of Sections 227 and 228 of the Code for the considerations as to discharge the accused or to proceed with trial. Para 4 of the said judgment is pressed into service which reads as under: (SCC pp. 41-42)

> "*4*. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If 'the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing', as enjoined by Section 227. If, on the other hand, 'the Judge is of opinion that there is ground for presuming that the accused has committed an offence which ... (*b*) is exclusively triable by the court, he shall frame in writing a charge against the accused', as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce

4 (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371

2 *State of Bihar* v. *Ramesh Singh*, (1977) 4 SCC 39 : 1977 SCC (Cri) 533

to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

13. Discharge of the accused under Section 227 of the Code was extensively considered by this Court in *P. Vijayan*[3] wherein it was held as under: (SCC pp. 401-02, paras 10-11)

"*10.* ... If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words 'not sufficient ground for proceeding against the accused' clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

14. While considering the very same provisions i.e. framing of charges and discharge of the accused, again in *Sajjan Kumar*[4], this Court held thus: (SCC pp. 375-77, paras 19-21)

"*19.* It is clear that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial

3 *P. Vijayan* v. *State of Kerala*, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488

4 *Sajjan Kumar* v. *CBI*, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371

stage is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

20. A Magistrate enquiring into a case under Section 209 CrPC is not to act as a mere post office and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence is totally unworthy of credit, it is the duty of the Magistrate to discharge the accused, on the other hand, if there is some evidence on which the conviction may reasonably be based, he must commit the case. It is also clear that in exercising jurisdiction under Section 227 CrPC, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

Exercise of jurisdiction under Sections 227 and 228 CrPC

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(*i*) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(*ii*) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(*iii*) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(*iv*) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(*v*) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(*vi*) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(*vii*) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

15. From the above decisions, it is clear that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, in that event, it is not open to the court to say that there is no sufficient ground for proceeding against the accused. A Judicial Magistrate enquiring into a case under Section 209 of the Code is not to act as a mere post office and has to arrive at a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. On the other hand, if the Magistrate finds that there is no prima facie evidence or the evidence placed is totally unworthy of credit, it is his duty to discharge the accused at once. It is also settled law that while exercising jurisdiction under Section 227 of the Code, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. This provision was introduced in the Code to avoid wastage of public time and to save the accused from unavoidable harassment and expenditure. While analysing the role of the respondent herein (A-6) from the charge-sheet and the materials supplied along with it, the above principles have to be kept in mind.

16. In *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill*[5] this Court has considered the scope of quashing an FIR and held that it is

> "settled principle of law that at the stage of quashing an FIR or complaint, the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein" (SCC p. 209, para 23).

5 (1995) 6 SCC 194 : 1995 SCC (Cri) 1059

17. By noting the principles laid down in *State of Haryana* v. *Bhajan Lal*[6] this Court held that: (*Rupan Deol Bajaj case*[5], SCC p. 209, para 23)

> "*23.* ... an FIR or a complaint may be quashed if the allegations made therein are so absurd and inherently improbable that no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused...."

18. In *Mahavir Prashad Gupta* v. *State (NCT of Delhi)*[7] this Court considered the jurisdiction of the High Court under Section 482 of the Code and held as under: (SCC p. 118, para 5)

> "*5.* The law on the subject is very clear. In *State of Bihar* v. *Murad Ali Khan*[8] it has been held that jurisdiction under Section 482 of the Code of Criminal Procedure has to be exercised sparingly and with circumspection. It has been held that at an initial stage a court should not embark upon an inquiry as to whether the allegations in the complaint are likely to be established by evidence or not. Again in *State of Haryana* v. *Bhajan Lal*[6] this Court has held that the power of quashing criminal proceedings must be exercised very sparingly and with circumspection and that too in the rarest of rare cases. It has been held that the court would not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. It has been held that the extraordinary or inherent powers did not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

19. Regarding conspiracy, Mr Raval, learned ASG after taking us through the averments in the charge-sheet based reliance on a decision of this Court in *Shivnarayan Laxminarayan Joshi* v. *State of Maharashtra*[9] wherein it was held that once the conspiracy to commit an illegal act is proved, the act of one conspirator becomes the act of the other. By pointing out the same, the learned ASG submitted that the respondent herein (A-6), along with the other conspirators defrauded the Bank's money by sanctioning loans to various fictitious persons.

20. We have already extracted the relevant allegations and the role of the respondent herein (A-6). The only allegation against the respondent is that he submitted false legal opinion to the Bank in respect of the housing loans in the capacity of a panel advocate and did not point out actual ownership of the properties. As rightly pointed out by Mr Venkataramani, learned Senior Counsel for the respondent, the respondent was not named in the FIR. The allegations in the FIR are that A-1 to A-4 conspired together and cheated Vijaya Bank, Narayanaguda, Hyderabad to the tune of Rs 1.27 crores. It is further seen that the offences alleged against A-1 to A-4 are the offences punishable under Sections 120-B, 419, 420, 467, 468 and 471 IPC and

6 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426
5 *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill*, (1995) 6 SCC 194 : 1995 SCC (Cri) 1059
7 (2000) 8 SCC 115 : 2000 SCC (Cri) 1453
8 (1988) 4 SCC 655 : 1988 SCC (Cri) 27
9 (1980) 2 SCC 465 : 1980 SCC (Cri) 493

Section 13(2) read with Section 13(1)(*d*) of the Prevention of Corruption Act, 1988. It is not in dispute that the respondent is a practising advocate and according to Mr Venkataramani, he has experience in giving legal opinion and has conducted several cases for the banks including Vijaya Bank. As stated earlier, the only allegation against him is that he submitted false legal opinion about the genuineness of the properties in question. It is the definite stand of the respondent herein that he has rendered legal scrutiny reports in all the cases after perusing the documents submitted by the Bank. It is also his claim that rendition of legal opinion cannot be construed as an offence. He further pointed out that it is not possible for the panel advocate to investigate the genuineness of the documents and in the present case, he only perused the contents and concluded whether the title was conveyed through a document or not. It is also brought to our notice that LW 5 (listed witness), who is the Law Officer of Vijaya Bank, has given a statement regarding flaw in respect of title of several properties. It is the claim of the respondent that in his statement, LW 5 has not even made a single comment as to the veracity of the legal opinion rendered by the respondent herein. In other words, it is the claim of the respondent that none of the witnesses have spoken to any overt act on his part or his involvement in the alleged conspiracy. The learned Senior Counsel for the respondent has also pointed out that out of 78 witnesses no one has made any relevant comment or statement about the alleged involvement of the respondent herein in the matter in question.

21. In order to appreciate the claim and the stand of the respondent herein as a panel advocate, we have perused the legal opinion rendered by the respondent herein in the form of legal scrutiny report dated 10-9-2003 as to the title relating to Shri B.A.V.K. Mohan Rao, s/o late Shri Someswar Rao which is as under:

"Legal Scrutiny Report

Dated: 10-9-2003

To,
The Branch Manager,
Vijaya Bank,
Narayanaguda,
Hyderabad

Sir,

Sub.: Title opinion Shri B.A.V.K. Mohan Rao, son of late Shri Someswar Rao.

With reference to your letter dated nil, I submit my scrutiny report as hereunder:

1. *Name and address of the mortgagor*:
Shri B.A.V.K. Mohan Rao,
S/o Late Shri Someswar Rao,
R/o 1-1 290/3, Vidyanager, Hyderabad.

2. *Details/description of the documents scrutinised*:

Sl. No.	*Date*	*Name of the documents*	*Whether original/certified true copy*
1.	12-5-2003	CC of pahanis for the years 1972-1973 and 1978-1979	Xerox copy
2.	8 2 1980	Death certificate of Shri P.V. Narahari Rao	Xerox copy
3.	7 3 1980	Legal heir certificate of Shri P.V. Narahari Rao	Xerox copy
4.	24-4-1980	CC of Regd. GPA No. 58/80	Xerox copy
5.	19 9 1980	Regd. Sale Deed No. 1243/80 with plan	Xerox copy
6.	7-12-1998	Sanctioned plan vide Proceeding No. 2155/98	Xerox copy
7.	2-1-2003	Development agreement	Xerox copy
8.	25-4-2003	EC No. 6654/2003 for the period from 28 6 1980 to 31 3 1982	Xerox copy
9.	25-4-2003	EC No. 4136/2003 for the period from 1-4-1982 to 23-3-1984	Xerox copy
10.	21 4 2003	EC No. 3918/2003 for the period from 24 3 1994 to 20-4-2003	Xerox copy
11.	28 7 2003	Agreement for sale	Original

3. *Details/description of property*:

Sl. No.	*Sy. No./H. No.*	*Extent of land* / *Building*	*Location* / *District Village*	*Boundaries*
	*		*	*

All that flat bearing No. F-5 on first floor, admeasuring 900 sq ft, along with undivided share of land 28 sq yd, out of total admeasuring 870 sq yd constructed on Plot Nos. 3, 4 and 5 in Sy. Nos. 84 and 85 in the premises of 'Guru Datta Nivas', situated at Nerdmet, Malkajagiri Municipality and Mandal, Ranga Reddy District, Hyderabad and bounded by:

Flat boundaries	*Land boundaries*
North: Flat No. F-6	20-0"
South: Open to sky	Wide road, Sy. No. 86
East: Corridor and staircase	Sy. Nos. 76 and 78 open to sky
West: Open to sky	

4. *Brief history of the property and how the owner/mortgagor has derived title:*

a The pahanis for the years 1972-1973 and 1978-1979 under Document 1 reveal that Shri Venkat Naraari Rao is the pattadar and possessor of the land admeasuring Acres 1-31 guntas in Sy. No. 84 and Acres 1-22 guntas in Survey No. 85 of Malkajgiri, Hyderabad.

Document 2 shows that Shri P.V. Narahari Rao expired on 23-1-1980 as per the death certificate issued by MCH.

b Document 3 shows that Smt Saraswathi Bai is the only legal heir of late Shri P.V. Narahari Rao.

Document 4 shows that Smt Saraswathi Bai executed a GPA in favour of Shri C.V. Prasad Rao, empowering him to deal and sell the abovesaid property. The GPA was registered in the office of the Sub-Registrar of Hyderabad-East vide Document No. 58/80 dated c 24-4-1980.

Document 5 shows that Smt Saraswathi Bai sold Plot Nos. 3, 4 and 5 admeasuring 870 sq yd situated at Malkajgiri, Hyderabad to Shri N. Samson Sanjeeva Rao and executed a sale deed in his favour by virtue of Document No. 1243/80 dated 19-9-1980 registered in the office of the Sub-Registrar of Uppal, Ranga Reddy.

d Document 6 shows that Shri N. Samson Sanjeeva Rao obtained permission from Malkajgiri Municipality for construction of residential building consisting of ground + 4 floors vide Permit No. G1/2155/98 dated 7-12-1998.

Document 7 shows that Shri N. Samson Sanjeeva Rao entered into development agreement with Shri P.Y. Kondal Rao for construction of e residential flats in the abovesaid plots.

Documents 8, 9 and 10 are the encumbrance certificates for the period from 28-6-1998 to 20-4-2003 (23 years) which disclose only the transactions mentioned in Document 5.

Document 11 shows that Shri N. Samson Sanjeeva Rao (owner) along with Shri P.Y. Kondal Rao (builder) agreed to sell the schedule f property (referred under Item III of this opinion) to Shri B.A.V.K. Mohan Rao (applicant) for a total sale consideration of Rs 5,50,000 and Shri B.A.V.K. Mohan Rao (applicant) also agreed to purchase the said property for the same consideration.

5. *Search and investigation:*

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5.1	The person who is the present owner of the property	Shri N.S. Sanjeeva Rao (present owner/vendor) and Shri B.A.V.K. Mohan Rao (purchaser/vendee)
5.2 to 5.5		
5.6	Whether the latest title deed and immediately previous title deed(s) are available in original	Document 5 is available in xerox (original verified)

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5.7 to 5.13		
5.14	Whether the proposed equitable mortgage by deposit of title deed is possible? If so, what are the documents to be deposited? If deposit is not possible, can there be simple mortgage or a registered memorandum or by any other mode of mortgage?	Yes, equitable mortgage is possible. The original registered sale deed executed in favour of Shri B.A.V.K. Mohan Rao (applicant) by the vendors along with all the documents as mentioned in the list in Item 2 of this opinion should be deposited.
5.15 to 5.20		
6-8	*	* *

9. *Certificate*:

I am of the opinion that Shri N.S. Sanjeeva Rao is having clear marketable title by virtue of Registered Sale Deed No. 1243 of 1980 dated 19-9-1980, referred Document 5 of this opinion. He can convey a valid clear marketable title in favour of Shri B.A.V.K. Mohan Rao (applicant) in respect of the schedule property (referred under Item 3 of this opinion) by duly executing a registered sale deed in his favour.

Shri B.A.V.K. Mohan Rao (applicant) can create a valid equitable mortgage with the Bank by depositing the original registered sale deed executed in his (*sic* name) by the vendors and also depositing all the documents as mentioned in the list in Item 2 of this opinion. I further certify that:

1.	There are no prior mortgages/charges whatsoever as could be seen from the encumbrance certificate for the period from 28 6 1980 to 20 4 2003 pertaining to the immovable property covered by the above title deed(s).	Yes
2.	There are prior mortgages/charges to the extent, which are liable to be cleared or satisfied by complying with the following.	NA
3.	There are claims from minors and his/her/their interest in the property to the extent of (specify) the share of minor(s) with name.	NA
4.	The undivided share of minor of (specify the liability that is fastened or could be fastened on the property).	NA
5.	The property is subject to the payment of rupees (specify the liability that is fastened or could be fastened on the property).	NA
6.	Provisions of the Urban Land (Ceiling and Regulation) Act are not applicable. Permission obtained.	NA

7.	Holding/acquisitions in accordance with the provisions of the land.	NA
8.	The mortgage if created will be perfect and available to the Bank for the liability of the intending borrower Shri B.A.V.K. Mohan Rao (applicant).	

The Bank is advised to obtain the encumbrance certificate for the period from 21-4-2003 till the date after obtaining a registered sale deed in favour of Shri B.A.V.K. Mohan Rao (applicant).

Search report

I have verified the title deed of Shri N.S. Sanjeeva Rao in the office of the Sub-Registrar of Uppal, Hyderabad on 18-7-2003 and found that the sale transaction between parties, schedule property stamp papers, Registered Sale Deed No. 1243/1980 are genuine. The verification receipt is enclosed herewith.

(K. Narayana Rao)
Advocate"

The above particulars show that the respondent herein, as a panel advocate, verified the documents supplied by the Bank and rendered his opinion. It also shows that he was furnished with xerox copies of the documents and very few original documents as well as xerox copies of death certificate, legal heirship certificate, encumbrance certificate for his perusal and opinion. It is his definite claim that he perused those documents and only after that he rendered his opinion. He also advised the Bank to obtain encumbrance certificate for the period from 21-4-2003 till date. It is pointed out that in the same way, he furnished legal scrutiny reports in respect of other cases also.

22. We have already mentioned that it is an admitted case of the prosecution that his name was not mentioned in the FIR. Only in the charge-sheet, the respondent has been shown as Accused 6 stating that he submitted false legal opinion to the Bank in respect of the housing loans in the capacity of a panel advocate and did not point out actual ownership of the properties in question.

23. Mr Venkataramani, learned Senior Counsel for the respondent submitted that in support of the charge under Section 120-B, there is no factual foundation and no evidence at all. Section 120-A defines criminal conspiracy which reads thus:

"**120-A.** ***Definition of criminal conspiracy***. When two or more persons agree to do, or cause to be done—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation. It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

Section 120-B speaks about punishment of criminal conspiracy. While considering the definition of criminal conspiracy, it is relevant to refer Sections 34 and 35 IPC which are as under:

"**34.** ***Acts done by several persons in furtherance of common intention***.—When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

35. ***When such an act is criminal by reason of its being done with a criminal knowledge or intention***.—Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention."

24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence.

25. In the earlier part of our order, first we have noted that the respondent was not named in the FIR and then we extracted the relevant portions from the charge-sheet about his alleged role. Though statements of several witnesses have been enclosed along with the charge-sheet, they speak volumes about others. However, there is no specific reference to the role of the present respondent along with the main conspirators.

26. The High Court while quashing the criminal proceedings in respect of the respondent herein has gone into the allegations in the charge-sheet and the materials placed for his scrutiny and arrived at a conclusion that the same do not disclose any criminal offence committed by him. It also concluded that there is no material to show that the respondent herein joined hands with A-1 to A-3 for giving false opinion. In the absence of direct material, he cannot be implicated as one of the conspirators of the offences punishable

under Section 420 read with Section 109 IPC. The High Court has also opined that even after critically examining the entire material, it does not disclose any criminal offence committed by him. Though as pointed out earlier, a roving enquiry is not needed, however, it is the duty of the Court to find out whether there is any prima facie material available against the person who has been charged with an offence under Section 420 read with Section 109 IPC.

27. In the banking sector in particular, rendering of legal opinion for granting of loans has become an important component of an advocate's work. In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skills. A lawyer does not tell his client that he shall win the case in all circumstances. Likewise, a physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task entrusted to him, he would be exercising his skill with reasonable competence. This is what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of the two findings viz. either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess.

28. In *Jacob Mathew* v. *State of Punjab*[10] this Court laid down the standard to be applied for judging. To determine whether the person charged has been negligent or not, he has to be judged like an ordinary competent person exercising ordinary skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practices.

29. In *Pandurang Dattatraya Khandekar* v. *Bar Council of Maharashtra*[11] this Court held that: (SCC p. 562, para 8)

> "8. There is a world of difference between the giving of improper legal advice and the giving of wrong legal advice. Mere negligence unaccompanied by any moral delinquency on the part of a legal practitioner in the exercise of his profession does not amount to professional misconduct."

30. Therefore, the liability against an opining advocate arises only when the lawyer was an active participant in a plan to defraud the Bank. In the given case, there is no evidence to prove that A-6 was abetting or aiding the original conspirators.

10 (2005) 6 SCC 1 : 2005 SCC (Cri) 1369
11 (1984) 2 SCC 556 : 1984 SCC (Cri) 335

31. However, it is beyond doubt that a lawyer owes an "unremitting loyalty" to the interests of the client and it is the lawyer's responsibility to act in a manner that would best advance the interest of the client. Merely because his opinion may not be acceptable, he cannot be mulcted with the criminal prosecution, particularly, in the absence of tangible evidence that he associated with other conspirators. At the most, he may be liable for gross negligence or professional misconduct if it is established by acceptable evidence and cannot be charged for the offence under Sections 420 and 109 IPC along with other conspirators without proper and acceptable link between them. It is further made clear that if there is a link or evidence to connect him with the other conspirators for causing loss to the institution, undoubtedly, the prosecuting authorities are entitled to proceed under criminal prosecution. Such tangible materials are lacking in the case of the respondent herein.

32. In the light of the above discussion and after analysing all the materials, we are satisfied that there is no prima facie case for proceeding in respect of the charges alleged insofar as respondent herein is concerned. We agree with the conclusion of the High Court in quashing the criminal proceedings and reject the stand taken by CBI.

33. In the light of what is stated above, the appeal fails and the same is dismissed.

(2012) 9 Supreme Court Cases 532

(BEFORE SWATANTER KUMAR AND F.M. IBRAHIM KALIFULLA, JJ.)

GAJOO .. Appellant;

Versus

STATE OF UTTARAKHAND .. Respondent.

Criminal Appeal No. 1856 of 2009*, decided on September 13, 2012

A. Criminal Trial — Defective or illegal investigation — Dereliction of duty by investigating officer — Disciplinary action directed by court — Failure to obtain serologist's report in respect of crime articles — DG Police directed to initiate disciplinary action against IO concerned and if he had since retired, to take action for deduction/stoppage of pension in accordance with service rules — Limitation bar also to be waived, if attracted — Criminal Procedure Code, 1973 — Ss. 156 to 161, 353 and 354 — Constitution of India — Art. 136 — Public Accountability, Vigilance and Prevention of Corruption — Erring Official(s)/Dereliction of duty/ Misfeasance or Malfeasance in office/Compensation/Relief/Costs/ Probe/Punishment — Service Law — Departmental enquiry — Initiation by court — Police — Misconduct

* From the Judgment and Order dated 7-4-2008 of the High Court of Uttarakhand at Nainital in Crl. A. No. 757 of 2001

statutory provisions for termination of services of a Labour Welfare Officer, the order of termination is liable to be quashed. We, therefore, allow this appeal and set aside the order passed in the writ petition and also in the writ appeal. It is not necessary for the disposal of this appeal to express any opinion as to justification of termination of the service of Shri Prasad and such question therefore has not been taken into consideration. In the facts of the case, there will be, however, no order as to costs. The sum of Rs 2000 directed to be paid to the respondent towards meeting the expenses for stay in Delhi under the order of this Court dated February 26, 1993, shall be retained by him.

1993 Supp (3) Supreme Court Cases 557

(BEFORE KULDIP SINGH AND N.M. KASLIWAL, JJ.)

D. S. DALAL .. Appellant;

Versus

STATE BANK OF INDIA AND OTHERS .. Respondents.

Civil Appeal No. 251 of 1982†, decided on March 18, 1993

Advocates Act, 1961 — Ss. 35, 36 and 38 — Professional misconduct — Firm of Advocates and Solicitors, of which the appellant was one of the partners, was entrusted by the respondent bank with filing of a recovery suit against a private company along with Rs 11,475 and connected documents and papers — Suit filed before Delhi HC returned with objections by the Court Registry — Thereafter suit not refiled — Respondents, who were kept in the dark about the whereabouts of the case, engaging another advocate and coming to know about the true state of affairs — Complaint filed before Bar Council alleging serious professional misconduct and seeking appropriate action against the appellant and his partner — Bar Council of India, after due enquiry, finding appellant and his partner guilty of gross professional misconduct, directing removal of their names from the rolls of advocates of the Bar Council of Delhi and withdrawal of the sanads granted to them — Appellant alone filing an appeal to SC against the decision, his partner having obtained stay of the order from the Bar Council of India in a review petition — Held, there were no grounds to interfere with the order of the Bar Council of India as the reasoning and the conclusions reached therein were proper — Case of the appellant that the records of the suit filed on behalf of the respondents was misplaced by the High Court Registry rejected being an afterthought — Legal practitioner — Professional misconduct

Appeal dismissed V-M/TABG/12036/S

Advocates who appeared in this case :
B. Singh, S.K. Gambhir and Davinder Singh, Advocates, for the Appellant;
R.P. Kapur and Rajiv Kapur, Advocates, for the Respondents.

† From the Judgment and Order dated October 24, 1981 of the Disciplinary Committee of the Bar Council of India, Delhi in B.C.I.T.R. Case No. 28 of 1979

The Judgment of the Court was delivered by

KULDIP SINGH, J.— D.S. Dalal was a practising advocate in Delhi. The Bar Council of India by its order dated October 24, 1981, removed his name from the rolls of advocates of the Bar Council of Delhi and the *sanad* granted to him has been withdrawn. This appeal under Section 30 of the Advocates Act is against the order of the Bar Council of India.

2. The State Bank of India lodged a complaint before the Bar Council of Delhi on September 4, 1978. It was alleged in the complaint that the appellant along with two other advocates was practising under the name and style of "M/s Singh and Company", a firm of advocates and solicitors having their office at 2670, Subzi Mandi, Delhi. It was alleged that the advocates were duly engaged by the Asaf Ali Road branch of the State Bank of India to file a recovery suit against M/s Delhi Flooring (Pvt.) Ltd. for the recovery of Rs 6,12,164.10. "Singh and Company" (the Firm) at that time was represented by Mr D.S. Dalal, Mr B. Singh and Ms V. Singh, Advocates, who were the partners of the said Firm and were conducting cases for and on behalf of the Firm.

3. It is the case of the complainant that in the year 1975, the file relating to the case which was to be filed against M/s Delhi Flooring (Pvt.) Ltd., containing original and valuable documents, was handed over to the Firm by the complainant. Thereafter, the Firm submitted a bill for filing the recovery suit which included the professional fees and other miscellaneous charges. An amount of Rs 11,475 was paid to the Firm on November 15, 1975, for filing the suit which included 1/3rd of the professional fee plus the miscellaneous charges. This was acknowledged by the Firm under a receipt which was placed on the record. Till December 19, 1975, the Firm did not inform the bank as to whether the suit was filed and if so what was the stage of the proceedings. The bank wrote a letter dated December 5, 1975 to the Firm asking it to send a copy of the plaint before December 8, 1975, for signatures and verification failing which the bank would be compelled to withdraw the case from the Firm. At that stage Mr B. Singh, advocate, one of the partners of the Firm, in his letter dated December 15, 1975 informed the bank that the suit had been filed on December 15, 1975 in the High Court of Delhi. Thereafter, the bank appears to have received no communication from the said advocates despite repeated reminders — oral and otherwise — and the bank was kept in the dark about the fate of the case entrusted to the appellant and his associates.

4. As there was no response from the appellant, the bank engaged the services of Mr R.P. Arora, Advocate, in order to find out as to what happened to the suit filed by the appellant and his associates on behalf of the bank. Mr R.P. Arora in his letter dated March 2, 1977, informed the bank that the suit which had been filed on December 15, 1975 was returned by the original branch on January 31, 1976 to the Registry of the

High Court with objections. Mr Arora in his letter dated March 31, 1977 further informed the bank that the entire suit paper-book had been returned to Mr B. Singh, Advocate on July 27, 1976 for removing the objections and thereafter the suit has not been refiled in the Registry of the High Court of Delhi.

5. The complainant, therefore, claimed that the appellant and his associates were guilty of serious professional misconduct as they failed to discharge their professional duties and responsibilities entrusted to them by the bank in its capacity as a client. It was further claimed by the bank that the appellant and his associates had misappropriated the money paid to them for court fee, miscellaneous expenses and one-third of the professional fee. The complainant further stated that even the documents and other papers handed over to the appellant and his associates for filing the suit were not returned. The complainant was originally registered with the Bar Council of Delhi. On September 19, 1979, the Disciplinary Committee of the Bar Council of Delhi transferred the case to the Bar Council of India on the ground that the case had been pending for more than one year. The Bar Council of India issued notices returnable on November 2, 1980. On that date the respondents were not present and as such fresh notices were issued for December 20, 1980. Mr D.S. Dalal, though served was not present on December 20, 1980 and as such ex parte proceedings were ordered. Notice to Mr B. Singh, Advocate was returned with the postal endorsement "refused". He was also ordered to be proceeded ex parte. The case was posted for January 23, 1981 for the evidence of the complainant. On that day the appellant moved an application for setting aside the ex parte order dated December 20, 1980. The ex parte order was set aside conditionally permitting the appellant to participate in the proceedings and the case was adjourned to February 27, 1981. On February 27, 1981, three witnesses were examined in the presence of the appellant and he cross-examined them. Thereafter the case was adjourned from time to time and finally fixed for evidence on August 22, 1981. The appellant again sent an application for adjournment which was rejected. The evidence was concluded, arguments were heard and the order reserved. The Bar Council of India in the impugned order observed as under:

> "From a perusal of the order sheet of the Disciplinary Committee of the Bar Council of Delhi and also of the order sheet before us, it reveals that the respondents have throughout adopted the tactics of non-cooperation purposely with a view to protract the proceedings unnecessarily."

6. It may be mentioned that the complainant had given up its case against Ms V. Singh, Advocate and as such the Bar Council of India ultimately did not proceed against her. So far as Mr B. Singh and Mr D.S. Dalal are concerned, the case against them was proved beyond reasonable

doubt and their names were removed from the rolls of advocates of Bar Council of Delhi and the *sanads* granted to them were ordered to be withdrawn.

7. The appeal before us is by D.S. Dalal. We have been informed that Mr B. Singh, Advocate filed a review petition before the Bar Council of India on October 22, 1989 which is still pending. The Bar Council has also granted stay of the order dated October 24, 1981 with the result that Mr B. Singh is continuing with his legal practice. This appeal was argued before us by Mr B. Singh, Advocate.

8. It is not disputed before us that Mr B. Singh and Mr D.S. Dalal were the main partners of the Firm. It is also not disputed that an amount of Rs 11,475 was received by these advocates towards the filing of the suit and further that the connected documents and papers were received by them. Mr B. Singh, learned counsel for the appellant primarily argued that the suit was filed by the appellant in the Delhi High Court on December 15, 1975 but the record of the suit file was misplaced/lost by the High Court Registry. He further stated that by his letter dated August 20, 1977, he informed the bank about the suit file being not traceable and further that the record of the suit was to be restructured and refiled.

9. We have been taken through the copy of the letter dated August 20, 1977, written by Mr B. Singh on behalf of the Firm to the Regional Manager, State Bank of India, Parliament Street, New Delhi. The relevant paragraph is as under:

> "However, as already intimated two bank cases — one of Delhi Flooring (P) Ltd. of Asaf Ali Road branch and second of J.M.A.I.E. Corporation of Jungpura branch filed by the undersigned in Delhi High Court — have been misplaced/lost by High Court Registry and the record reconstruction petitions have already been given to the branches in March 1976 itself. In case the said suits have not already been got restored through some other learned counsel and the assistance of the undersigned is required for the restoration/ reconstruction then he is willing to cooperate fully without charging any fee and without insisting on the payment of his outstanding bills first. The undersigned can work only when he is allowed to work in terms of his approved schedule of fees and the payment is made of all his bills forthwith."

The letter dated August 20, 1977, quoted above was not produced before the Bar Council of India. It has been placed before us for the first time. Apart from the ipse dixit of the appellant and Mr B. Singh in the above letter, there is no evidence on the record to show that the suit file was misplaced or lost by the High Court Registry. On the other hand, there is cogent and reliable evidence on the record to show that the Delhi High Court Registry returned back the papers to Mr B. Singh for removing the objections raised by it.

10. Mr R.P. Arora, Advocate, appeared as a witness before the Bar Council of India. The relevant part of his evidence is as under:

> "I know the respondents in the case. I was instructed by the complainant in the case to find out as to whether the respondents had filed the suit against the Delhi Flooring (P) Ltd. in the High Court of Delhi which was entrusted by the complainant to the respondents. Accordingly I went to Delhi High Court and made enquiries to find out whether such a suit has been filed. On enquiry I came to know from the registers of the High Court that the suit had been filed on behalf of the complainant against Delhi Flooring (P) Ltd. on December 15, 1975. I found from the records that the office had not registered the suit because of certain objections raised by the office. I also came to know that the entire suit file had been returned to the respondents for complying with the objections and to refile the suit. This was so returned on July 27, 1976. The enquiries that were made by me in the High Court office were during March 1977 and till that date the suit had not been refiled by the respondents."

11. Mr R.P. Arora, Advocate, after examining the records of the Delhi High Court had sent two reports to the State Bank of India. In his report dated March 2, 1977 he stated as under:

> "As desired by you, to know the whereabouts of the above-noted case, I contacted the clerk concerned in the original branch of High Court of Delhi at New Delhi and also inspected the registers of the original suits.
>
> The above-noted case was filed by M/s Singh & Co. on December 15, 1975, but there were certain objections by the original branch and on January 31, 1976 the said case (file) was returned to the registry by the original branch. The register of the registry in respect of the period from January 31, 1976 is not available and I shall let you know the up to date information as to when the said case was returned to M/s Singh & Co., within a short period."

Subsequently, in his report dated March 31, 1977, Mr R.P. Arora, Advocate gave the following information to the bank:

> "I have enquired from the original section of High Court of Delhi at New Delhi, that the file of the above-stated case was returned to Shri B. Singh on July 27, 1976 as the said case was under objections. So far he has not again filed the said case in High Court."

Both the above quoted reports have been proved on the record of the Bar Council of India as evidence. The Bar Council of India on appreciation of the evidence before it came to the conclusion that the charge against the appellant and Mr B. Singh was proved beyond doubt. The Bar Council of India concluded as under:

> "... After having gone through the evidence and the documents produced in the case carefully, we have come to the conclusion that

the complainant had entrusted the suit to be filed against M/s Delhi Flooring (Pvt) Ltd. with the necessary papers and Rs 11,400.74 for expenses etc. to the respondent-advocates. It is also established that the respondents have filed the suit on December 15, 1975 with some objections deliberately and when the papers were returned by the High Court, they had not refiled the suit for a pretty long time and as is established till this day. So, we have no hesitation to conclude that the respondents have misappropriated the amount realised by them from the bank without filing the suit in a proper manner."

12. We have given our thoughtful consideration to the evidence on the record against the appellant. We see no ground to interfere with the order of the Bar Council of India. We agree with the reasoning and the conclusions reached therein.

13. We, therefore, dismiss the appeal. No costs.

1993 Supp (3) Supreme Court Cases 562

(BEFORE KULDIP SINGH AND N.M. KASLIWAL, JJ.)

SIROMAN SINGH .. Appellant;

Versus

STATE OF ORISSA AND OTHERS .. Respondents.

Civil Appeal No. 775 of 1978†, decided on March 17, 1993

Bihar and Orissa Excise Act, 1915 — S. 93(1) (as amended in 1980) — Excise dues under the Act — Recovery of, under S. 3 of Revenue Recovery Act, 1890, as arrears of land revenue, held, not illegal — Revenue Recovery Act, 1890, S. 3

The appellants contended that the excise dues under Section 93(1) of the Orissa Act, being arrears of revenue and not arrears of land-revenue or a sum recoverable as an arrear of land-revenue, could not be recovered under Section 3 of the Revenue Recovery Act, 1890. Since Section 2 of the Bihar and Orissa Excise (Orissa Amendment) Act, 1980 substituted the words 'recovery of arrears of land-revenue' for the words 'recovery of arrears of revenue' in Section 93(1) of the principal Act and provided that the amendment should be deemed always to have been substituted, the said contention is untenable. (Paras 6 and 7)

Lakshmi Prasad Sao v. *Collector and Deputy Commissioner, Singhbhum*, 1979 BLJR 379: 1979 Tax LR 2503 (Pat), *considered*

Appeal dismissed H-M/ATU/12031/S

Advocates who appeared in this case :

R.K. Garg, Senior Advocate (M/s P.D. Sharma and R.L. Saraiwala, Advocates, with him) for the Appellant;

R.K. Mehta, Advocate, for the Respondents.

† From the Judgment and Order dated March 28, 1977 of the Orissa High Court in Original Jurisdiction Case No. 2306 of 1975

nor are necessary for cross-examination, non-supply of such documents would not vitiate the proceedings and there would be no violation of the principles of natural justice.

8. In the present case, the respondent did not cross-examine even the Assistant Traffic Inspector, much less challenged the reports filed by the Assistant Traffic Inspector. Even in the charge-memo, the predecessors of the present appellants had not relied upon the statements of the passengers.

9. The question whether the authority can act upon the reports filed by the Assistant Traffic Inspector or not and whether these reports should be accepted or not is a matter which has to be examined by the enquiry officer. The Court does not sit in appeal over the findings of the enquiry officer. If the findings are based on uncontroverted material placed before the enquiry officer, it cannot be said that these findings are perverse.

10. The High Court, therefore, seems to have reached the conclusions without examining the file relating to the enquiry. The facts on which the High Court's judgment is based do not appear to have been correctly appreciated by the High Court. The Tribunal on the contrary has clearly recorded the facts pertaining to the enquiry. In the premises, we set aside the impugned judgment and order of the High Court and restore the decision of the Tribunal. The appeal is allowed accordingly.

(1999) 3 Supreme Court Cases 376

(BEFORE DR A.S. ANAND, C.J. AND V.N. KHARE, J.)

L.C. GOYAL . . Appellant;

Versus

SURESH JOSHI (MRS) AND OTHERS . . Respondents.

Civil Appeal No. 2271 of 1998†, decided on March 12, 1999

A. **Advocates Act, 1961 — Ss. 35(1) & (3), 38 and 43 — Professional misconduct — Misappropriation of client's money taken for court fees — Punishment vis-à-vis gravity of misconduct — Mitigating circumstances — Legal profession, held, is known as a noble profession having high traditions — Members of the profession are expected to uphold those traditions and serve the society with sincerity and honesty — Going against those traditions brings disrepute to the profession as a whole — If a member of the profession falls from such standards, he deserves punishment commensurate with gravity of his misconduct — Appellant's licence suspended for five years on the ground that he misappropriated client's money and the cheque through which money was refunded, bounced due to insufficient funds — Supreme Court not inclined to interfere with the punishment, while exercising of its appellate power under S. 38, but keeping in view that the appellant undertook to conform to standards of legal profession, period of suspension reduced to two and a half years subject to the condition that the amount shall be refunded to the client with interest — Costs of appeal quantified at Rs 5000 also imposed on appellant — This was in addition to the costs awarded by the Bar Council of India**

† From the Judgment and Order dated 2-3-1998 of the Disciplinary Committee of the Bar Council of India, in B.C.I T.R. Case No. 44 of 1995

Appellant, an Advocate, was found guilty by Disciplinary Committee of the Bar Council of India (BCI) of misappropriating Rs 25,102 which he received from his client as an amount to be paid as court fee. The BCI held that the appellant was guilty of professional misconduct and therefore suspended his licence to practice for a period of five years. The appellant made certain submissions against findings of the BCI but those submissions did not find favour with the Supreme Court.

Held :

Legal profession is known as a noble profession having high traditions and has been catering to the needs of the society for a very long time past. Members of this profession are expected to uphold those traditions and serve the society with sincerity and honesty. If such are the expectations from a noble profession, its members must conduct themselves in a way which may be worthy of emulation. By doing any act which is contrary to accepted norms and standards of this profession, a member of the profession not only discredits himself but also brings disrepute to the profession to which he belongs. By such acts, the credibility and reputation of the profession as a whole comes under cloud. If any member of the profession falls from such standards, he deserves punishment commensurate with the gravity of his misconduct. (Para 14)

In the present case the order of the BCI does not call for interference. However, since the appellant's counsel has given an undertaking on behalf of the appellant to the effect that the appellant would conform to the standards of legal profession and further, he has deposited a sum of Rs 40,000 to be paid to plaintiffs of the suit, the order of the Disciplinary Committee of BCI is modified. Period of suspension of appellant's licence is reduced from five to two and a half years, provided the appellant also deposits interest on Rs 38,000 w.e.f. 31-3-1993 till the date of payment of money to the plaintiffs @ Rs 9% per annum. The appellant has already deposited a sum of Rs 40,000 in the court which has been invested in fixed deposit of a nationalised bank. The amount over and above Rs 38,000 deposited by the appellant in the Supreme Court and interest accrued on the fixed deposit shall be adjusted towards interest payable by the appellant. The balance amount, if any, shall be paid by the appellant within one month from the date of this judgment. In case the appellant fails to deposit the aforestated amount within the stipulated period, the order reducing the suspension of appellant's licence to practice would stand recalled and all the consequences provided in the order under appeal shall come into effect. The appellant shall also deposit the costs as awarded by the Bar Council of India, as well as the costs of this appeal. Costs of the appeal are quantified as Rs 5000.

B. **Advocates Act, 1961 — Ss. 35(3) and 36(3) — Professional misconduct — Standard of proof — Strict or reasonable proof — Appellant assailing findings of the Disciplinary Committee on the ground that opinion of handwriting expert should have been obtained when he had denied his signature on cheque and receipts alleged to have been issued by him to client — Complaint against appellant was that he misappropriated client's money taken for paying court fees and the cheque through which the money was refunded, bounced due to insufficient funds — Held, opinion of handwriting expert was not necessary because other facts showed that the signature was of the appellant — Supreme Court itself comparing signature on the cheque with appellant's admitted signature and finding striking similarities — Held, the established circumstances in this case spoke for themselves and candidly pointed towards appellant's misconduct — Evidence Act, 1872, S. 45 — Handwriting expert when need not be called — Legal maxims — Res ipsa loquitur (things speak for itself)**

Held :

The appellant's misconduct was established from the following facts, (*a*) valuation of suit given in the plaint originally filed was purposely kept vague which was subsequently amended without the knowledge of the complainant, (*b*) the cheque bounced due to insufficiency of funds and not because genuineness of signature was doubted by bank, (*c*) the complainant was not beneficiary of the cheque and therefore there was no reason for her to forge appellant's signature, (*d*) the appellant did not give reply to notices sent to him, and (*e*) no FIR was lodged with regard to theft of chequebook. Besides, there is a striking similarity between appellant's admitted signature and the signature appearing on the cheque. (Paras 7 to 12)

The circumstances established in the present case speak for themselves and candidly point out towards the misconduct committed by the appellant. When established circumstantial evidence is so patent, it leads to only conclusion that the signature on cheque was not forged; there was no need for an opinion of handwriting expert. The Court is therefore satisfied that the established circumstantial evidence as well as the documentary evidence in the present case show that the allegations of the complainant were well substantiated and in such circumstances of the case, the Bar Council of India was justified in declining to summon handwriting expert for finding out the genuineness of signature on cheque. (Para 12)

C. **Negotiable Instruments Act, 1881 — S. 138 — Dishonour of cheque due to insufficiency of funds — Drawer denying his signature on cheque and pleading that he could not be held responsible unless opinion of handwriting expert was obtained — In the facts and circumstances of the case held, cheque bounced for want of funds and therefore plea of forged signature could not be accepted (Para 8)**

Appeal partly allowed K-M/TZW/20883/C

Advocates who appeared in this case :

R.K. Jain, Senior Advocate (Aseem Mehrotra, Ms Surita Bamezai and Ashok Kr. Mahajan, Advocates, with him) for the Appellant;

Pranab Kr. Mullick, Advocate, for the Respondents.

The Judgment of the Court was delivered by

V.N. KHARE, J.— This appeal under Section 38 of the Advocates Act, 1961 (hereinafter referred to as "the Act") at the instance of the appellant who is a practising advocate of the High Court of Delhi as well as an Advocate-on-Record of this Court is directed against the order dated 2-3-1998 passed by the Disciplinary Committee of the Bar Council of India on a complaint filed by the respondent (hereinafter referred to as the complainant) whereby the Bar Council of India after having found that the appellant has committed professional misconduct, suspended his licence to practise for a period of five years.

2. The facts that emerge out of the complaint filed by the complainant are these:

Sometime in September 1989, the complainant engaged the appellant for filing a suit for injunction on the original side of the High Court of Delhi. The appellant filed the suit. The appellant is alleged to have charged Rs 25,102 towards payment of court fee and also Rs 389 for miscellaneous charges total amounting to Rs 25,491, and also a further sum of Rs 6500 out of which Rs 3500 was paid through cheque and a sum of Rs 3000 in cash.

The appellant gave a receipt dated 6-10-1989 for a sum of Rs 6500 as well as receipt dated 6-10-1989 for a sum of Rs 25,102. Sometime in 1992, the complainant came to know that the appellant had not deposited the process fee and also did not press the application for interim injunction filed in the suit. The complainant on an enquiry found that the appellant had misappropriated a sum of Rs 25,102 and also did not take any steps towards the progress of the case. On being so told by the complainant, the appellant after realising his mistake issued a cheque dated 31-3-1993 for a sum of Rs 38,000 on account of refund of court fee amount along with interest. The said cheque was drawn on UCO Bank and the same was deposited in the account of the Union, namely, M/s Siemens Employees' Union, New Delhi with Central Bank of India. The said cheque bounced due to insufficient funds. Later on, when the complainant approached the appellant informing him that the cheque had bounced, the appellant asked the complainant to deposit the cheque again with an assurance that this time the cheque would be honoured but again the cheque when it was deposited on 15-5-1993 was dishonoured with the remarks "insufficient funds". The complainant then sent a notice dated 9-6-1993 which remained unreplied. Under such circumstances, the complainant filed a complaint before the Delhi Bar Council. Since the said complaint could not be decided within the stipulated time, it stood transferred to the Bar Council of India. Before the Bar Council of India, the complainant examined herself as well as got exhibited various documents, namely, Ext. C-1, a receipt dated 6-10-1989 for a sum of Rs 6500; Ext. C-2, another receipt dated 6-10-1989 which was in respect of a sum of Rs 25,102; Ext. C-3, case-file of the civil suit filed before the High Court of Delhi; Ext. C-4, cheque issued by the appellant dated 31-3-1993 for a sum of Rs 38,000; Exts. C-5 and C-6, memos of Central Bank and UCO Bank respectively with respect to presentation of cheque and its dishonouring on account of insufficient funds; Exts. C-7 and C-8, memos of Central Bank and UCO Bank with respect to the first presentation of cheque and its dishonouring due to insufficient funds in the account of the appellant; Ext. C-9, counterfoil of deposit of cheque in the account of Siemens Employees' Union; Ext. C-14, the certificate issued by the SHO, Police Station Tilak Marg, New Delhi dated 28-7-1995 to the effect that no complaint was received from the appellant regarding theft of chequebook at Police Station Tilak Marg. Besides that, the original file of Civil Suit No. 2688 of 1989 was summoned by the Bar Council. The appellant denied the allegations that he had received a sum of Rs 25,102 towards payment of court fee and also denied his signatures on Exts. C-1, C-2 and C-4 alleging that his signatures were forged by the respondent herself. The Bar Council after considering the entire material found that the appellant had received a sum of Rs 25,102 from the respondent towards payment of court fee which he never deposited in the court and Ext. C-4 bears the signature of the appellant. Consequently, the Bar Council after having arrived at the conclusion that the appellant had committed professional misconduct, suspended his licence to practise for a period of 5 years. That is how the matter has come before us.

3. Shri R.K. Jain, learned Senior Counsel appearing for the appellant advanced two submissions. The first submission is that the appellant having denied his signatures on Exts. C-1, C-2 and C-4, it was incumbent upon the Bar Council to have sought an opinion of a handwriting expert for finding out the genuineness of the signatures on those exhibits. He contended that the failure on the part of the Bar Council to summon a handwriting expert had resulted in grave injustice to the appellant. The second submission is that the appellant had never received a sum of Rs 25,102 towards payment of court fee and the finding recorded by the Bar Council contrary to it is totally perverse. Since both the submissions of learned counsel are overlapping, we propose to deal with both the submissions together.

4. After we heard the matter and perused the record, we find five established circumstances against the appellant which are stated hereinafter.

(1) *The valuation of the suit given in the plaint originally filed was purposely kept vague which was subsequently amended without the knowledge of the complainant*

5. The suit was filed in 1989. However, the Registry of the High Court returned the plaint for removing the following defects:

(*i*) that the prayer clause was not proper;

(*ii*) that exact value for the purposes of court fee and jurisdiction were not mentioned; and

(*iii*) claim made and the court fee amount paid should also be stated.

6. On 26-9-1989, the plaint was refiled and a new para 50 was added. Prayer clause was also amended. Clarification of the court fee amount was also made and paras 39, 40, 42 and 43 of the plaint were also amended. In paras 39, 40, 42 and 43 of the plaint, the words "fixed court fee of Rs 20 is affixed on the plaint" were added. In para 50 which was a new paragraph at p. 20 of the plaint, the value of each prayer has been tentatively fixed at Rs 200 and the court fee of Rs 20 on each prayer has been affixed on the plaint were mentioned. Pages 20, 21 and 22 of the plaint did not bear the signatures of the complainant although all other pages of the plaint were signed by the complainant. Thus it shows that initially no valuation was given in the plaint but subsequently without any knowledge of the complainant, pp. 20 to 22 of the plaint were substituted under the signatures of the appellant. Had the respondent been informed about the substitution of these 3 pages of the plaint, the same would have contained the signatures of the complainant. When the plaint was originally filed, the figures stated herein were not in the plaint which facts are borne out from the report of the Registry of the Delhi High Court. The amount mentioned in paras 39, 40, 42, 43 and addition of para 50 with respect to court fee was done by the appellant as the same were not in existence when the plaint was filed at the first instance. The aforesaid facts show that the valuation of the suit was purposely kept vague when the plaint was filed for the first time so that the respondent-complainant may not be able to know as to the actual amount of court fee affixed on the plaint. The original plaint was summoned by the Bar

Council and after examining it, the Bar Council recorded the following findings:

> "A prima facie look at this makes it clear that in column 5 stamp paper towards court fees column has been left blank and no figure has been mentioned therein. At S. No. 1 against the memo of parties, a figure of Rs 140 has been mentioned and over vakalatnama Rs 2.75 has been mentioned. It is further apparent that alignment of the amount of Rs 140 court fees paid for parties was not typed at the same time as the alignment of the type which clearly shows that the particulars and objects mentioned at the top of the column horizontally same alignment whereas the figure of Rs 140 is slightly below which clearly indicates that this was put subsequently. Similarly, the figure of Rs 2.75 at S. No. 3 appears to have been mentioned subsequently as vakalatnama and the figure of 22 appears to have been typed at the same time and Rs 2.75 is somewhat on lower level whereas, had all these figures been typed at the same time, they would have been in the same line and alignment. Thus, it appears that the figures of Rs 140 and Rs 2.75 have been typed subsequently."

7. We are in agreement with the aforesaid finding recorded by the Bar Council and are of the view that the aforesaid established circumstances clearly show that the exact amount of court fee to be paid on the plaint was purposely kept vague and subsequently three pages were substituted so that the complainant may not be able to know the exact amount of court fee paid on the plaint.

(2) *Dishonouring of the cheque issued by the appellant, Ext. C-4 by the Bank on account of insufficient funds in the account of the appellant*

8. The complainant alleged that when the appellant realized that the complainant has come to know that he had misappropriated a sum of Rs 25,491, he gave a cheque for a sum of Rs 38,000 which is Ext. C-4. The said cheque was drawn on UCO Bank and the same was deposited in Central Bank of India in the account of the Union, viz., Siemens Employees' Union, New Delhi. But the said cheque was dishonoured due to insufficient funds. The appellant denied his signature on Ext. C-4 and contended that his signature was forged by the complainant. It is in this context that it was urged before the Bar Council of India that some handwriting expert be examined in order to find out the genuineness of the signature on Ext. C-4. As stated above, the cheque bounced not on account of the fact that the signature on Ext. C-4 was not tallying with the specimen signature of the appellant kept with the Bank, but on account of insufficient funds. Had the signature on Ext. C-4 been different, the Bank would have returned the same with the remark that the signature on Ext. C-4 was not tallying with the appellant's specimen signature kept with the Bank. The memos Ext. C-6 and Ext. C-8 issued by the Bank clearly show that the signature of the appellant on Ext. C-4 was not objected to by the Bank, but the same was returned with the remark "insufficient funds". This circumstance shows that the signature on Ext. C-4 was that of the appellant.

(3) *The complainant was not a beneficiary of Ext. C-4*

9. As seen earlier, the cheque Ext. C-4, issued by the appellant was in favour of M/s Siemens Employees' Union, New Delhi. The account-payee cheque obviously was not issued in the name of the complainant. By the aforesaid cheque, the complainant was not going to gain anything out of it. The amount normally would have been credited in the account of M/s Siemens Employees' Union, New Delhi. Thus, this circumstance also shows that there was no reason for the complainant to forge the signature of the appellant on Exts. C-1, C-2 and C-4.

(4) *No reply to the notices (Exts. C-12 and C-13) dated 9-6-1993 and 11-1-1993, respectively*

10. The complainant sent two notices on behalf of M/s Siemens Union to the appellant wherein she inter alia alleged that a sum of Rs 25,102 was misappropriated by the appellant under the pretext of payment of the court fee for the suit filed by the plaintiffs, that the appellant did not press the application for injunction and that the appellant misled the complainant as regards the progress of the case. These notices were not replied to by the appellant which is a material circumstance against the appellant when receipt of the notices sent to him have been admitted.

(5) *No FIR lodged with regard to theft of the chequebook*

11. The case set up by the appellant before the Bar Council was that, in fact, the complainant somehow managed to get his chequebook and she after forging his signature on one of the leaves presented the same to the Bank for payment. If it was true, why did the appellant not lodge any FIR with the Tilak Marg Police Station regarding theft of the chequebook? However, it was subsequently explained by the appellant that he did send a letter to the SHO of the said police station. But, in the normal course, FIR is not lodged by letter at the first instance. Moreover, SHO, Tilak Marg Police Station gave a certificate Ext. C-14, to the effect that he did not receive any registered letter or report from the appellant regarding theft of his chequebook.

12. These established circumstances stated above clearly show that the signature on Exts. C-1, C-2 and C-4 were that of the appellant himself. Moreover, during the course of hearing of the case, we ourselves examined and compared the admitted signature of the appellant with that of Ext. C-4, leaving nothing to chance lest any injustice is caused to the appellant. On comparison, we found striking similarity between the admitted signature and that of the disputed one and there is no reason to doubt the genuineness of the signature on Ext. C-4. The circumstances established in the present case speak for themselves and candidly point out towards the misconduct committed by the appellant. When the established circumstantial evidence is so patent it leads to only one conclusion that the signature on Ext. C-4 was not forged; there was no need for an opinion of a handwriting expert. We are, therefore, satisfied that the established circumstantial evidence as well as the documentary evidence in the present case shows that the allegations of the

complainant were well substantiated and in such circumstances of the case, the Bar Council of India was justified in declining to summon a handwriting expert for finding out the genuineness of the signature on Ext. C-4.

13. Shri R.K. Jain, learned Senior Counsel, while concluding his argument prayed that we may take a lenient view of the matter in view of the fact that the appellant has deposited the entire money covered by Ext. C-4. The learned counsel also gave an undertaking on behalf of the appellant that he would not repeat such conduct.

14. The legal profession is known as a noble profession having high traditions and has been catering to the needs of the society for a very long time past. Thus the members of this profession are expected to uphold those traditions and serve the society with sincerity and honesty. If such are the expectations from a noble profession, its members must conduct themselves in a way which may be worthy of emulation. By doing any act which is contrary to the accepted norms and standards of this profession, a member of the profession not only discredits himself, but also brings disrepute to the profession to which he belongs. By such acts, the credibility and reputation of the profession as a whole comes under a cloud. If any member of the profession falls from such standards, he deserves punishment commensurate with the gravity of the misconduct. Initially, we were not inclined to interfere with the order under appeal. However, since the appellant's counsel has given an undertaking on behalf of the appellant to the effect that the appellant would conform to the standards of the legal profession and further, he has deposited a sum of Rs 40,000 to be paid to the plaintiffs of the suit, we modify the order of the Disciplinary Committee, Bar Council of India of suspending the appellant's licence to practise for a period of five years by reducing it to two and a half years, provided the appellant also deposits interest on Rs 38,000 w.e.f. 31-3-1993 till the date of payment of money to the plaintiffs @ 9% per annum. The appellant has already deposited a sum of Rs 40,000 in the court which has been invested in a fixed deposit of a nationalised bank. The amount over and above Rs 38,000 deposited by the appellant in this Court and an interest accrued on the fixed deposit shall be adjusted towards interest payable by the appellant. The balance amount, if any, shall be paid by the appellant within one month from the date of this judgment. In case the appellant fails to deposit the aforestated amount within the stipulated period, our order reducing the suspension period of the appellant's licence to practise would stand recalled and all the consequences provided in the order under appeal shall come into effect. The appellant shall also deposit the cost as awarded by the Bar Council of India, as well as the costs of this appeal.

15. The appeal is, therefore, allowed in part. The appellant shall pay costs to the claimant which we quantify at Rs 5000.

between *Pradeep Jain (Dr) case*[3] and the present case and the decision in *Dr Parag Gupta case*[1].

3. The problem felt by the Uttar Pradesh Government or certain other students as modifying the decision in *Pradeep Jain (Dr) case*[3] is not at all well founded. In fact, what this Court stated in summarising the law on the matter is by culling out the principles from the said decisions and we have not evolved any new principle at all. Based on these principles we have adjusted the equities in respect of students selected under 15% all-India quota and who had migrated to other States. If the judgment rendered by us in *Dr Parag Gupta case*[1] is confined to such students, we do not think the difficulty felt by the appellants in these cases would arise at all.

4. The general direction given by the High Court following the judgment of this Court in *Dr Parag Gupta case*[1] in respect of all petitioners without examining their cases whether they fell within 15% all-India quota and who had been selected under the 15% all-India quota and migrated to other States or not, would not be appropriate. The order of the High Court, therefore, stands modified by confining its order only to fresh students who were covered by *Dr Parag Gupta case*[1] that is such students who had migrated to other States/universities under 15% all-India quota and who were desirous of pursuing studies in their home States and not to every student who has gone out of his home State and desires to return to his home State. In respect of such other students the relief granted by the High Court should not apply.

5. The appeals are partly allowed and the order made by the High Court is set aside in each of these cases and the matter is remanded for fresh consideration in the light of this order and in accordance with law. The writ petition also stands disposed of.

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(BEFORE K.T. THOMAS AND R.P. SETHI, JJ.)

R.D. SAXENA . . Appellant;

Versus

BALRAM PRASAD SHARMA . . Respondent.

Civil Appeal No. 1938 of 2000 with Contempt Petition No. 147 of 2000[*], decided on August 22, 2000

A. **Advocates Act, 1961 — S. 35 — Professional misconduct — Refusal to return case files when demanded by client held, amounts to professional misconduct — Advocate has no lien in respect of litigation papers in his keeping even where there is a dispute regarding payment of his fees — Obligation to return the brief is not just a legal duty but a moral imperative — Advocate has other legal remedies to recover such fees — Litigant is free to change his advocate when he feels that the advocate retained cannot**

[*] From the Judgment and Order dated 24-7-1999 of the Disciplinary Committee of the Bar Council of India, New Delhi in BCI TRC No. 21 of 1996

espouse his cause efficiently or that the conduct of such advocate is prejudicial to his interest or for any other reason — Moreover, permitting an advocate lien over the case files in view of fees claimed by him, held, would result in serious abuse and exploitation of illiterate litigants — Further, the cause in a court/tribunal is far more important than the right of an advocate to his fees — Held, the Bar Council of India rightly found the appellant guilty of professional misconduct for refusing to return the case files of his client Bank on the basis of the claim that the Bank had still to pay the balance of his fees — However, Supreme Court reducing the punishment awarded (18 months' disbarment and Rs 1000 fine) to reprimand, because this occasion was the first time that the Supreme Court had pronounced a ruling on the question of whether an advocate had a lien over case files for his fees — Clarified that reduced punishment would not count as a precedent — Civil Procedure Code, 1908, Or. 3 R. 4(2) — Appointment of advocate by party — Constitution of India, Art. 22(1) — Legal practitioner "of his choice" — Right of person arrested to have — Criminal Procedure Code, 1973, S. 303 — "Pleader of his choice" — Right of accused to have — Bar Council of India Rules, Pt. VI Ch. II Rr. 24, 28, 29 — Advocate, held, is within his rights to deduct his fees from any money of the client remaining in his hand at termination of proceedings, but the rules do not provide him with a lien over the litigation papers and files — Generally — Common law — Advocate has no lien in respect of litigation papers required for progress of lis filed in court — Words and phrases — "Misconduct"

B. Contract Act, 1872 — Ss. 171 and 148 r/w Sale of Goods Act, 1930, S. 2(7) — Advocate's right to retain as security for a general balance of account, any "goods bailed" to him — Held, litigation papers and case files cannot be equated with "goods bailed" under Ss. 171 and 148 of Contract Act — Legal practitioner therefore has no lien over such papers and files and is obliged to return the same to his client on demand — Words and Phrases — "Goods", "Bailment"

C. Advocates Act, 1961 — S. 35 — Misconduct — Meaning and scope of — Contextual meaning — A wide canvas should be adopted for

D. Interpretation of Statutes — Construction of words and phrases — Where the statute does not define a word ("goods" in this case as used in S. 171, Contract Act), held, the legislature should be presumed to have used it in its ordinary dictionary meaning

E. Advocates — Generally — Conduct — Advocate, held, must conduct himself at all times in a manner befitting his status as a member of a high and honourable profession — If he departs from such a standard, even in the context of recovering his fees, and behaves in a manner which is not fair, reasonable and according to law, he would be liable to disciplinary action

F. Advocates — Generally — Social duty — Held, members of legal profession have a social duty to show the people a beacon of light by their conduct and actions — The poor, uneducated and the exploited in particular need a helping hand from the legal profession

G. Judiciary — Faith in institution of — Legal profession ought to evolve a code of conduct for itself in addition to Act and Rules already

existing so that faith of common man in institution of judiciary may be strengthened

The appellant *R*, was an advocate who was retained by the M.P. State Cooperative Bank in 1990 as a legal advisor and also to conduct cases in which the Bank was a party. In 1993 the Bank terminated the retainership and asked the appellant to return its case files. The appellant did not do so and instead presented a consolidated bill to the Bank seeking Rs 97,100 as the balance owing to him for legal services rendered. He also informed the Bank that he would return the files only after his dues were settled.

The Bank denied that any amount in respect of fees was owed to *R*. After fruitless correspondence it filed a complaint before the State Bar Council on 3-2-1994, accusing the appellant of professional misconduct. In his reply *R* admitted that he had not returned the Bank's files, but he contended that he had a right of lien over them as long as his bills remained unpaid. As the State Bar Council did not dispose of the matter even after the expiry of one year, the proceedings stood transferred to the Bar Council of India, under the provisions of Section 36-B of the Advocates Act. The Bar Council of India held an inquiry and concluded that *R* was guilty of professional misconduct; as punishment the appellant was disbarred for a period of 18 months and finded Rs 1000.

Before the Supreme Court, it was contended for the appellant that a miscarriage of justice had resulted, because the Bar Council of India had not considered the defence set up by the appellant, that he had a lien over his client's files in lieu of his unpaid fees. For the Bank it was contended that no amount was owing to the appellant and that the bill presented by him only showed inflated figures; in the alternative it was contended that an advocate could not retain a client's files after the termination of his engagement and that a lien in respect of such files could not be claimed.

Dismissing the appeal, but reducing the quantum of punishment to a reprimand, the Supreme Court

Held :

Per curiam (Thomas and Sethi, JJ.)

Files containing copies of the records (perhaps some original documents also) cannot be equated with the "goods" referred to in Section 171 of the Contract Act. Files kept by an advocate cannot amount to "goods bailed". The word "bailment" is defined in Section 148 of the Contract Act as the delivery of goods by one person to another for some purpose, upon a contract that they shall be returned or otherwise disposed of according to the directions of the person delivering them, when the purpose is accomplished. In the case of litigation papers in the hands of the advocate there is neither delivery of goods nor any contract that they shall be returned or otherwise disposed of. That apart, the word "goods" mentioned in Section 171 is to be understood in the sense in which that word is defined in the Sale of Goods Act. (Para 8)

Thus understood, "goods" to fall within the purview of Section 171 of the Contract Act should have marketability and the person to whom they are bailed should be in a position to dispose of them in consideration of money. In other words, the goods referred to in Section 171 of the Contract Act are saleable goods. There is no scope for converting the case files into money, nor can they be sold to any third party. Hence, the reliance placed on Section 171 of the Contract Act has no merit. (Para 9)

After independence, the Advocates Act, 1961 was enacted and it repealed a host of enactments including the Indian Bar Council Act. When the new Bar Council of India came into existence it framed rules called the Bar Council of India Rules as empowered by the Advocates Act. Such Rules contain provisions specifically prohibiting an advocate from adjusting the fees payable to him by a client against his own personal liability to the client. As a rule an advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client (vide Rule 24; see also Rules 28 and 29). (Para 12)

Thus, even after providing a right for an advocate to deduct the fees out of any money of the client remaining in his hand at the termination of the proceeding for which the advocate was engaged, it is important to notice that no lien is provided on the litigation files kept with him. In the conditions prevailing in India with lots of illiterate people among the litigant public it may not be advisable also to permit the counsel to retain the case bundle for the fees claimed by him. Any such lien if permitted would become susceptible to great abuse and exploitation. (Para 13)

Halsbury's Laws of England, para 226, Vol. 44, *referred to*

P. Krishnamachariar v. *Official Assignee of Madras*, AIR 1932 Mad 256 : 55 Mad 455; *Tyabji Dayabhai & Co.* v. *Jetha Devji & Co.*, AIR 1927 Bom 542 : 29 Bom LR 1196 : 51 Bom 855; *B. an Advocate, In re*, AIR 1933 Pat 571 : 34 Cri LJ 1131, *referred to*

Nobody would dispute the proposition that the cause in a court/tribunal is far more important for all concerned than the right of the legal practitioner for his remuneration in respect of the services rendered for espousing the cause on behalf of the litigant. If a need arises for the litigant to change his counsel pendente lite, that which is more important should have its even course flow unimpeded. Retention of records for the unpaid remuneration of the advocate would impede such a course and the cause pending judicial disposal would be badly impaired. If a medical practitioner is allowed a legal right to withhold the papers relating to the treatment of his patient which he thus far administered to him for securing the unpaid bill, that would lead to dangerous consequences for the uncured patient who is wanting to change his doctor. No professional can be given the right to withhold the returnable records relating to the work done by him with his client's matter on the strength of any claim for unpaid remuneration. The alternative is that the professional concerned can resort to other legal remedies for such unpaid remuneration. (Para 14)

A litigant must have the freedom to change his advocate when he feels that the advocate engaged by him is not capable of espousing his cause efficiently or that his conduct is prejudicial to the interest involved in the lis, or for any other reason. For whatever reason, if a client does not want to continue the engagement of a particular advocate it would be a professional requirement consistent with the dignity of the profession that he should return the brief to the client. It is time to hold that such obligation is not only a legal duty but a moral imperative. (Para 15)

The words "of his choice" in Article 22(1) of the Constitution indicate that the right of the accused to change an advocate whom he once engaged in the same case, cannot be whittled down by that advocate by withholding the case bundle on the premise that he has to get the fees for the services already rendered to the client. (Para 16)

State of M.P. v. *Shobharam*, AIR 1966 SC 1910 : 1966 Cri LJ 1521, *relied on*

If a party terminates the engagement of an advocate before the culmination of the proceedings that party must have the entire file with him to engage another advocate. But if the advocate who is changed midway adopts the stand that he would not return the file until the fees claimed by him are paid, the situation perhaps may turn to dangerous proportions. There may be cases when a party has no resources to pay the huge amount claimed by the advocate as his remuneration. A party in a litigation may have a version that he has already paid the legitimate fee to the advocate. At any rate if the litigation is pending the party has the right to get the papers from the advocate whom he has changed so that the new counsel can be briefed by him effectively. In either case it is impermissible for the erstwhile counsel to retain the case bundle on the premise that fees are yet to be paid. (Para 17)

Even if there is no lien on the litigation papers of his client an advocate is not without remedies to realise the fee which he is legitimately entitled to. But if he has a duty to return the files to his client on being discharged, the litigant too has a right to have the files returned to him, more so when the remaining part of the lis has to be fought in the court. This right of the litigant is to be read as the corresponding counterpart of the professional duty of the advocate. (Para 18)

The word "misconduct" is a relative term. It has to be considered with reference to the subject-matter and the context wherein such term occurs. It literally means wrong conduct or improper conduct. (Para 19)

For understanding the import of the expression "misconduct" in the context in which it is referred to in Section 35 of the Advocates Act a wide canvas should be adopted. (Para 22)

Corpus Juris Secundum, p. 740, Vol. 7, *referred to*

A Solicitor ex p the Law Society, In re, (1912) 1 KB 302 : 81 LJKB 245 : 105 LT 874; *George Frier Grahame* v. *Attorney General*, AIR 1936 PC 224, *referred to*

Therefore it is held that the refusal to return the files to the client when he demanded the same amounted to misconduct under Section 35 of the Act. Hence, the appellant in the present case is liable to punishment for such misconduct. (Para 23)

However, regarding the quantum of punishment two broad aspects must be taken into account:

(*1*) This Court has not pronounced, so far, on the question whether the advocate has a lien on the files for his fees.

(2) The appellant would have bona fide believed, in the light of decisions of certain High Courts, that he did have a lien.

In such circumstances it is not necessary to inflict a harsh punishment on the appellant. A reprimand would be sufficient in the interest of justice on the special facts of this case. (Para 24)

The punishment awarded to the appellant is therefore altered to one of reprimanding the appellant. However, it is made clear that if any advocate commits this type of professional misconduct in future he would be liable to such quantum of punishment as the Bar Council will determine and the lesser punishment imposed now need not be counted as a precedent. (Para 25)

Per Sethi, J. (supplementing)

While dealing with moneys or any other article or document entrusted to him, an advocate is expected to always keep in mind the high standards of the profession and its values adopted and practised for centuries. "Professional

obligations" of a lawyer are distinguished from the "business commitments" followed by the trading community. The legal profession owes social obligations to the society in discharge of professional services to the litigants. (Para 28)

Even under the common law no lien can be claimed with respect to the case file and such documents which are necessary for the further progress of the lis filed in the court. Even in England the right of retention has been much diluted by various exceptions created by decisions, chiefly by the courts of equity on the basis of what may be just and equitable as between the parties with conflicting interests. (Para 35)

Cordery on Solicitors, 7th Edn.; *Halsbury's Laws of England*, 1995 Edn., Vol. 44(1), *referred to*

Barrat v. *Gough Thomas*, (1950) 2 All ER 1048, *referred to*

Alfred H. Silvertown: *The Law of Lien* and *Professional Practice Handbook*, Young Lawyers' Section, Law Institute of Victoria, 1982, *referred to*

In modern India, the rights of an advocate to appear in the court are referable to his enrolment as such under the statute governing the enrolment. The lawyer's rights, obligations and disabilities are, therefore, governed either by the contract or by the statute. He has the right to sue his client for his fees, if not paid, like any other professional. The rights and obligations of an advocate ought to be regulated by keeping the high standards and exalted position of the profession, by not treating the lawyers as ordinary merchants. (Para 38)

Reference to "goods" in Section 171 of the Contract Act cannot, by any imagination, be stretched to mean the case papers, entitling their retention by the lawyer as his lien for the purposes of realising his fee. (Para 39)

Bailey's Large Dictionary of 1732; *Webster's Dictionary* and *Dr Johnson's Dictionary*, *relied on*

CCE v. *Eastend Paper Industries Ltd.*, (1989) 4 SCC 244 : 1989 SCC (Tax) 602; *Union of India* v. *Delhi Cloth and General Mills Co. Ltd.*, AIR 1963 SC 791 : 1963 Supp (1) SCR 586, *relied on*

Where the Contract Act does not define "goods", the legislature should be presumed to have used that word in its ordinary dictionary meaning i.e. to become goods it must be something which can ordinarily come to the market to be bought and sold and is known to the market as such. (Para 40)

Thus, looking from any angle, it cannot be said that the case papers entrusted by the client to his counsel are the goods in his hand upon which he can claim a retaining lien till his fee or other charges incurred are not paid. An advocate is expected, at all times, to conduct himself in a manner befitting his status as an officer and a gentleman by upholding the high and honourable profession to whose privilege he has been admitted after his enrolment. If an advocate departs from the high standards which the profession has set for itself and conducts himself in a manner which is not fair, reasonable and according to law, he is liable to disciplinary action. (Para 41)

'G', a Senior Advocate of the Supreme Court, Re, AIR 1954 SC 557 : 1954 Cri LJ 1410; *M, an Advocate, Re*, AIR 1957 SC 149 : 1957 Cri LJ 300, *relied on*

In India admittedly, a social duty is cast upon the legal profession to show the people beacon light by their conduct and actions. The poor, uneducated and exploited mass of the people need a helping hand from the legal profession. No effort should be made or allowed to be made by which a litigant could be deprived of his rights, statutory as well as constitutional, by an advocate only on account of the exalted position conferred upon him under the judicial system

prevalent in the country. An advocate is competent to settle the terms of his engagement and his fee by private agreement with his client but it is equally true that if such fee is not paid he has no right to retain the case papers and other documents belonging to his client. Like any other citizen, an advocate has a right to recover the fee or other amounts payable to him by the litigant by way of legal proceedings but subject to such restrictions as may be imposed by law or the rules made in that behalf. It is high time for the legal profession to join heads and evolve a code for themselves in addition to the mandate of the Advocates Act, Rules made thereunder and the Rules made by various High Courts and the Supreme Court, for strengthening the belief of the common man in the institution of the judiciary in general and in their profession in particular. Creation of such a faith and confidence would not only strengthen the rule of law but also result in reaching excellence in the profession. (Para 42)

H. **Advocates — Generally — Professional Services — Fees for — History and development of concept traced (Paras 29 and 31)**

Gibbon: *Decline and Fall of the Roman Empire, referred to*

A-M/22959/Corr-40/C

Suggested Case Finder Search Text (*inter alia*) :

(advocate* or lawyer) misconduct fee*

Advocates who appeared in this case :

R.K. Virmani, Advocate, for the Appellant;

R.K. Munjral, Sushil Kr. Jain and Ms Pratibha Jain, Advocates, for the Respondent.

Chronological list of cases cited ***on page(s)***

1. (1989) 4 SCC 244 : 1989 SCC (Tax) 602, *CCE* v. *Eastend Paper Industries Ltd.* 280*d-e*
2. AIR 1966 SC 1910 : 1966 Cri LJ 1521, *State of M.P.* v. *Shobharam* 275*a*
3. AIR 1963 SC 791 : 1963 Supp (1) SCR 586, *Union of India* v. *Delhi Cloth and General Mills Co. Ltd.* 280*d*
4. AIR 1957 SC 149 : 1957 Cri LJ 300, *M, an Advocate, Re* 281*a*
5. AIR 1954 SC 557 : 1954 Cri LJ 1410, *'G', a Senior Advocate of the Supreme Court, Re* 280*f g*, 281*a*
6. (1950) 2 All ER 1048, *Barratt* v. *Gough-Thomas* 278*a*
7. AIR 1936 PC 224, *George Frier Grahame* v. *Attorney General* 276*b*
8. AIR 1933 Pat 571 : 34 Cri LJ 1131, *B, an Advocate, In re* 273*e*
9. AIR 1932 Mad 256 ; 55 Mad 455, *P. Krishnamachariar* v. *Official Assignee of Madras* 273*d*
10. AIR 1927 Bom 542 : 29 Bom LR 1196 : 51 Bom 855, *Tyabji Dayabhai & Co.* v. *Jetha Devji & Co.* 273*d e*
11. (1912) 1 KB 302 : 81 LJKB 245 : 105 LT 874, *A Solicitor ex p the Law Society, In re* 275*g-h*

The Judgments of the Court were delivered by

THOMAS, J. (*for himself and Sethi, J.*)*— The main issue posed in this appeal has sequential importance for members of the legal profession. The issue is this: has the advocate a lien for his fees on the litigation papers entrusted to him by his client? In this case the Bar Council of India, without deciding the above crucial issue, has chosen to impose punishment on a delinquent advocate debarring him from practising for a period of 18 months

* **Ed.**: As per the certified copy received, Sethi, J. while delivering his separate opinion has also signed the opinion delivered by Thomas, J.

and a fine of Rs 1000. The advocate concerned was further directed to return all the case bundles which he got from his respondent client without any delay. This appeal is filed by the said advocate under Section 38 of the Advocates Act, 1961.

2. As the question involved in this appeal has topical importance for the legal profession we heard learned counsel at length. To appreciate the contentions we would present the factual backdrop as under:

The appellant, now a septuagenarian, has been practising as an advocate mostly in the courts at Bhopal, after enrolling himself as a legal practitioner with the State Bar Council of Madhya Pradesh. According to him, he was appointed as legal advisor to Madhya Pradesh State Cooperative Bank Ltd. ("the Bank" for short) in 1990 and the Bank continued to retain him in that capacity during the succeeding years. He was also engaged by the said Bank to conduct cases in which the Bank was a party. However, the said retainership did not last long. On 17-7-1993 the Bank terminated the retainership of the appellant and requested him to return all the case files relating to the Bank. Instead of returning the files the appellant forwarded a consolidated bill to the Bank showing an amount of Rs 97,100 as the balance payable by the Bank towards the legal remuneration to which he is entitled. He informed the Bank that the files would be returned only after settling his dues.

3. Correspondence went on between the appellant and the Bank regarding the amount, if any, payable to the appellant as the balance due to him. The respondent Bank disclaimed any liability outstanding from them to the appellant. The dispute remained unresolved and the case bundles never passed from the appellant's hands. As the cases were pending the Bank was anxious to have the files for continuing the proceedings before the courts/tribunals concerned. At the same time the Bank was not disposed to capitulate to the terms dictated by the appellant which they regarded as grossly unreasonable. A complaint was hence filed by the Managing Director of the Bank, before the State Bar Council (Madhya Pradesh) on 3-2-1994. It was alleged in the complaint that the appellant is guilty of professional misconduct by not returning the files to his client.

4. In the reply which the appellant submitted before the Bar Council he admitted that the files were not returned but claimed that he has a right to retain such files by exercising his right of lien and offered to return the files as soon as payment is made to him.

5. The complaint was then forwarded to the Disciplinary Committee of the District Bar Council. The State Bar Council failed to dispose of the complaint even after the expiry of one year. So under Section 36-B of the Advocates Act the proceedings stood transferred to the Bar Council of India. After holding inquiry the Disciplinary Committee of the Bar Council of India reached the conclusion that the appellant is guilty of professional misconduct. The Disciplinary Committee has stated the following in the impugned order:

> "On the basis of the complaint as well as the documents available on record we are of the opinion that the respondent is guilty of professional

misconduct and thereby he is liable for punishment. The complainant is a public institution. It was the duty of the respondent to return the briefs to the Bank and also to appear before the Committee to revert his allegations made in application dated 8-11-1995. No such attempt was made by him."

6. In this appeal learned counsel for the appellant contended that the failure of the Bar Council of India to consider the singular defence set up by the appellant i.e. he has a lien over the files for his unpaid fees due to him, has resulted in miscarriage of justice. The Bank contended that there was no fee payable to the appellant and the amount shown by him was on account of inflating the fees. Alternatively, the respondent contended that an advocate cannot retain the files after the client terminated his engagement and that there is no lien on such files.

7. We would first examine whether an advocate has lien on the files entrusted to him by the client. Learned counsel for the appellant endeavoured to base his contention on Section 171 of the Indian Contract Act which reads thus:

> "171. Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect."

8. Files containing copies of the records (perhaps some original documents also) cannot be equated with the "goods" referred to in the section. The advocate keeping the files cannot amount to "goods bailed". The word "bailment" is defined in Section 148 of the Contract Act as the delivery of goods by one person to another for some purpose, upon a contract that they shall be returned or otherwise disposed of according to the directions of the person delivering them, when the purpose is accomplished. In the case of litigation papers in the hands of the advocate there is neither delivery of goods nor any contract that they shall be returned or otherwise disposed of. That apart, the word "goods" mentioned in Section 171 is to be understood in the sense in which that word is defined in the Sale of Goods Act. It must be remembered that Chapter VII of the Contract Act, comprising Sections 76 to 123, had been wholly replaced by the Sale of Goods Act, 1930. The word "goods" is defined in Section 2(7) of the Sale of Goods Act as

> "every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale".

9. Thus understood "goods" to fall within the purview of Section 171 of the Contract Act should have marketability and the person to whom they are bailed should be in a position to dispose of them in consideration of money. In other words the goods referred to in Section 171 of the Contract Act are saleable goods. There is no scope for converting the case files into money,

nor can they be sold to any third party. Hence, the reliance placed on Section 171 of the Contract Act has no merit.

10. In England the solicitor had a right to retain any deed, paper or chattel which had come into his possession during the course of his employment. It was the position in common law and it was later recognized as the solicitor's right under the Solicitors Act, 1860. In *Halsbury's Laws of England*, it is stated thus (vide para 226 in Vol. 44):

> "226. *Solicitor's rights.* At common law a solicitor has two rights which are termed liens. The first is a right to retain property already in his possession until he is paid costs due to him in his professional capacity, and the second is a right to ask the court to direct that personal property recovered under a judgment obtained by his exertions stand as security for his costs of such recovery. In addition, a solicitor has by statute a right to apply to the court for a charging order on property recovered or preserved through his instrumentality in respect of his taxed costs of the suit, matter or proceeding prosecuted or defended by him."

11. Before India attained independence different High Courts in India had adopted different views regarding the question whether an advocate has a lien over the litigation files kept with him. In *P. Krishnamachariar* v. *Official Assignee of Madras*[1] a Division Bench held that an advocate could not have such a lien unless there was an express agreement to the contrary. The Division Bench has distinguished an earlier decision of the Bombay High Court in *Tyabji Dayabhai & Co.* v. *Jetha Devji & Co.*[2] wherein the English law relating to the solicitor's lien was followed. Subsequently, a Full Bench of the Madras High Court in 1943 followed the decision of the Division Bench. A Full Bench of the Patna High Court in *B. an Advocate, In re*[3] held the view that an advocate could not claim a right to retain the certified copy of the judgment obtained by him on the premise that an appeal was to be filed against it. Of course the Bench said that if the client had specifically instructed him to do so it is open to him to keep it.

12. After independence the position would have continued until the enactment of the Advocates Act, 1961 which has repealed a host of enactments including the Indian Bar Council Act. When the new Bar Council of India came into existence it framed rules called the Bar Council of India Rules as empowered by the Advocates Act. Such Rules contain provisions specifically prohibiting an advocate from adjusting the fees payable to him by a client against his own personal liability to the client. As a rule an advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client (vide Rule 24). In this context a reference can be made to Rules 28 and 29 which are extracted below:

> "28. After the termination of the proceeding, the advocate shall be at liberty to appropriate towards the settled fee due to him, any sum remaining

1 AIR 1932 Mad 256 ; 55 Mad 455
2 AIR 1927 Bom 542 ; 29 Bom LR 1196 ; 51 Bom 855
3 AIR 1933 Pat 571 ; 34 Cri LJ 1131

unexpended out of the amount paid or sent to him for expenses, or any amount that has come into his hands in that proceeding.

29. Where the fee has been left unsettled, the advocate shall be entitled to deduct, out of any moneys of the client remaining in his hands, at the termination of the proceeding for which he had been engaged, the fee payable under the rules of the court in force for the time being, or by then settled and the balance, if any, shall be refunded to the client."

13. Thus, even after providing a right for an advocate to deduct the fees out of any money of the client remaining in his hand at the termination of the proceeding for which the advocate was engaged, it is important to notice that no lien is provided on the litigation files kept with him. In the conditions prevailing in India with lots of illiterate people among the litigant public it may not be advisable also to permit the counsel to retain the case bundle for the fees claimed by him. Any such lien if permitted would become susceptible to great abuses and exploitation.

14. There is yet another reason which dissuades us from giving approval to any such lien. We are sure that nobody would dispute the proposition that the cause in a court/tribunal is far more important for all concerned than the right of the legal practitioner for his remuneration in respect of the services rendered for espousing the cause on behalf of the litigant. If a need arises for the litigant to change his counsel pendente lite, that which is more important should have its even course flow unimpeded. Retention of records for the unpaid remuneration of the advocate would impede such course and the cause pending judicial disposal would be badly impaired. If a medical practitioner is allowed a legal right to withhold the papers relating to the treatment of his patient which he thus far administered to him for securing the unpaid bill, that would lead to dangerous consequences for the uncured patient who is wanting to change his doctor. Perhaps the said illustration may be an overstatement as a necessary corollary for approving the lien claimed by the legal practitioner. Yet the illustration is not too far-fetched. No professional can be given the right to withhold the returnable records relating to the work done by him with his client's matter on the strength of any claim for unpaid remuneration. The alternative is that the professional concerned can resort to other legal remedies for such unpaid remuneration.

15. A litigant must have the freedom to change his advocate when he feels that the advocate engaged by him is not capable of espousing his cause efficiently or that his conduct is prejudicial to the interest involved in the lis, or for any other reason. For whatever reason, if a client does not want to continue the engagement of a particular advocate it would be a professional requirement consistent with the dignity of the profession that he should return the brief to the client. It is time to hold that such obligation is not only a legal duty but a moral imperative.

16. In civil cases, the appointment of an advocate by a party would be deemed to be in force until it is determined with the leave of the court [vide Order 3 Rule 4(1) of the Code of Civil Procedure]. In criminal cases, every person accused of an offence has the right to consult and be defended by a

legal practitioner of his choice which is now made a fundamental right under Article 22(1) of the Constitution. The said right is absolute in itself and it does not depend on other laws. In this context reference can be made to the decision of this Court in *State of M.P.* v. *Shobharam*[4]. The words "of his choice" in Article 22(1) indicate that the right of the accused to change an advocate whom he once engaged in the same case, cannot be whittled down by that advocate by withholding the case bundle on the premise that he has to get the fees for the services already rendered to the client.

17. If a party terminates the engagement of an advocate before the culmination of the proceedings that party must have the entire file with him to engage another advocate. But if the advocate who is changed midway adopts the stand that he would not return the file until the fees claimed by him are paid, the situation perhaps may turn to dangerous proportions. There may be cases when a party has no resources to pay the huge amount claimed by the advocate as his remuneration. A party in a litigation may have a version that he has already paid the legitimate fee to the advocate. At any rate if the litigation is pending the party has the right to get the papers from the advocate whom he has changed so that the new counsel can be briefed by him effectively. In either case it is impermissible for the erstwhile counsel to retain the case bundle on the premise that fees were yet to be paid.

18. Even if there is no lien on the litigation papers of his client an advocate is not without remedies to realise the fee which he is legitimately entitled to. But if he has a duty to return the files to his client on being discharged the litigant too has a right to have the files returned to him, more so when the remaining part of the lis has to be fought in the court. This right of the litigant is to be read as the corresponding counterpart of the professional duty of the advocate.

19. Misconduct envisaged in Section 35 of the Advocates Act is not defined. The section uses the expression "misconduct, professional or otherwise". The word "misconduct" is a relative term. It has to be considered with reference to the subject-matter and the context wherein such term occurs. It literally means wrong conduct or improper conduct.

20. *Corpus Juris Secundum* contains the following passage at p. 740 (Vol. 7):

> "Professional misconduct may consist in betraying the confidence of a client, in attempting by any means to practise a fraud or impose on or deceive the court or the adverse party or his counsel, and in fact in any conduct which tends to bring reproach on the legal profession or to alienate the favourable opinion which the public should entertain concerning it."

21. The expression "professional misconduct" was attempted to be defined by Darling, J., in *A Solicitor ex p the Law Society, In re*[5] in the following terms:

4 AIR 1966 SC 1910 : 1966 Cri LJ 1521

5 (1912) 1 KB 302 : 81 LJKB 245 : 105 LT 874

"If it is shown that an advocate in the pursuit of his profession has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to say that he is guilty of professional misconduct."

22. In this context it is to be mentioned that the aforesaid definition secured approval by the Privy Council in *George Frier Grahame* v. *Attorney General*[6]. We are also inclined to take that wide canvas for understanding the import of the expression "misconduct" in the context in which it is referred to in Section 35 of the Advocates Act.

23. We, therefore, hold that the refusal to return the files to the client when he demanded the same amounted to misconduct under Section 35 of the Act. Hence, the appellant in the present case is liable to punishment for such misconduct.

24. However, regarding the quantum of punishment we are disposed to take into account two broad aspects:

(*1*) This Court has not pronounced, so far, on the question whether the advocate has a lien on the files for his fees.

(*2*) The appellant would have bona fide believed, in the light of decisions of certain High Courts, that he did have a lien.

In such circumstances it is not necessary to inflict a harsh punishment on the appellant. A reprimand would be sufficient in the interest of justice on the special facts of this case.

25. We, therefore, alter the punishment to one of reprimanding the appellant. However, we make it clear that if any advocate commits this type of professional misconduct in future he would be liable to such quantum of punishment as the Bar Council will determine and the lesser punishment imposed now need not be counted as a precedent.

26. Appeal is disposed of accordingly.

SETHI, J. (*supplementing*)— I had the privilege of going through the lucid and informative judgment prepared by my esteemed brother Thomas, J. I agree both with the reasoning and the conclusions. However, realising the importance of the issue involved and its implication on the legal profession in relation to the litigant public, I wish to add a few words of my own to this judgment.

28. While dealing with the moneys or any other article or document entrusted, an advocate is expected to always keep in mind the high standards of his profession and its values adopted and practised for centuries. "Professional obligations" of a lawyer are distinguished from the "business commitments" followed by the trading community. The legal profession owes social obligations to the society in discharge of professional services to the litigants. The Bar Council of India Rules say that:

6 AIR 1936 PC 224

"An advocate shall, at all times, comport himself in a manner befitting his status as an officer of the court, a privileged member of the community and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar or for a member of the Bar in his non-professional capacity may still be improper for an advocate."

29. According to the ancient traditions, the professional services rendered by the lawyers were honorary and the reward given to him was not a compensation for discharge of his legal obligations or legal assistance but in the nature of gratitude in recognition of the honorary services rendered by him. Among the Romans, it was one of the duties which the patrician as patron owed to the plebeian to give protection to the latter in his law suits. For those who rendered legal assistance, Gibbon says in his book *Decline and Fall of the Roman Empire*:

"On the public days of market, or assembly, the masters of the art were seen walking in the forum ready to impart the needful advice to the meanest of their citizens from whose votes on a future occasion they might solicit a grateful return. As their years and honours increased, they seated themselves at home, on a chair or throne, to expect with patient gravity the visits of their clients, who at the dawn of day, from the town and country, began to thunder at their doors."

30. However with the passage of time professional assistance ceased to be gratuitous. With the multiplicity of the proceedings, increase in litigation and complicacies of law, the legal assistance could not be in the nature of a mere social obligation and the services rendered as honorary, because a great deal of time was needed by a lawyer to equip himself with the laws, which prevented him from earning his livelihood from other sources. The ancient tradition having ceased to exist, the profession of law could have flourished only if those who pursued it were allowed remuneration for the services rendered.

31. In England also, a belief existed from the earliest times that the lawyer's fees is not a compensation to him for discharge of legal obligations but a gratuity or an honorarium which the client bestowed on him in token of his gratitude. The lawyers were considered as officers of the court, the tradition being that the law was an honorary occupation and not a means of livelihood. Early advocates were generally persons in holy orders who rendered their services to the weak and afflicted without charge and as an act of pity.

32. Under common law, the rights of a solicitor are called as liens, which are of two types namely:

(*1*) a "retaining lien", i.e., a right to retain property already in his possession until he has been paid costs due to him in his professional character; and

(*2*) a "lien on property recovered or preserved", i.e., a right to ask the court to direct that personal property recovered under a judgment obtained by his exertions stand as security for his costs of such recovery.

33. According to *Cordery on Solicitors*, 7th Edn., the retaining lien is founded on the general law of lien which springs from possession and is governed by the same rules as other cases of possessory lien. Evershed, M.R. in *Barratt* v. *Gough-Thomas*[7] observed:

> "It is a right at common law depending, it has been said, on implied agreement. It has not the character of an encumbrance or equitable charge. It is merely passive and possessory, that is to say, the solicitor has no right of actively enforcing his demand. It confers on him merely the right to withhold possession of the documents or other personal property of his client or former client.... It is wholly derived from, and, therefore coextensive with, the right of the client to the documents or other property;"

34. According to Cordery the property upon which lien can be claimed is in the form of deeds, papers or other personal property which comes into a solicitor's possession in the course of his professional employment with the sanction of the client and/or client's property, such as bill of exchange, application of shares, share certificates, a debenture trust deed, a policy of assurance, letters of administration or money. After referring to various authorities of English courts, the law relating to lien and its retention has been summarised in *Halsbury's Laws of England*, Vol. 44 (1), 1995 Edn., as under:

> "*Property affected by retaining lien.* The general rule is that the retaining lien extends to any deed, paper or personal chattel which has come into the solicitor's possession in the course of his employment and in his capacity as solicitor with the client's sanction and which is the client's property. The following may thus be subject to a retaining lien:
>
> (*1*) a bill of exchange;
> (*2*) a cheque;
> (*3*) a policy of assurance;
> (*4*) a share certificate;
> (*5*) an application for shares;
> (*6*) a debenture trust deed;
> (*7*) letters patent;
> (*8*) letters of administration;
> (*9*) money, including money in a client account, although only the amount due to the solicitor, and maintenance received by a solicitor if not subject to an order as to its application or bound to be applied, in effect, as trust money; or
> (*10*) documents in a drawer of which the solicitor is given the key.
>
> The lien does not extend to (*a*) a client's original will; or (*b*) a deed in favour of the solicitor but reserving a life interest and power of revocation to the client; or (*c*) original court records; or (*d*) documents

7 (1950) 2 All ER 1048

which did not come into the solicitor's hands in his capacity as solicitor for the person against whom the lien is claimed or his successor, but as mortgagee, steward of a manor or trustee. Moreover, where documents are delivered to a solicitor for a particular purpose under a special agreement which does not make express provision for a lien in favour of the solicitor, as perhaps the raising of money, or money is paid to the solicitor for a particular purpose so that he becomes a trustee of the money, no lien arises over those documents or that money unless subsequently left in the solicitor's possession for general purposes. Otherwise the lien extends to the property whatever the occasion of delivery, except that where a solicitor acts for both mortgagor and mortgagee and the mortgage is redeemed the solicitor cannot set up a lien on the deeds against the mortgagor."

It is further stated that such a lien extends only to the solicitor's taxable costs, charges and expenses incurred on the instructions of the client against whom the lien is claimed and for which the client is personally liable including the costs of recovering the remuneration by action or upon a taxation.

35. It follows, therefore, that even under the common law no lien can be claimed with respect to the case file and such documents which are necessary for the further progress of the lis filed in the court. Even in England the right of retention has been much diluted by various exceptions created by decisions, chiefly by the courts of equity on the basis of what may be just and equitable as between the parties with conflicting interests.

36. Alfred H. Silvertown in *The Law of Lien* states that where documents are delivered by a client to a solicitor for a specific purpose, then no lien is created unless there is an agreement to the contrary. The retaining lien extends only to the extent of the solicitor's taxable costs and expenses arising from the instructions of the client, for which the client is personally liable. The lien does not embrace fees and expenses which are due to the solicitor in some other capacity. To attract the solicitor's lien on a document of his client, it has to be specifically shown that the client had agreed with respect to the creation of lien upon the document in case of his failure to pay the solicitor's fee.

37. *The Professional Practice Handbook*, Young Lawyers' Section, Law Institute of Victoria, 1982 prescribes that it is the duty of a solicitor, when called upon by his client, to deliver him the documents in his charge. The solicitor is subject to the ordinary law of bailee of client's papers in his possession. The bailment is a bailment at will which, depending upon the circumstances, may be gratuitous or for reward. In either case the bailee solicitor is under a duty to redeliver, upon demand, the client's papers certainly within the period during which a solicitor may be regarded as owing a duty not to destroy papers having regard to the Limitations of Actions Act, 1958.

38. In modern India, the rights of an advocate to appear in the court are referable to his enrolment as such under the statute governing the enrolment.

The lawyer's rights, obligations and disabilities are, therefore, governed either by the contract or by the statute. He has the right to sue his client for his fees, if not paid, like any other professional. The rights and obligations of an advocate ought to be regulated by keeping the high standards and exalted position of the profession, by not treating the lawyers as ordinary merchants. Thomas, J. has very elaborately dealt with and concluded that the provisions of Section 171 of the Contract Act cannot be pressed into service by an advocate for retention of documents of his client purportedly in exercise of his lien over such case-file papers.

39. Reference to "goods" in Section 171 of the Contract Act cannot, by any imagination, be stretched to mean the case papers, entitling their retention by the lawyer as his lien for the purposes of realising his fee. Besides the meaning attached to the "goods" under Section 2(7) of the Sale of Goods Act, under the general law the "goods" have been defined in *Bailey's Large Dictionary of 1732* as "merchandise" and by Johnson, who followed as the next lexicographer, it is defined to be moveables in a house; personal or immovable estates; wares, freight, merchandise. Webster defines the word "goods" thus:

> "Goods, noun, plural; (1) moveables; household furniture; (2) Personal or moveable estate, as horses, cattle, utensils, etc. (3) wares; merchandise; commodities bought and sold by merchants and traders."

40. This Court in *Union of India* v. *Delhi Cloth and General Mills Co. Ltd.*[8] held that to become "goods" an article must be something which can ordinarily come to the markets to be bought and sold. In *CCE* v. *Eastend Paper Industries Ltd.*[9] it was stated that goods are understood to mean as identifiable articles known in the markets as goods and marketed and marketable in the market as such. Where the Act does not define "goods", the legislature should be presumed to have used that word in its ordinary dictionary meaning i.e. to become goods it must be something which can ordinarily come to the market to be bought and sold and is known to the market as such.

41. Thus, looking from any angle, it cannot be said that the case papers entrusted by the client to his counsel are the goods in his hand upon which he can claim a retaining lien till his fee or other charges incurred are not paid. In *'G', a Senior Advocate of the Supreme Court, Re*[10] this Court observed that it was highly reprehensible for an advocate to stipulate for or receive a remuneration proportioned to the result of litigation or a claim whether in the form of a share in the subject-matter, a percentage or otherwise. An advocate is expected, at all times, to conduct himself in a manner befitting his status as an officer and a gentleman by upholding the high and honourable profession to whose privilege he has been admitted after his enrolment. If an advocate departs from the high standards which the profession has set for itself and conducts himself in a manner which is not fair, reasonable and according to

8 AIR 1963 SC 791 : 1963 Supp (1) SCR 586
9 (1989) 4 SCC 244 : 1989 SCC (Tax) 602
10 AIR 1954 SC 557 : 1954 Cri LJ 1410

law, he is liable to disciplinary action. In *M, an Advocate, Re*[11] this Court observed:

> "As has been laid down by this Court *In the matter of 'G', a Senior Advocate of the Supreme Court*[10] the Court, in dealing with cases of professional misconduct is 'not concerned with ordinary legal rights, but with the special and rigid rules of professional conduct expected of and applied to a specially privileged class of persons who, because of their privileged status, are subject to certain disabilities which do not attach to other men and which do not attach even to them in a non-professional character... he (a legal practitioner) is bound to conduct himself in a manner befitting the high and honourable profession to whose privileges he has so long been admitted; and if he departs from the high standards which that profession has set for itself and demands of him in professional matters, he is liable to disciplinary action'. It appears to us that the fact of there being no specific rules governing the particular situation, which we are dealing with, on the facts found by us, is not any reason for accepting a less rigid standard. If any, the absence of rules increases the responsibility of the members of the profession attached to this Court as to how they should conduct themselves in such situations, having regard to the very high privilege that an advocate of this Court now enjoys as one entitled, under the law, to practise in all the courts in India."

42. In our country, admittedly, a social duty is cast upon the legal profession to show the people beekon (*sic* beacon) light by their conduct and actions. The poor, uneducated and exploited mass of the people need a helping hand from the legal profession, admittedly, acknowledged as a most respectable profession. No effort should be made or allowed to be made by which a litigant could be deprived of his rights, statutory as well as constitutional, by an advocate only on account of the exalted position conferred upon him under the judicial system prevalent in the country. It is true that an advocate is competent to settle the terms of his engagement and his fee by private agreement with his client but it is equally true that if such fee is not paid he has no right to retain the case papers and other documents belonging to his client. Like any other citizen, an advocate has a right to recover the fee or other amounts payable to him by the litigant by way of legal proceedings but subject to such restrictions as may be imposed by law or the rules made in that behalf. It is high time for the legal profession to join heads and evolve a code for themselves in addition to the mandate of the Advocates Act, Rules made thereunder and the Rules made by various High Courts and this Court, for strengthening the belief of the common man in the institution of the judiciary in general and in their profession in particular. Creation of such a faith and confidence would not only strengthen the rule of law but also result in reaching excellence in the profession.

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11 AIR 1957 SC 149 : 1957 Cri LJ 300

denied them and chose to depose before the court. The practice adopted by the defence side in getting the affidavits of these witnesses in advance is to be deprecated. That, in a way, amounts to an attempt aimed at dissuading the witnesses from speaking the truth before the court. The trial Judge as well as the High Court rightly rejected the defence contention. These witnesses appear to be illiterate persons. Their so-called affidavits must have been either cooked up or obtained by playing a fraud on them. This type of interference in criminal justice shall not be encouraged and is to be viewed seriously.

11. There was some semblance of doubt regarding the presence of some of the accused at the place of occurrence and those accused were given the benefit of doubt by the Sessions Court.

12. We do not find any reason to interfere with the findings recorded by the Sessions Court, which were affirmed by the High Court. These appeals are without any merit and are dismissed accordingly. The appellants who are on bail shall surrender to their bail bonds to serve out the remaining sentence.

(2002) 4 Supreme Court Cases 212

(BEFORE R.C. LAHOTI AND P. VENKATARAMA REDDI, JJ.)

RAJENDRA V. PAI . . Appellant;

Versus

ALEX FERNANDES AND OTHERS . . Respondents.

Civil Appeals Nos. 6142-44 of 2001†, decided on April 9, 2002

A. **Advocates Act, 1961 — Ss. 35(3)(d) and 38 — Professional misconduct — Quantum of punishment — Removal of name of appellant advocate from the State roll of advocates, if on facts, was justified — Land acquisition proceedings taking place in appellant's village — Appellant defending the proposed acquisition of land in which he had a personal interest in view of his family property being involved therein — Due to the said fact, other villagers (about 150 in number) too, either on their own or on persuasion, confiding in appellant and engaging him to contest the said proceedings in respect of their lands — Only 3 of the said villagers making complaints against the appellant to the Bar Council on the ground of professional misconduct of soliciting professional work and settling contingent fee and wrongly identifying claimants — Finding the appellant guilty, Bar Council debarring him from practice for his life — Held, ordinarily, the Supreme Court does not interfere with the quantum of punishment in such like matters where an elected statutory body of professionals has found one of their own kinsmen guilty of professional misconduct, but the punishment given to the appellant in the totality of facts and circumstances of the case was so disproportionate as to prick the conscience of the Court — Hence, on facts, punishment awarded to the appellant modified by suspending him from practice for a period of 7 years**

† From the Judgment and Order dated 22-12-2000 of the Disciplinary Committee of the Bar Council of India at New Delhi in DCAs Nos. 11-13 of 2000

B. **Advocates Act, 1961 — Ss. 35 and 36 — Punishment for misconduct — Probity and high standards of ethics and morality in professional career, particularly of an advocate — Held, must be maintained and cases of proved misconduct should be severely dealt with**

C. **Advocates Act, 1961 — Ss. 35(3)(d) and 37 — Punishment for professional misconduct — Removal of name from the State roll of advocates — Considerations in — Held, debarring a person from pursuing his career for his life is an extreme punishment and calls for caution and circumspection before being passed**

D. **Advocates Act, 1961 — S. 35 — Professional misconduct — Involvement of personal interest of an advocate in a litigation — Held, the appellant should not have indulged in prosecuting or defending a litigation in which he had a personal interest in view of his family property being involved therein**

There were large-scale land acquisition proceedings in the village to which the appellant belonged. There were about 150 villagers whose lands were involved. Inasmuch as the appellant was an advocate and also personally interested in defending against the proposed acquisition of land belonging to his family members, the villagers either on their own or on persuasion confided in the appellant, who played a leading role initially in contesting the land acquisition proceedings and later in securing the best feasible quantum of compensation. Out of about 150 claimants, 3 filed complaints against the appellant which were inquired into by the Disciplinary Committee of the State Bar Council and held proved against the appellant. The substance of the allegations found proved was that the appellant solicited professional work from the villagers; that he settled contingent fee depending on the quantum of compensation awarded to the claimant; and that he identified some claimants in opening a bank account wherein the cheque for the awarded amount of compensation was lodged and then the amount withdrawn, which identification was later on found to be false. The appellant submitted that he did not solicit professional work as such and in fact the villagers confided in him because he was an advocate and was also looking after litigation relating to his family land. The appellant also contended that the villagers had voluntarily agreed to contribute to a collective fund raised for covering the expenses of litigation and so far as false identification in opening the bank account was concerned, the appellant acted irresponsibly when he relied on other villagers who persuaded him to make an identification which only was acceptable to the authorities on account of his being an advocate. It was urged on behalf of the appellant that it was his first fault, if at all, and if he was debarred from practice for his life, the appellant and his family would be completely ruined.

Partly allowing the appeals, the Supreme Court

Held :

Debarring a person from pursuing his career for his life is an extreme punishment and calls for caution and circumspection before being passed. Ordinarily, the Supreme Court does not interfere with the quantum of punishment in such like matters where an elected statutory body of professionals has found one of their own kinsmen guilty of professional misconduct. (Para 3)

No doubt probity and high standards of ethics and morality in professional career, particularly of an advocate, must be maintained and cases of proved

professional misconduct severely dealt with; yet, it is felt that the punishment given to the appellant in the totality of facts and circumstances of the case is so disproportionate as to prick the conscience of the Court. There does not appear to have been any other occasion where the appellant may have defaulted or misconducted himself. Undoubtedly, the appellant should not have indulged in prosecuting or defending a litigation in which he had a personal interest in view of his family property being involved. The explanation put forward by the appellant may not provide a legally acceptable defence so as to absolve him from the charge of misconduct levelled against him, but the same does deserve to be taken into consideration for mellowing down the gravity of indictment. In a group litigation wherein a little less than 150 persons were involved, only 3 have found a cause for grievance inspiring them to complain against the appellant, is a factor of some relevance. It was conceded by the learned counsel for the complainant-respondent that the complainants have not suffered any financial loss on account of the appellant. On the totality of the facts and circumstances of the case it would meet the ends of justice if the appellant is suspended from practice for a period of seven years. Such sentence would satisfy the need for punishment and also act as a deterrent on the appellant and set an example to others so as to prevent recurrence of such like incidents. (Para 3)

W-M/T/25637/C

Advocates who appeared in this case :
Kailash Vasdev, Senior Advocate (K.V. Viswanathan, V.S. Borkar, Kunwar Ajit Mohan and K.V. Venkataraman, Advocates, with him) for the Appellant;
Ms S. Janani, Advocate, for the Respondents.

The Judgment of the Court was delivered by

R.C. LAHOTI, J. The appellant, an advocate on the rolls of the Bar Council of Maharashtra and Goa, has been found guilty of professional misconduct and by order dated 22-1-2000, passed under Section 35 of the Advocates Act, 1961, his name has been directed to be removed from the State roll of advocates. The appeal to the Bar Council of India preferred by the appellant has been dismissed on 22-12-2000. Feeling aggrieved by the said two orders these appeals have been preferred under Section 38 of the Advocates Act.

2. A brief résumé of the facts would suffice for the purpose of this order. It appears that there were large-scale land acquisition proceedings in the village to which the appellant belongs. There were about 150 villagers whose lands were involved. Some land owned by the family members of the appellant also suffered acquisition. Inasmuch as the appellant was an advocate and also personally interested in defending against the proposed acquisition of land belonging to his family members, the villagers either on their own or on persuasion confided in the appellant, who played a leading role initially in contesting the land acquisition proceedings and later in securing the best feasible quantum of compensation. There were around 150 claimants out of whom three only filed complaints against the appellant which were inquired into by the Disciplinary Committee of the State Bar Council and held proved against the appellant. The substance of the allegations found proved is that the appellant solicited professional work

from the villagers; that he settled contingent fee depending on the quantum of compensation awarded to the claimant; and that he identified some claimants in opening a bank account wherein the cheque for the awarded amount of compensation was lodged and then the amount withdrawn, which identification was later on found to be false. The gist of only the relevant one out of the several pleas taken up by the appellant before the Bar Council and pressed for the consideration of this Court by learned counsel for the appellant is that the entire episode points out only to rustic naivety on the part of the appellant though an advocate. It was submitted that the appellant did not solicit professional work as such and in fact the villagers confided in him because of his being an advocate, also looking after litigation relating to his family land, and the villagers had voluntarily agreed to contribute to a collective fund raised for covering the expenses of litigation as they were likely to make an overall saving in litigation expenses by fighting collectively as a group and it is out of this fund that the appellant incurred expenses including those by himself. So far as false identification in opening the bank account is concerned, the appellant acted irresponsibly when he relied on other villagers who persuaded him to make an identification which only was acceptable to the authorities on account of his being an advocate. This fact finds support from the circumstance that out of little less than 150, only 3 of the litigating landowners have filed these complaints to the Bar Council. It was urged most passionately by the learned counsel for the appellant that it was the first fault, if at all, of the appellant and if debarred from practice for his life at his age, yet in early forties, the appellant and his family would be completely ruined.

3. We have heard the learned counsel for the parties. Ordinarily, this Court does not interfere with the quantum of punishment in such like matters where an elected statutory body of professionals has found one of their own kinsmen guilty of professional misconduct and hence not worthy of being retained in the profession. So far as the finding as to professional misconduct is concerned, we cannot find any fault or infirmity therewith and indeed learned counsel for the appellant very wisely and fairly gave up challenge to such finding and kept himself confined to pursuing and pressing what can be termed as a mere mercy appeal. Debarring a person from pursuing his career for his life is an extreme punishment and calls for caution and circumspection before being passed. No doubt probity and high standards of ethics and morality in professional career, particularly of an advocate, must be maintained and cases of proved professional misconduct severely dealt with; yet, we strongly feel that the punishment given to the appellant in the totality of facts and circumstances of the case is so disproportionate as to prick the conscience of the Court. Excepting the instance forming gravamen of the charge against the appellant, there does not appear to have been any other occasion where the appellant may have defaulted or misconducted himself. Undoubtedly, the appellant should not have indulged in prosecuting or defending a litigation in which he had a personal interest in view of his family property being involved. Though the explanation put forward on

behalf of the appellant, which has been consistently taken before the State Bar Council, the Bar Council of India and before this Court, may not provide a legally acceptable defence so as to absolve him from the charge of misconduct levelled against him but the same does deserve to be taken into consideration for mellowing down the gravity of indictment and hence for determining the quantum of punishment. In a group litigation wherein a little less than 150 persons were involved only 3 have found a cause for grievance inspiring them to complain against the appellant, is a factor of some relevance. It was conceded by the learned counsel for the complainant-respondent that the complainants have not suffered any financial loss on account of the appellant. On the totality of the facts and circumstances of the case, in our opinion, it would meet the ends of justice if the appellant is suspended from practice for a period of seven years. Such sentence would satisfy the need for punishment and also act as a deterrent on the appellant and set an example to others so as to prevent recurrence of such like incidents.

4. The appeals are partly allowed. Though the finding of the appellant having been guilty of committing professional misconduct as arrived at by the State Bar Council and the Bar Council of India is maintained, the punishment awarded to the appellant is modified. Instead of the name of the appellant being removed from the State rolls of the Bar Council of the State, it is directed that his licence to practise shall remain suspended for a period of seven years. Order awarding the costs is maintained. The appeals stand disposed of in these terms. No order as to the costs in this Court.

(2002) 4 Supreme Court Cases 216

(BEFORE S. RAJENDRA BABU AND RUMA PAL, JJ.)

ASHEESH PRATAP SINGH AND OTHERS .. Petitioners;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petitions (C) No. 8 of 2001* with No. 76 of 2001 (along with modification order in IA No. 2),
decided on March 11, 2002

Constitution of India — Art. 32 — Issue of directions and orders — Medical colleges — Private medical college — Closure under Supreme Court's order — Relief to students — Students of Azamgarh Medical College passing the 1st professional examination held in May 2000 but the College neither having lab facilities nor sufficient teachers for the 2nd professional course — Supreme Court by an interim order granting time for bringing the College up to the standards fixed in 1993 Regulations — Ultimately, in terms of a stipulation in the said interim order Supreme Court ordering closure of the College — In such circumstances, the competent authority directed to initiate necessary steps, on appropriate

* Under Article 32 of the Constitution of India

12. On the facts proved in the case in hand, we are of the view that the appellants have proved that their possession of the land in question is in continuity for more than the statutory period, in publicity and adverse to Jagjit Singh and his other collaterals and they have perfected their title over the land by adverse possession.

13. We, therefore, find merit in the present appeal and accordingly it is allowed by setting aside the impugned judgment and the judgment of the trial court is restored. Consequently, suit filed by the plaintiff is dismissed. We direct the parties to bear their own costs.

(2002) 2 Supreme Court Cases 67

(BEFORE K.T. THOMAS AND S.N. PHUKAN, JJ.)

HARISH CHANDRA TIWARI .. Appellant;

Versus

BAIJU .. Respondent.

Civil Appeal No. 200 of 2000†, decided on January 8, 2002

A. Advocates Act, 1961 — Ss. 35(3)(d) and 38 — Misconduct — Punishment of removal of name from roll of advocates — Held, justified in case of misappropriation of client's money — Such misappropriation, of all the different types of misconduct possible for an advocate to commit, is among the most serious — When advocate receives money from client towards litigation expenses or for purpose of deposit in court or collects money from court on client's behalf, the advocate holds the money in trust — Clarified that a lesser punishment may be appropriate where delinquent advocate returns the misappropriated money before disciplinary proceedings are commenced — Where appellant Advocate had withdrawn and kept the compensation money payable to respondent client (Rs 8118) in a land acquisition matter and in response to complaint before Bar Council falsely claimed to have given the money to the respondent and even filed a fraudulent affidavit purporting to be that of the respondent who had disowned it completely, held, on facts, punishment of removal of his name from roll of advocates must be imposed — Punishment of three-year suspension from practice awarded by Disciplinary Committee of Bar Council of India not adequate

B. Advocates Act, 1961 — S. 35 — Misconduct — Determination of punishment — Factors to be taken into account are (i) the need to cleanse legal profession of persons prone to misappropriating money of clients; and (ii) the need to prevent formation of the impression that a person admitted to the legal profession acquires immunity from punitive measures and is free to indulge in unethical activities — Penology — Deterrent punishment

C. Advocates — Advocates Act, 1961 — Ss. 35 and 36 — Punishment for misconduct — Probity of legal profession — Held, can be effectively maintained only by Disciplinary Committee of the Bar Council, either of the

† From the Judgment and Order dated 23-9-1998 of the Disciplinary Committee Bar Council of India in BCI Tr. Case No. 76 of 1991

State concerned or of India — Awarding of appropriate and meaningful punishments should convey to the members of the profession the message that their professional activities are being watched and that professional delinquency would not be taken lightly

Disposing of the appeal, the Supreme Court

Held :

In determining the punishment to be awarded by the Disciplinary Committee on proven misconduct in each case, the Committee should weigh various factors. One of them is the acute need to cleanse the legal profession from those who are prone to misappropriating the money of the clients. Deterrence is thus a prominent consideration. This is particularly necessary at a time when the legal profession has become crowded as it is today, without there being any effective filtering process at the admission stage. Secondly, to keep up the professional standards it is necessary that nobody should form the impression that once a person is admitted to the legal profession he would be immune to any punitive measures and is free to indulge in nefarious or detestable activities. The only authority which can effectively maintain the probity of the legal profession is the Disciplinary Committee of the Bar Council, either of the State or of India. The proper message which should go to all members of the legal profession is that they are all being watched, regarding their professional activities, through binoculars by the Bar Council of the State as well as by the Bar Council of India and that their Disciplinary Committee would not acquiesce any professional delinquency with flea-bite punishment. (Para 11)

Among the different types of misconduct envisaged for a legal practitioner misappropriation of the client's money must be regarded as one of the gravest. In his professional capacity the legal practitioner has to collect money from the client towards expenses of the litigation, or withdraw money from the court payable to the client or take money of the client to be deposited in court. In all such cases, when the money of the client reaches his hand it is a trust. If a public servant misappropriates money he is liable to be punished under the present Prevention of Corruption Act, with imprisonment which shall not be less than one year. He is certain to be dismissed from service. If an advocate misappropriates money of the client there is no justification in de-escalating the gravity of the misdemeanour. Perhaps the dimension of the gravity of such breach of trust would be mitigated when the misappropriation remained only for a temporary period. There may be justification to award a lesser punishment in a case where the delinquent advocate returned the money before commencing of disciplinary proceedings. (Para 12)

In the present case the misappropriation remained unabated even after the disciplinary proceedings commenced and it continued even till now as the delinquent advocate did not care to return even a single pie to the client. The misconduct of the appellant-advocate became more aggravated when he determined to forge an affidavit in the name of his client, which he produced before the Disciplinary Committee in order to defraud his client and to deceive the Disciplinary Committee to believe that he and his client had settled the dispute by making a late payment to his client. (Para 13)

By retaining such advocate on the roll of the legal profession it would be unsafe to the profession. The situation in this case thus warrants the punishment of removal of his name from the roll of advocates. (Para 14)

Prahlad Saran Gupta v. *Bar Council of India*, (1997) 3 SCC 585; *B.R. Mahalkari* v. *Y.B. Zurange*, (1997) 11 SCC 109, *distinguished*

a This appeal is disposed of and the punishment of removal of the name of the appellant from the roll of advocates is imposed upon the appellant. He would thus stand debarred from practising in any court or before any authority or person in India. (Para 18)

A-M/ATZ/25074/CR

Suggested Case Finder Search Text (*inter alia*) :

b advocate* misconduct (misappropriat* or cheat*)

Advocates who appeared in this case :
M.N. Kashyap, Advocate, for the Appellant.

Chronological list of cases cited ***on page(s)***

1. (1997) 11 SCC 109, *B.R. Mahalkari* v. *Y.B. Zurange* 72*d e*
2. (1997) 3 SCC 585, *Prahlad Saran Gupta* v. *Bar Council of India* 72*c d*

c The Judgment of the Court was delivered by

THOMAS, J. We are sad that the Disciplinary Committee of the Bar Council of India (for short "the Disciplinary Committee") despite being the acme statutory body entrusted with the upkeep of the probity of legal profession in India opted to treat a very grave professional misconduct in a d comparatively lighter vein. The Disciplinary Committee held an advocate guilty of breach of trust for misappropriating the asset of a "poor" client. But having held so, the Disciplinary Committee has chosen to impose a punishment of suspending the advocate from practice for a period of three years.

2. The delinquent advocate filed this appeal under Section 38 of the e Advocates Act, 1961 (for short "the Act"). We told him that in the event of this Court upholding the finding of misconduct he should show cause why the punishment shall not be enhanced to removal of his name from the roll of the Bar Council of the State concerned. Notice on that aspect has been accepted by Mr M.M. Kashyap, learned counsel for the appellant.

3. We issued notices to the Bar Council of India and also to the Bar f Council of U.P. Neither has chosen to enter appearance in this matter and hence we heard learned counsel for the appellant-advocate above.

4. The appellant Harish Chandra Tiwari was enrolled as an advocate with the Bar Council of the State of U.P. in May 1982 and has been practising since then, mainly in the courts at Lakhimpur Kheri district in U.P. The respondent Baiju engaged the delinquent advocate in a land acquisition case g in which the respondent was a claimant for compensation. The Disciplinary Committee has described the respondent as "an old, helpless, poor illiterate person". Compensation of Rs 8118 for the acquisition of the land of the said Baiju was deposited by the State in the court. The appellant applied for releasing the amount and as per orders of the court he withdrew the said amount on 2-9-1987. But he did not return it to the client to whom it was h payable nor did he inform the client about the receipt of the amount. Long thereafter, when the client came to know of it and after failing to get the

amount returned by the advocate, a complaint was lodged by him with the Bar Council of the State for initiating suitable disciplinary action against the appellant.

5. On 12-7-1988, the appellant filed a reply to the said complaint before the Bar Council of the State. He admitted having been engaged by the respondent as his counsel in the aforesaid land acquisition case, he also admitted that he had withdrawn a sum of Rs 8118 from the court. But he adopted a defence that he had returned the amount to the client after deducting his fees and expenses.

6. On 3-8-1988, an affidavit purporting to be that of the respondent Baiju was filed by the appellant before the State Bar Council in which it is stated that a compromise had been arrived at between him and his client and that no further action need be taken on the complaint filed by the respondent. The Disciplinary Committee of the State Bar Council was not prepared to act on the said affidavit without verifying it from the client concerned. Hence they summoned the respondent and confronted him with the said affidavit. The respondent totally disowned the said affidavit, repudiated the alleged compromise between him and the appellant and denied having received any amount from the appellant-advocate.

7. The complaint and the proceedings later stood transferred to the Bar Council of India by virtue of Section 36-B(2) of the Act. The Disciplinary Committee after conducting the inquiry, came to the conclusion that the affidavit dated 3-8-1988, purported to have been sworn to by the respondent, was a forged one and that the application appended therewith was fabricated. The Disciplinary Committee observed as follows:

> "Thus, the conduct of the respondent and his evasive reply and his evasive vague deposition duly makes out that after taking the cheque from the Land Acquisition Officer in his own name, the respondent has failed to make the payment to the complainant who is an illiterate, poor person and his money has been misappropriated by the respondent-advocate."

8. In this appeal the appellant first pleaded that he is not liable to be punished at all and then contended alternatively that he has given the money to the client subsequently. But the factual position is so strong against the appellant that he could not show a single circumstance to accept his defence that he had paid the amount to the client. The finding of the Disciplinary Committee that the delinquent advocate

> "has withdrawn the compensation of Rs 8118 and has not paid it to the complainant for the last more than 11 years and is thus guilty of wrong professional conduct and has maligned the reputation of the noble profession and has committed breach of trust which an advocate enjoys",

does not require any interference in this appeal.

9. Now, we have the function to decide as to the quantum of punishment to be awarded to the delinquent appellant-advocate, since we feel that the punishment awarded is not adequate in proportion to the gravity of the

misconduct. Section 38 of the Act empowers the Supreme Court to "pass such order (including an order varying the punishment awarded by the Disciplinary Committee of the Bar Council of India) thereon as it deems fit". The only condition for varying the punishment awarded by the Bar Council of India is that if such variation is to prejudicially affect the appellant he should be given a reasonable opportunity of being heard. In the present appeal we gave notice to the learned counsel for the appellant to show cause why the punishment should not be enhanced to removal from the roll of the Bar Council of the State. Learned counsel for the appellant addressed arguments on that score.

10. Three different punishments are envisaged in Section 35 of the Act: (*1*) reprimand the advocate; (*2*) suspend the advocate from practice for such period as it may deem fit; (*3*) remove the name of the advocate from the State roll of advocates.

11. In determining the punishment to be awarded by the Disciplinary Committee on proven misconduct in each case, the Committee should weigh various factors. One of them is the acute need to cleanse the legal profession from those who are prone to misappropriating the money of the clients. Deterrence is thus a prominent consideration. This is particularly necessary at a time when the legal profession has become crowded as it is today, without there being any effective filtering process at the admission stage. Secondly, to keep up the professional standards it is necessary that nobody should form the impression that once a person is admitted to the legal profession he would be immune to any punitive measures and is free to indulge in nefarious or detestable activities. The only authority which can effectively maintain the probity of the legal profession is the Disciplinary Committee of the Bar Council, either of the State or of India. The proper message which should go to all members of the legal profession is that they are all being watched, regarding their professional activities, through binoculars by the Bar Council of the State as well as by the Bar Council of India and that their Disciplinary Committee would not acquiesce any professional delinquency with flea-bite punishment.

12. Among the different types of misconduct envisaged for a legal practitioner misappropriation of the client's money must be regarded as one of the gravest. In his professional capacity the legal practitioner has to collect money from the client towards expenses of the litigation, or withdraw money from the court payable to the client or take money of the client to be deposited in court. In all such cases, when the money of the client reaches his hand it is a trust. If a public servant misappropriates money he is liable to be punished under the present Prevention of Corruption Act, with imprisonment which shall not be less than one year. He is certain to be dismissed from service. But if an advocate misappropriates money of the client there is no justification in de-escalating the gravity of the misdemeanour. Perhaps the dimension of the gravity of such breach of trust would be mitigated when the misappropriation remained only for a temporary period. There may be justification to award a lesser punishment in a case where the delinquent

advocate returned the money before commencing the disciplinary proceedings.

13. In the present case the misappropriation remained unabated even after the disciplinary proceedings commenced and it continued even till now as the delinquent advocate did not care to return even a single pie to the client. The misconduct of the appellant-advocate became more aggravated when he determined to forge an affidavit in the name of his client, which he produced before the Disciplinary Committee in order to defraud his client and to deceive the Disciplinary Committee to believe that he and his client had settled the dispute by making a late payment to his client.

14. By retaining such advocate on the roll of the legal profession it would be unsafe to the profession. The situation in this case thus warrants the punishment of removal of his name from the roll of advocates.

15. Learned counsel for the appellant cited two decisions of this Court in which the punishment awarded has not been escalated to removal from the roll. One is *Prahlad Saran Gupta* v. *Bar Council of India*[1]. In that case the finding against the delinquent advocate was that he retained a sum of Rs 1500 without sufficient justification from 4-4-1978 till 2-5-1978 and he deposited the amount in the court on the latter date, without disbursing the same to his client. The said conduct was found by this Court as "not in consonance with the standards of professional ethics expected from a senior member of the profession" (SCC p. 593, para 11). On the said fact situation this Court imposed a punishment of reprimanding the advocate concerned.

16. The other case cited by the learned counsel is *B.R. Mahalkari* v. *Y.B. Zurange*[2]. The findings in that case are that the advocate retained the amount of Rs 1176, though before the commencement of the disciplinary proceedings he sent the said amount to the client. After holding that the advocate is guilty of misconduct this Court upheld the punishment of suspension from practice for a period of three years.

17. The facts in the aforecited decisions would speak for themselves and the distinction from the facts of this case is so glaring that the misconduct of the appellant in the present case is of a far graver dimension. Hence the said two decisions are not of any help to the appellant for mitigation of the quantum of punishment.

18. In the result we dispose of this appeal by imposing the punishment of removal of the name of the appellant from the roll of advocates. He would thus stand debarred from practising in any court or before any authority or person in India.

1 (1997) 3 SCC 585
2 (1997) 11 SCC 109

follow that the cut pieces of bloom which were rendered into melting scrap, had gone into making of steel ingots falling under Item 26 of the First Schedule, so the requirement of the said notification to that extent is fulfilled. The appellants are, therefore, entitled to the benefit of exemption under the notification in regard to so much of the excise duty as is proved to have been paid on such melting scrap under Item 26 of the First Schedule.

7. Accordingly, the orders under challenge are set aside and the civil appeals are allowed.

8. There will be no order as to costs.

(2003) 1 Supreme Court Cases 102

(BEFORE V.N. KHARE AND ASHOK BHAN, JJ.)

BAR COUNCIL OF ANDHRA PRADESH .. Appellant;

Versus

KURAPATI SATYANARAYANA .. Respondent.

Civil Appeal No. 3412 of 2001*, decided on November 15, 2002

A. Advocates — Advocates Act, 1961 — S. 35 — Professional misconduct — Misappropriation of client's money is a grave misconduct — On facts, held, delinquent advocate's failure to pay to client the decretal money which he had received on behalf of his client, amounted to breach of trust and grave professional misconduct — Bar Council of India erred in taking the view that the delinquent had utilised the money for his own treatment under compelling circumstances and that he had no intention to retain the money — Punishment of removal of name from the roll of Bar Council appropriate

A suit was filed by one *GN* before the Addl. Distt. Munsiff through the respondent Advocate. The suit having been decreed, execution petition was filed for realization of the decretal amount. The respondent was engaged as counsel for *GN* in the execution proceedings as well. The respondent received a total sum of Rs 14,600 on various dates in the execution proceedings but he did not make payment of the same to *GN*. Thereupon *GN* filed a complaint on 18-10-1996 before the Addl. Distt. Munsiff. The complaint along with the reply filed by the respondent delinquent and the connected documents, were forwarded to the State Bar Council. The Bar Council issued a notice to the delinquent but the delinquent did not file any counter. The Disciplinary Committee of the State Bar Council, after examining the witnesses produced by the complainant, came to the conclusion that the delinquent had received a total sum of Rs 14,600 belonging and payable to the complainant and retained the same with him. It was noted that only on 19-8-1997 and 17-10-1997 the delinquent had sent DDs of Rs 3600 and Rs 2900 respectively which the Committee directed to be forwarded to the complainant. But it was specifically mentioned that the said payments would not obliterate the misconduct of the delinquent. The delinquent preferred appeal before the Disciplinary Committee of the Bar Council of India. The said

* From the Judgment and Order dated 28-3-1999 of the Disciplinary Committee of Bar Council of India in DC Appeal No. 39 of 1997

Disciplinary Committee agreed with the finding of fact recorded by the Disciplinary Committee of the State Bar Council, but came to the conclusion that the delinquent had not committed any professional misconduct though there might have been some negligence on his part which did not involve any moral turpitude. The Committee observed: "... he could not make the payment of the remaining amount to the complainant as the said amount was utilised by him on his treatment. This type of events are very common when somebody is in trouble ... The Committee is of the considered view that the appellant from the very beginning never wanted to misappropriate the decretal amount ... and lapse on his part to return the same was because of his domestic circumstances." The State Bar Council filed the present appeal against the order of the Disciplinary Committee of the Bar Council of India.

Allowing the appeal with costs assessed at Rs 5000, the Supreme Court

Held :

Amongst the various types of misconduct envisaged for a legal practitioner the misappropriation of the client's money must be regarded as one of the gravest. The Disciplinary Committee of the Bar Council of India, which is the highest body, to monitor the probity of the legal profession in the country erred in trivialising and treating a very grave professional misconduct on the part of the delinquent lightly by saying that the delinquent did not make the payment to the complainant as he had utilised the money for his personal need for treatment and that such like instances do take place when a person is in trouble. It was neither pleaded nor shown by the delinquent that he was in dire financial difficulty which prompted him to utilise the decretal amount for his treatment which was with him in trust. This is an act of breach of trust. Such types of excuses cannot be entertained being frivolous and unsustainable. Adherence to the correct professional conduct in the discharge of one's duties as an advocate is the backbone of the legal system. Any laxity while judging the misconduct which is not bona fide and dishonest would undermine the confidence of the litigant public resulting in the collapse of the legal system. This is an act of grave professional misconduct. The conduct of the delinquent, who is an elderly gentleman, is reprehensible and is unbecoming of an advocate. The finding of the Disciplinary Committee of the Bar Council of India that there was no intention on the part of the delinquent advocate to misappropriate the money of his client or to defraud him is not only unfounded and perverse but also lacks the serious thought which was required to be given by the Disciplinary Committee of the Bar Council of India in the discharge of quasi-judicial function while probing into the grave charge of professional misconduct by an advocate in the discharge of his duties as a counsel. (Paras 7 and 8)

Harish Chandra Tiwari v. *Baiju*, (2002) 2 SCC 67 : 2002 SCC (Cri) 294, *relied on*

The delinquent is guilty of professional misconduct. Having regard to the serious nature of misconduct the punishment of removal of his name from the roll of the Bar Council would be the only appropriate punishment and accordingly the order passed by the Disciplinary Committee of the Bar Council of India is set aside and that of the Disciplinary Committee of the State Bar Council is restored. (Para 9)

B. **Advocates Act, 1961 — S. 38 — Appeal filed by State Bar Council — Maintainability — "Person aggrieved" — State Bar Council, apart from having quasi-judicial power, has also the role of prosecutor through its Executive Committee — Being the prosecutor, the State Bar Council would**

be an "aggrieved person" and therefore, the appeal under S. 38 would be maintainable on its behalf (Para 6)

Bar Council of Maharashtra v. *M.V. Dabholkar*, (1975) 2 SCC 702, *relied on*

R-M/AT/Z/26995/CR

Advocates who appeared in this case :
Sudhir Nandrajog and Virendra Rawat, Advocates, for the Appellant;
S. Vittal Rao and Ms Sudha Gupta, Advocates, for the Respondent.

Chronological list of cases cited ***on page(s)***

1. (2002) 2 SCC 67 : 2002 SCC (Cri) 294, *Harish Chandra Tiwari* v. *Baiju* 106g
2. (1975) 2 SCC 702, *Bar Council of Maharashtra* v. *M.V. Dabholkar* 106c

The Judgment of the Court was delivered by

BHAN, J.— The Bar Council of Andhra Pradesh, for short "the State Bar Council", has filed this appeal against the order of the Disciplinary Committee of the Bar Council of India in DC Appeal No. 39 of 1997 dated 28-3-1999 by which the Bar Council of India has set aside the order passed by the State Council removing the name of Kurapati Satyanarayana, hereinafter referred to as "the delinquent", from the roll of the State Bar Council as he was found guilty of grave professional misconduct in the discharge of his duties as an advocate.

2. OS No. 1624 of 1991 was filed by Shri Gutta Nagabhushanam, hereinafter referred to as "the de facto complainant", on the file of the Additional District Munsif Magistrate, West Godavari District, Eluru through the delinquent advocate. The said suit having been decreed, Execution Petition No. 112 of 1995 was instituted for realisation of the decretal amount. The delinquent was engaged as the counsel for the de facto complainant in the execution proceedings as well. The delinquent received a total sum of Rs 14,600 on various dates in the execution proceedings but did not make payment of the same to the de facto complainant. On 18-10-1996 the de facto complainant filed a complaint with the Additional District Munsif, Eluru. On the said complaint, the Additional District Munsif, Eluru passed the following orders:

> "Decree-holder present. Shri K. Satyanarayana absent, perused the entire record. The memo filed by DHR along with original receipt issued by Shri K. Satyanarayana, Advocate, dated 2-4-1996 and the photostat copy of calculation memo dated 16-8-1996 prepared by Shri K. Satyanarayana, Advocate, which is not signed by DHR and along with this complaint and counter be submitted to the Secretary, Bar Council of A.P. in High Court premises, through the Hon'ble District and Sessions Judge, West Godavari, Eluru for taking necessary action with covering letter, DHR is informed in open court."

3. The complaint filed by the de facto complainant along with the reply filed by the delinquent and the connected documents were forwarded to the Bar Council of Andhra Pradesh in the High Court premises for appropriate action. The State Bar Council took notice of the complaint filed and issued a notice to the delinquent. The delinquent in spite of the service of notice did

not choose to file a counter. The State Bar Council referred the matter to its Disciplinary Committee. The State Disciplinary Committee after examining the witnesses produced by the complainant came to the conclusion that the delinquent had received a total sum of Rs 14,600 belonging and payable to the de facto complainant on different dates and retained the same with him.

4. Assertion of the delinquent that he had informed the complainant through a postcard about the receipt of the decretal amount was not accepted. That in spite of an undertaking (Ext. C-1) dated 24-4-1996 given in writing by the delinquent to pay a sum of Rs 11,000 to the complainant, the same was not paid. The story put forth that he paid a sum of Rs 11,000 on 4-9-1996 was not accepted because the delinquent failed to produce any receipt given by the complainant evidencing the payment of the said amount to the complainant. It was noted that only on 19-8-1997 Demand Draft No. 808327 of Rs 3600 and Demand Draft No. 0142169 dated 17-10-1997 for Rs 2900 drawn on State Bank of Hyderabad in favour of the complainant were sent. The Committee directed that the said two drafts be forwarded to the complainant without prejudice to his any other right, if any. It was specifically mentioned that the payment of the said two amounts would not obliterate the misconduct of the delinquent.

5. The delinquent preferred an appeal before the Disciplinary Committee of the Bar Council of India. The Disciplinary Committee of the Bar Council of India agreed with the finding of fact recorded by the Disciplinary Committee of the State Bar Council that the delinquent had failed to make the payment of Rs 14,600 received by the delinquent on behalf of the complainant in the execution proceedings, but came to the conclusion that the delinquent had not committed any professional misconduct though there might have been some negligence on his part which did not involve any moral turpitude. For coming to this conclusion, the Disciplinary Committee of the Bar Council of India recorded the following findings:

> "... One thing is very clear from the conduct of the appellant that no doubt, he had withdrawn the money on behalf of the complainant being his counsel, but he never refused to return the same to the complainant. It has also come in evidence that the appellant had made part-payment of the total amount before filing of the present complaint by the complainant before the Disciplinary Committee of Andhra Pradesh. Perusal of the file shows that the appellant could not make the payment of the remaining amount because of his family circumstances. There seems to be weight in the arguments of the appellant to the effect that he could not make the payment of the remaining amount to the complainant as the said amount was utilised by him on his treatment. This type of events are very common when somebody is in trouble. At this stage, we are to see as what was the intention of the appellant with respect to utilisation of the said amount. We are to see whether he had the intention of misappropriating the money of his client in order to defraud him or he was compelled by the circumstances in not returning the said amount as and when demanded by the complainant. During the course of arguments

it was brought to our notice that the appellant had already returned the total decretal amount with interest to the de facto complainant. He has further brought to our notice that he was still suffering from serious heart ailment and he has also sought appointment with a doctor for undergoing surgery in near future. The Committee is of the considered view that the appellant from the very beginning never wanted to misappropriate the decretal amount of the de facto complainant and the lapse on his part to return the same was because of his domestic circumstances, as explained."

Counsel for the parties have been heard at length.

6. The first point raised before us on behalf of the delinquent that the appeal filed by the Bar Council of Andhra Pradesh would not be maintainable as not being the "person aggrieved" need not be dilated upon in view of the seven-Judge Constitution Bench judgment of this Court in *Bar Council of Maharashtra* v. *M.V. Dabholkar*[1]. It has been held in the said case that the role of the Bar Council is of dual capacity, one as the prosecutor through its Executive Committee and the other quasi-judicial, performed through its Disciplinary Committee. Being the prosecutor the State Bar Council would be an "aggrieved person" and therefore the appeal under Section 38 of the Advocates Act, 1961 would be maintainable on its behalf.

7. On merits we find that the order of the Disciplinary Committee of the Bar Council of India is unsustainable. It is sad that the Disciplinary Committee of the Bar Council of India, which is the highest body, to monitor the probity of the legal profession in the country chose to trivialise and treat a very grave professional misconduct on the part of the delinquent lightly by saying that the delinquent did not make the payment to the de facto complainant as he had utilised the money for his personal need for treatment and that such like instances do take place when a person is in trouble. It was neither pleaded nor shown by the delinquent that he was in dire financial difficulty which prompted him to utilise the decretal amount for his treatment which was with him in trust. This is an act of breach of trust. We are firmly of the view that such types of excuses cannot be entertained being frivolous and unsustainable. Adherence to the correct professional conduct in the discharge of one's duties as an advocate is the backbone of legal system. Any laxity while judging the misconduct which is not bona fide and dishonest would undermine the confidence of the litigant public resulting in the collapse of legal system. This is an act of grave professional misconduct. This Court in *Harish Chandra Tiwari* v. *Baiju*[2] held that amongst the various types of misconduct envisaged for a legal practitioner the misappropriation of the client's money must be regarded as one of the gravest. It was observed: (SCC pp. 71-72, para 12)

"*12.* Among the different types of misconduct envisaged for a legal practitioner misappropriation of the client's money must be regarded as

1 (1975) 2 SCC 702

2 (2002) 2 SCC 67 : 2002 SCC (Cri) 294

one of the gravest. In his professional capacity the legal practitioner has to collect money from the client towards expenses of the litigation, or withdraw money from the court payable to the client or take money of the client to be deposited in court. In all such cases, when the money of the client reaches his hand it is a trust. If a public servant misappropriates money he is liable to be punished under the present Prevention of Corruption Act, with imprisonment which shall not be less than one year. He is certain to be dismissed from service. But if an advocate misappropriates money of the client there is no justification in de-escalating the gravity of the misdemeanour. Perhaps the dimension of the gravity of such breach of trust would be mitigated when the misappropriation remained only for a temporary period. There may be justification to award a lesser punishment in a case where the delinquent advocate returned the money before commencing the disciplinary proceedings."

8. The conduct of the delinquent, who is an elderly gentleman, is reprehensible and is unbecoming of an advocate. It deeply pains us that the delinquent who claimed to have practised for three decades and has worked as government advocate for four years should have been guilty of such serious misconduct. The finding of the Disciplinary Committee of the Bar Council of India that there was no intention on the part of the delinquent advocate to misappropriate the money of his client or to defraud him is not only unfounded and perverse but also lacks the serious thought which was required to be given by the Disciplinary Committee of the Bar Council of India in the discharge of quasi-judicial function while probing into the grave charge of professional misconduct by an advocate in the discharge of his duties as a counsel.

9. We find the delinquent guilty of grave professional misconduct. Having given our anxious consideration, we feel that having regard to the serious nature of misconduct the punishment of removal of his name from the roll of Bar Council would be the only appropriate punishment and accordingly we set aside the order passed by the Disciplinary Committee of the Bar Council of India and restore that of the Disciplinary Committee of the State Bar Council. Appeal is allowed.

10. Accordingly, we direct the removal of his name from the roll of the Bar Council. The appellant shall be entitled to the costs of this appeal, which we assess at Rs 5000.

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the court keeps its hands off; but where a provision of law has to be read and understood, it is not fair to keep the court out."

In view of the above statement of law, with which we are in respectful agreement we hold that generally the court may not interfere with the selection, relating to educational affairs, and academic matters may be left to the expert body to select best of the talent on objective criteria. What is the objective criteria is a question of fact in each case. Each case depends upon its own facts and the circumstances in which the respective claims of competing candidates has come up for consideration. No absolute rule in that behalf could be laid. Each case requires to be considered on its own merit and in its own setting, giving due consideration to the views expressed by the educational experts in the affairs of their administration or selection of the candidates.

10. The two decisions relied on by the learned counsel are of no assistance to the facts of this case. In the first case, the Court had considered that the High Court has no power to give direction to the appointing authority to promote the candidates. Instead the Court is required to direct the authority to consider the claims in accordance with law, that is settled legal position. It does not require reiteration. That is not the situation having arisen in this case. Even the second case, which was relied upon, is not of any assistance. On the facts in that case, the finding which was questioned in this Court was upheld by this Court, as it was for the University to prescribe the grading in awarding the postgraduation degrees. Considered from this perspective, we are of the view that the High Court was not justified in interfering with the selection. The order of the learned Single Judge and of the Division Bench stands set aside. The writ petition stands dismissed.

11. The appeal is accordingly allowed, but, in the circumstances, without costs.

(1997) 3 Supreme Court Cases 131

(BEFORE S.C. AGRAWAL AND SUJATA V. MANOHAR, JJ.)

HIKMAT ALI KHAN .. Appellant;

Versus

ISHWAR PRASAD ARYA AND OTHERS .. Respondents.

Civil Appeal No. 4240 of 1986†, decided on January 28, 1997

Advocates Act, 1961 — Ss. 35(3)(b), (c) & (d) and 24-A — Punishment — Adequacy — Test — Gravity of the misconduct taken into consideration — Proper punishment for an advocate convicted under S. 307, IPC for assaulting his opponent in the courtroom with a knife, held, was removal from the State roll of advocates and not mere suspension from practice for a certain period — Conviction was for an offence involving moral turpitude

† From the Judgment and Order dated 8-9-1985 of the Disciplinary Committee of the Bar Council of India, in D.C. As. Nos. 17 and 17-A of 1981

Held :

In view the provisions of Sections 35(*b*), (*c*) & (*d*) and 24-A of the Advocates Act, 1961, the conduct involving conviction of an offence involving moral turpitude which would disqualify a person from being enrolled as an advocate has to be considered a serious misconduct when found to have been committed by a person who is enrolled as an advocate and it would call for the imposition of the punishment of removal of the name of the advocate from the roll of advocates. In the instant case, the respondent advocate has been convicted of the offence of attempting to commit murder punishable under Section 307 IPC. He had assaulted his opponent in the courtroom with a knife. The gravity of the misconduct committed by him is such as to show that he is unworthy of remaining in the profession. The said misconduct, therefore, called for the imposition of the punishment of removal of his name from the State roll of advocates and the Disciplinary Committee of the Bar Council of U.P., in passing the punishment of debarring him from practising for a period of three years, has failed to take note of the gravity of the misconduct committed by him. (Para 6)

Appeal allowed H-M/T/17432/C

Advocates who appeared in this case :

Subodh Markandeya, Ms Chitra Markandeya, Ajay Singh and Ms Meenakshi Aggarwal, Advocates, for the Appellant;

H.K. Puri and Pramod Swarup, Advocates, for the Respondents.

The Judgment of the Court was delivered by

S.C. AGRAWAL, J.— Ishwar Prasad Arya, Respondent 1, was registered as an advocate with the Bar Council of Uttar Pradesh and was practising at Budaun. An incident took place on 18-5-1971 during lunch interval at about 1.55 p.m. in which Respondent 1 assaulted his opponent Radhey Shyam in the courtroom of Munsif/Magistrate, Bisauli at Budaun with a knife. A pistol shot is also said to have been fired by him at the time of the incident. After investigation he was prosecuted for offences under Section 307 of the Indian Penal Code and Section 25 of the Arms Act. The Ist Temporary Civil and Sessions Judge, by his judgment dated 3-7-1972, convicted him of the said offence and sentenced him to undergo rigorous imprisonment for three years for the offence under Section 307 IPC and for a period of nine months for offence under Section 25 of the Arms Act. The conviction and sentence for the offence under Section 307 IPC were maintained by the High Court by its judgment dated 10-9-1975 in Criminal Appeal No. 1873 of 1972 but he was given the benefit of doubt regarding offence under Section 25 of the Arms Act and the conviction and sentence for the said offence were set aside. Before he could be arrested to undergo the punishment of rigorous imprisonment for three years for offence under Section 307 IPC, a copy of letter No. Pr.VI/Chh.Pa XXIII-2016-75-76 dated 28-4-1976 purporting to have been sent by Shri L.R. Singh, Deputy Secretary, Ministry of Home, U.P., Lucknow, addressed to the District Magistrate, Budaun bearing endorsement No. 1513(II)-75-76 was received in the Court of the IIIrd Additional District and Sessions Judge, Budaun, who was responsible for executing the order of the court of the Ist Temporary Civil and Sessions Judge on its abolition. In the said letter it was stated that the Governor has been pleased to suspend the conviction of Ishwar Prasad Arya under Article

161 of the Constitution with immediate effect and until further orders he should remain free. After receiving the copy of the said letter dated 28-4-1976 the IIIrd Additional District and Sessions Judge, on 30-4-1976, stayed the proceedings in the case and despite repeated enquiries by the court from the State Government about the suspension of the sentence the execution of the sentence awarded to the respondent remained suspended till 27-9-1977, when on receipt of a crash radiogram message from the Home Ministry, Lucknow, it was found that the letter dated 28-4-1976 was fraudulent and thereupon a warrant for the arrest of Respondent 1 was issued by the court on 28-9-1977 and he was arrested the same day and was sent to Budaun Jail to undergo the imprisonment. On 9-12-1977 Shri G.S. Sharma, IIIrd Additional District and Sessions Judge, Budaun, sent a complaint containing these facts to the Chairman, Bar Council of U.P., for taking action against Respondent 1 under Section 35 of the Advocates Act, 1961 (hereinafter referred to as "the Act"). On the basis of the said complaint disciplinary proceedings (DC Case No. 70 of 1981) were initiated against Respondent 1 by the Bar Council of U.P. By order dated 30-1-1982 the Disciplinary Committee of the Bar Council of U.P. found Respondent 1 guilty of gross professional misconduct by taking the benefit himself of a forged and fabricated document which had been prepared at his behest. The Disciplinary Committee of the Bar Council of U.P. directed that Respondent 1 be debarred from practising as an advocate for a period of two years from the date of the service of the order. Respondent 1 filed an appeal (DC Appeal No. 4 of 1982) in the Bar Council of India against the order dated 30-1-1982 passed by the Disciplinary Committee of the Bar Council of U.P. The said appeal was allowed by the Disciplinary Committee of the Bar Council of India by order dated 8-6-1984 and the order of the Disciplinary Committee of the Bar Council of U.P. dated 30-1-1982 was set aside on the view that there was no material on the basis of which it could reasonably be held that Respondent 1 had prepared the document which was subsequently found forged.

2. The appellant, Hikmat Ali Khan, had also submitted a complaint against Respondent 1 to the Secretary, Bar Council of U.P., wherein it was stated that by order dated 3-7-1972 passed by the Temporary Civil and Sessions Judge, Budaun the respondent had been convicted and sentenced to three years' rigorous imprisonment under Section 307 IPC and his appeal had been dismissed by the High Court by judgment dated 10-9-1975 and even after the dismissal of his appeal Respondent 1 remained out of jail till 27-9-1978 on the basis of a forged and fraudulent document purported to have been sent by the Deputy Secretary, Ministry of Home, U.P., Lucknow and that during the said period he continued to practise as an advocate. In the said complaint, it was also mentioned that the name of Respondent 1 is noted as a bad character in Register No. 8 of Police Station, Wazirganj, District Budaun and further that a number of criminal cases have been registered against him. It was prayed that a fresh enquiry may be made in the matter and in case the facts are proved against Respondent 1 his registration

as an advocate may be cancelled since he is a blot on the names of all the advocates. On the basis of the said complaint of the appellant proceedings (DC Case No. 40 of 1983) were initiated against Respondent 1 by the Bar Council of U.P. In the said proceedings, Respondent 1 appeared and filed his written statement, but thereafter he did not appear and participate in the proceedings. The Disciplinary Committee of the Bar Council of U.P. proceeded ex parte against him. By order dated 25-3-1984 the Disciplinary Committee found that Respondent 1 was convicted and sentenced under Section 307 IPC and under Section 25 of the Arms Act and that his name was also recorded in Register No. 8 maintained by the police in Kotwali Budaun and that it is a register in which the names of the bad characters are entered. The Disciplinary Committee held that it is unbecoming of an advocate to earn such a bad reputation in the society and that Respondent 1 was liable to be punished. The Disciplinary Committee of the Bar Council of U.P. directed that Respondent 1 be debarred from practising as an advocate for a period of three years. Respondent 1 filed an appeal (DC Appeal No. 17 of 1984) against the said order passed by the Disciplinary Committee of the Bar Council of U.P. The appellant also filed an appeal (DC Appeal No. 17-A of 1984) against the said order. Respondent 1, in his appeal, prayed that the punishment imposed by the Disciplinary Committee of the Bar Council of U.P. be set aside; the appellant, in his appeal, on the other hand, wanted the said punishment to be enhanced and his name to be removed from the roll of advocates. Both the appeals were disposed of by the Disciplinary Committee of the Bar Council of India by order dated 8-9-1985. It was observed that the matter has already been considered by the Disciplinary Committee of the Bar Council of India in its order dated 8-6-1984 in DC Appeal No. 4 of 1982 whereby the order of the Bar Council of U.P. dated 30-1-1982 suspending Respondent 1 from practice for three years had been set aside. The Disciplinary Committee of the Bar Council of India held that there was no choice left with it but to accept the appeal in view of the order dated 8-6-1984 passed by the Disciplinary Committee of the Bar Council of India in DC Appeal No. 4 of 1982 and, therefore, the appeal filed by Respondent 1 was allowed and the order of the Disciplinary Committee of the Bar Council of U.P. dated 25-3-1984 in DC Case No. 40 of 1983 was set aside. Consequently, the appeal filed by the appellant was dismissed. Feeling aggrieved by the said order dated 8-9-1985 passed by the Disciplinary Committee of the Bar Council of India allowing DC Appeal No. 17 of 1984 filed by Respondent 1 and dismissing DC Appeal No. 17-A of 1984 filed by him, the appellant has filed this appeal.

3. Shri Subodh Markandeya, the learned counsel for the appellant, has urged that in passing the order dated 8-9-1985 the Disciplinary Committee of the Bar Council of India has failed to appreciate that in the earlier order dated 8-6-1984 in DC Appeal No. 4 of 1982 the Disciplinary Committee of the Bar Council of India had given the benefit of doubt to Respondent 1 in respect of fabrication of letter dated 28-4-1976 on the basis of which he was able to avoid being arrested for a period of about 16 months from 30-4-1976

to 28-9-1977 for undergoing the sentence of rigorous imprisonment imposed on him under Section 307 IPC and that in the said proceedings the Disciplinary Committee of the Bar Council of India had not considered the conduct of Respondent 1 involving his conviction for the offence under Section 307 IPC and his being sentenced to rigorous imprisonment for three years. According to Shri Markandeya, the said conduct of Respondent 1 was the subject-matter of the complaint filed by the appellant for which conduct the Disciplinary Committee of the Bar Council of U.P. had imposed the punishment of debarring him from practising as an advocate for a period of three years. Shri Markandeya also urged that in his complaint the appellant had also pointed out that the name of Respondent 1 is entered in Register No. 8 maintained at Kotwali Budaun and the said register contains the names of bad characters and that this fact was also found established by the Disciplinary Committee of the Bar Council of U.P. and it was observed that it is unbecoming of an advocate to earn such a bad reputation in the society. The submission of Shri Markandeya is that having regard to the gravity of the misconduct of Respondent 1 in assaulting his opponent in the courtroom with a knife and his having committed the offence under Section 307 IPC and his being sentenced to undergo rigorous imprisonment for three years in connection with the said incident, the punishment of removal of the name of Respondent 1 from the roll of advocates should have been imposed on him and that the Disciplinary Committee of the Bar Council of U.P. was in error in imposing the light punishment of debarring Respondent 1 from practising as an advocate for a period of three years only and that this was a fit case in which the appeal filed by the appellant should have been allowed by the Disciplinary Committee of the Bar Council of India.

4. Respondent 1 is represented by Shri H.K. Puri. After arguing for some time Shri Puri sought leave of the Court for being discharged as an advocate of Respondent 1 when he was asked to address the Court on the appeal regarding enhancement of the punishment imposed on Respondent 1. We, however, did not grant leave sought by Shri Puri for being discharged as a counsel for Respondent 1.

5. The order dated 25-3-1984 passed by the Disciplinary Committee of the Bar Council of U.P. in DC Case No. 40 of 1983 arising out of the complaint submitted by the appellant clearly holds that from material available on record it is established that Respondent 1 was convicted and sentenced for the offence under Section 307 IPC and under Section 25 of the Arms Act and that his name is recorded in Register No. 8 maintained at Kotwali Budaun which is a register in which the names of the bad characters are entered. It is no doubt true that the conviction of Respondent 1 for the offence under Section 25 of the Arms Act was set aside by the High Court on appeal, but his conviction and sentence for the offence under Section 307 IPC was maintained by the High Court. The said conviction under Section 307 IPC related to an incident which took place in the courtroom wherein Respondent 1 had assaulted his opponent, Shri Radhey Shyam, with a knife. The Disciplinary Committee of the Bar Council of India, while dealing with

the appeal of Respondent 1 as well as the cross-appeal of the appellant which were filed against the said order of the Disciplinary Committee of the Bar Council of U.P., failed to take note that the misconduct of Respondent 1 which was the subject-matter of the complaint in DC Case No. 4 of 1982 arising out of the complaint filed by Shri G.S. Sharma, IIIrd Additional District and Sessions Judge, Budaun, was different from the misconduct which had been found established on the basis of the complaint made by the appellant. The complaint of Shri G.S. Sharma, which gave rise to DC Case No. 70 of 1981 before the Disciplinary Committee of the Bar Council of U.P., related to fabrication of the copy of the letter No. Pr.VI/Chh.Pa XXIII-2016-75-76 dated 28-4-1976 from Shri L.R. Singh, Deputy Secretary, Ministry of Home, U.P., Lucknow, to the District Magistrate, Budaun that was received in the Court of IIIrd Additional District and Sessions Judge vide endorsement No. 1513(II)-75-76 wherein it was stated that the Governor was pleased to suspend the conviction of Respondent 1 under Article 161 of the Constitution with immediate effect and that until further orders he should remain free. In the said complaint of Shri G.S. Sharma, the Disciplinary Committee of the Bar Council of U.P., by order dated 30-1-1982, found Respondent 1 guilty of gross professional misconduct by taking the benefit himself of a forged and fabricated document which had been prepared at his behest. The Disciplinary Committee of the Bar Council of India, in its order dated 8-6-1984 in DC Appeal No. 4 of 1982, felt that there was no material from which it could reasonably be held that Respondent 1 had prepared the document which was subsequently found forged and that Respondent 1 could be given the benefit of doubt and, therefore, the order dated 30-1-1982 passed by the Disciplinary Committee of the Bar Council of U.P. in DC Case No. 70 of 1981 was set aside. The said order of the Disciplinary Committee of the Bar Council of India did not have any bearing on the conduct of Respondent 1 which led to his conviction for the offence under Section 307 IPC and his being sentenced to rigorous imprisonment for three years and his name being entered as a bad character in Register No. 8 of Kotwali Budaun which was the subject-matter of the complaint made by the appellant and on the basis of which the Disciplinary Committee of the Bar Council of U.P. had passed the order dated 25-3-1984 in DC Case No. 40 of 1983 debarring Respondent 1 from practising as an advocate for a period of three years. The Disciplinary Committee of the Bar Council of India was, therefore, in error in setting aside the order dated 25-3-1984 passed by the Disciplinary Committee of the Bar Council of U.P. merely on the basis of its order dated 8-6-1984 in DC Case No. 4 of 1982. The order of the Disciplinary Committee of the Bar Council of India dated 8-9-1985 allowing DC Appeal No. 17 of 1984 filed by Respondent 1 cannot, therefore, be sustained and has to be set aside. Having regard to the findings recorded by the Disciplinary Committee of the Bar Council of U.P. regarding the misconduct of Respondent 1 that has been found established from the record, we find no merit in DC Appeal No. 17 of 1984 filed by Respondent 1

against the order dated 25-3-1984 passed by the Disciplinary Committee of the Bar Council of U.P. and the said appeal is liable to be dismissed.

6. We will now come to DC Appeal No. 17-A of 1984 filed by the appellant which raises the question whether the punishment imposed by the Disciplinary Committee of the Bar Council of U.P. in its order dated 25-3-1984, is adequate having regard to the gravity of the misconduct of Respondent 1. The misconduct of Respondent 1 that has been found established is that he had assaulted his opponent, Shri Radhey Shyam with a knife in the courtroom and he has been convicted of the offence under Section 307 IPC and has been sentenced to rigorous imprisonment for a period of three years. It has also been found established that the name of Respondent 1 was contained in Register No. 8 maintained at Kotwali Budaun which is a register wherein the names of bad characters are entered. The acts of misconduct found established are serious in nature. Under sub-section (3) of Section 35 of the Act the Disciplinary Committee of the State Bar Council is empowered to pass an order imposing punishment on an advocate found guilty of professional or other misconduct. Such punishment can be reprimand [clause (*b*)], suspension from practice for a certain period [clause (*c*)] and removal of the name of the advocate from the State roll of advocates [clause (*d*)], depending on the gravity of the misconduct found established. The punishment of removal of the name from the roll of advocates is called for where the misconduct is such as to show that the advocate is unworthy of remaining in the profession. In this context, it may be pointed out that under Section 24-A of the Act a person who is convicted of an offence involving moral turpitude is disqualified for being admitted as an advocate on the State roll of advocates. This means that the conduct involving conviction of an offence involving moral turpitude which would disqualify a person from being enrolled as an advocate has to be considered a serious misconduct when found to have been committed by a person who is enrolled as an advocate and it would call for the imposition of the punishment of removal of the name of the advocate from the roll of advocates. In the instant case Respondent 1 has been convicted of the offence of attempting to commit murder punishable under Section 307 IPC. He had assaulted his opponent in the courtroom with a knife. The gravity of the misconduct committed by him is such as to show that he is unworthy of remaining in the profession. The said misconduct, therefore, called for the imposition of the punishment of removal of the name of Respondent 1 from the State roll of advocates and the Disciplinary Committee of the Bar Council of U.P., in passing the punishment of debarring Respondent 1 from practising for a period of three years, has failed to take note of the gravity of the misconduct committed by Respondent 1. Having regard to the facts of the case, the proper punishment to be imposed on Respondent 1 under Section 35 of the Act should have been to direct the removal of his name from the State roll of advocates. The appeal filed by the appellant, therefore, deserves to be allowed.

7. For the reasons aforementioned, the appeal is allowed, the impugned order dated 8-9-1985 passed by the Disciplinary Committee of the Bar Council of India in DCs Appeals Nos. 17 and 17-A of 1984 is set aside and the order dated 25-3-1984 passed by the Disciplinary Committee of the Bar Council of U.P. in DC Case No. 40 of 1983 is upheld with the modification that instead of his being debarred from practising as an advocate for a period of three years, the name of Respondent 1 shall be removed from the State roll of advocates. No order as to costs.

(1997) 3 Supreme Court Cases 138

(BEFORE A.M. AHMADI, C.J. AND S.P. BHARUCHA AND G.T. NANAVATI, JJ.)

MAHMOOD HASAN AND OTHERS . . Petitioners;

Versus

STATE OF U.P. AND OTHERS . . Respondents.

Writ Petition (C) No. 1131 of 1991†, decided on January 7, 1997

Constitution of India — Arts. 142, 32 and 136 — Review — Exceptional circumstances warranting review of earlier orders — Promotion matter — In various writ petitions, Supreme Court and High Court passing orders for promoting the petitioners therein as Supply Inspectors in U.P. Food and Civil Supplies Department on the ground of their juniors having already been promoted — Some of such juniors, exclusively on the consideration of their long continuance in the promotional post allowed by Supreme Court to continue in the promotional post — Ultimately a large number of employees, almost equal to the total strength of the cadre of Supply Inspectors, seeking promotion to that cadre on the ground that all of them were senior to one or the other employee promoted under the said orders of the Supreme Court or the High Court or by orders of the State Government — Relief — Proper course in such exceptional circumstances, held, was to replace the juniors by seniors — Hence, the earlier orders of Supreme Court recalled and the orders of High Court as well as the orders of promotion made by State Government set aside and promotions directed to be made, keeping in view all relevant rules and norms, retrospectively from the date of arising of vacancies according to the State-level seniority list submitted to the Supreme Court — However, those promoted prior to 1-1-1985 (the first day of the month in which the first of the said earlier orders of the Supreme Court was passed) and protected by the Regularisation Rules, left undisturbed — Those to be promoted with retrospective effect under the instant decision directed to be given all pecuniary benefits of such promotion while those to be reverted saved from refunding the pecuniary or other benefits already enjoyed by them since they had worked at the higher post — State Govt. to complete the exercise within six months — Service Law — Promotion — Discrimination arising out of judicial and executive orders — Relief — U.P. Regularisation of Ad hoc Promotions (On Posts within the Purview of Public Service Commission) Rules, 1988 — U.P. Food and Civil Supplies (Supply Branch) Ministerial Service Rules, 1979

† Under Article 32 of the Constitution of India

Scheme. Any construction made by PSS should be pulled down and it must be brought back to the condition in which it existed prior to allotment. The Municipality is directed to pull down the construction within four weeks from today. They should place the report on the file of the Registry of the action taken in the matter.

13. Accordingly, the appeal is allowed. The writ petition is ordered as prayed for. The law as to preservation of open spaces, buildings, layout schemes of public bodies, has since found elucidation in this judgment, we make no order as to costs.

(1995) 2 Supreme Court Cases 584

(BEFORE KULDIP SINGH, J.S. VERMA AND P.B. SAWANT, JJ.)

IN RE : VINAY CHANDRA MISHRA

(THE ALLEGED CONTEMNER)

Contempt Petition (Crl.) No. 3 of 1994†, decided on March 10, 1995

A. **Constitution of India — Arts. 129, 215 and 142 — Supreme Court if can take cognizance of contempt of a High Court and suo motu initiate contempt proceedings against the contemner — Art. 129, held, vests the Supreme Court with power to punish not only for the contempt of itself but also of the High Courts and subordinate courts — Such contempt proceedings before the Supreme Court for contempt of High Court are maintainable despite the fact that the High Court concerned is also under Art. 215 another court of record vested with identical and independent power of punishing for contempt of itself — Law laid down in the Delhi Judicial Service Assn. case affirmed — It needs no reconsideration by a larger Bench — Supreme Court bound to discharge its constitutional obligations whenever there is interference or obstruction to the course of justice**

Held :

The contention raised in support of the objection to the Supreme Court taking cognizance of the contempt of the High Courts ignores the fact that the Supreme Court is not only the highest court of record, but under various provisions of the Constitution, is also charged with the duties and responsibilities of correcting the lower courts and tribunals and of protecting them from those whose misconduct tends to prevent the due performance of their duties. When, therefore, Article 129 vests the Supreme Court with the powers of the court of record including the power to punish for contempt of itself, it vests such powers in the Supreme Court in its capacity as the highest court of record and also as a court charged with the appellate and superintending powers over the lower courts and tribunals as detailed in the Constitution. To discharge its obligations as the custodian of the administration of justice in the country and as the highest court imbued with supervisory and appellate jurisdiction over all the lower courts and tribunals, it is inherently deemed to have been entrusted with the power to see that the stream of justice in the country remains pure, that its course is not hindered or obstructed in any manner, that justice is delivered without fear or favour and for that purpose all the courts and tribunals are protected while discharging their legitimate duties. To discharge this obligation, the Supreme Court has to take cognizance of the

† Petition received on behalf of the Applicant/Petitioner for initiating proceedings for contempt

deviation from the path of justice in the tribunals of the land, and also of attempts to cause such deviations and obstruct the course of justice. To hold otherwise would mean that although the Supreme Court is charged with the duties and responsibilities enumerated in the Constitution, it is not equipped with the power to discharge them. (Para 23)

The propositions of law laid down and the observations made by the Supreme Court in *Delhi Judicial Service Assn.* v. *State of Gujarat*, (1991) 4 SCC 406, conclusively negate the contention that the Supreme Court cannot take cognizance of the contempt committed of the High Court. No infirmity has been pointed out in that decision. Being in complete agreement with the law laid down in that decision on the present controversy, the request for referring to a larger Bench deserves rejection. (Paras 24 and 25)

Delhi Judicial Service Assn v *State of Gujarat*, (1991) 4 SCC 406, *affirmed* and *followed*

K L. Gauba v *Hon'ble the Chief Justice and Judges of the High Court of Judicature at Labour*, AIR 1942 FC 1 , 1941 FCR 54 43 Cri LJ 311; *Purshottam Lal Jaitly* v. *King-Emperor*, 1944 FCR 364, *cited*

Hence, when the Constitution vests the Supreme Court with a special and specific power to take action for contempt not only of itself but of the lower courts and tribunals, for discharging its constitutional obligations as the highest custodian of justice in the land, that power is obviously coupled with a duty to protect all the limbs of the administration of justice from those whose actions create interference with or obstruction to the course of justice. Failure to exercise the power on such occasions, when it is invested specifically for the purpose, is a failure to discharge the duty. (Para 53)

Chief Controlling Revenue Authority and Superintendent of Stamps v *Maharashtra Sugar Mills Ltd* , 1950 SCR 536 : AIR 1950 SC 218, *relied on*

Julius v *Bishop of Oxford*, (1880) 5 AC 214 (1874-80) All ER Rep 43, *referred to*

B. **Contempt of Court — Criminal contempt — Contempt in the face of the Court in the nature of in facie curiae contempt — Justification for adopting summary procedure and punishing the offender on the spot — Natural justice rights of the contemner — Rule of 'nemo judex in sua causa' not offended — Contemner has no right to examine the Judge or Judges before whom contempt committed — Else the raison d'être for taking action for contempt committed in the face of the Court would be destroyed — Not necessary to formulate the charge in a specific allegation — Contempt of Courts Act, 1971, S. 14**

C. **Contempt of Court — Criminal contempt — Judge complaining of contempt committed in the face of his court — Cognizance of taken by Superior Court — Held, not necessary to summon the Judge for examination to verify his allegations against the contemner — Even where the version of the contemner of the alleged incident different the contemner has no right to cross-examine the complaining Judge — Situation governed by S. 14(3) of Contempt of Courts Act, 1971**

Held :

Criminal contempt of court undoubtedly amounts to an offence but it is an offence *sui generis* and hence for such offence, the procedure adopted both under the common law and the statute law even in this country has always been summary. However, the fact that the process is summary does not mean that the procedural requirement, viz., that an opportunity of meeting the charge, is denied to the contemner. (Para 26)

The degree of precision with which the charge may be stated depends upon the circumstances. So long as the gist of the specific allegations is made clear or otherwise the contemner is aware of the specific allegation, it is not always necessary to formulate the charge in a specific allegation. (Para 26)

The consensus of opinion among the judiciary and the jurists alike is that despite the objection that the Judge deals with the contempt himself and the contemner has little opportunity to defend himself, there is a residue of cases where not only it is justifiable to punish on the spot but it is the only realistic way of dealing with certain offenders. This procedure does not offend against the principle of natural justice, viz., *nemo judex in sua causa* since the prosecution is not aimed at protecting the judge personally but protecting the administration of justice. The threat of immediate punishment is the most effective deterrent against misconduct. The judge has to remain in full control of the hearing of the case and he must be able to take steps to restore order as early and quickly as possible. The time factor is crucial. Dragging out the contempt proceedings means a lengthy interruption to the main proceedings which paralyses the court for a time and indirectly impedes the speed and efficiency with which justice is administered. Instant justice can never be completely satisfactory yet it does provide the simplest, most effective and least unsatisfactory method of dealing with disruptive conduct in court. So long as the contemner's interests are adequately safeguarded by giving him an opportunity of being heard in his defence, even summary procedure in the case of contempt in the face of the court is commended and not faulted. (Para 26)

Balogh v. *Crown Court at St Albans*, 1975 QB 73 : (1974) 3 All ER 283 : (1974) 3 WLR 314, *referred to*

In such procedure, there is no scope for examining the Judge or Judges of the court before whom the contempt is committed. To give such a right to the contemner is to destroy not only the *raison d'être* for taking action for contempt committed in the face of the court but also to destroy the very jurisdiction of the court to adopt proceedings for such conduct. It is for these reasons that neither the common law nor the statute law countenances the claim of the offender for examination of the judge or judges before whom the contempt is committed. (Para 27)

Section 14 of the Contempt of Courts Act, 1971 deals with the procedure when the action is taken for the contempt in the face of the Supreme Court and the High Court. Sub-section (3) of the said section deals with a situation where *in facie curiae* contempt is tried by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed. The provision in specific terms and for obvious reasons, states that in such cases it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, to appear as a witness and the statement placed before the Chief Justice shall be treated as the evidence in the case. (Para 27)

As the facts reveal, the contempt alleged is in the face of the Court. The learned Judge or the Bench could have itself taken action for the offence on the spot. Instead, the learned Judge probably thought that it would not be proper to be a prosecutor, a witness and the judge himself in the matter and decided to report the incident to the learned Acting Chief Justice of his Court. There is nothing unusual in the course the learned Judge adopted, although the procedure adopted by the learned Judge has resulted in some delay in taking action for the contempt. (Para 26)

Here, although the contempt is in the face of the Court, the procedure that has been adopted was not only not summary but has adequately safeguarded the

contemner's interests. The contemner was issued a notice intimating him the specific allegations against him. He was given an opportunity to counter the allegations by filing his counter-affidavit and additional counter/supplementary affidavit as per his request, and he has filed the same. He was also given an opportunity to file an affidavit of any other person that he chose or to produce any other material in his defence, which he has not done. However, in the affidavit which he has filed, he has requested for an examination of the learned Judge. The statement of the learned Judge has already been furnished to the contemner and he has replied to the same. (Para 27)

Therefore in keeping with Section 14 of the Contempt of Courts Act, 1971, the Supreme Court which has taken cognizance of the criminal contempt committed in the face of the High Court has to proceed by treating the statement of the learned Judge and the affidavits filed by the contemner and the reply given by the learned Judge to the said affidavits, as evidence in the case. (Para 27)

D. **Constitution of India — Arts. 215 and 129 — Criminal contempt — Allegation of contempt committed in the face of the High Court by Senior Counsel — He, when questioned by the Bench regarding the provision under which the impugned order had been passed, started shouting and said "that no question could have been put to him", that he would get the Judge transferred or impeached and threatened by saying that he had "turned up many judges" and created a scene in the Court and the counsel lost his temper and, according to the Judge, "except to abuse him of mother and sister" the contemner abused and insulted him "like anything" — Contemner thereby, according to the Judge, wanted to convey that admission of the appeal was a matter of course and no arguments were to be heard at that stage — Contemner not only a Senior Advocate but also President of the Bar and Chairman of the Bar Council of India — Complaint made by the Judge to his Actg. Chief Justice reciting the above facts and expressing his apprehensions regarding difficulty in such situation for Judges to discharge their judicial function without fear or favour and appealing for "restoration of the dignity of the judiciary" — Matter referred by the Actg. Chief Justice to the Supreme Court — Suo motu cognizance taken by Supreme Court of the criminal contempt and show cause issued, opportunity afforded to him to file his own affidavits and of whomsoever he wished and produce whatever material he desired to — In his counter and additional counter a different version of the incident put up and counter allegations of impropriety and failure to follow the conventions made against the Judge — Contemner also alleging that in fact it was the Judge who committed contempt of his own court and filing application for initiating proceedings against the Judge — Supreme Court obtaining response of the complaining Judge to the counters and allegations made by the contemner — In sum, contemner disputing the occurrence of the acts alleged against him — That they amount to criminal contempt of court not disputed — Punishment to be awarded in such a case — At a subsequent stage written unconditional apology also filed by the contemner by seeking therein to withdraw his applications, petitions, counters, allegations and submissions — Whether this apology should be accepted — On facts, the contemner did indulge and commit the acts attributed to him and they were calculated to overawe the court and intended to interfere with and obstruct the course of justice — Such acts lower the authority of the Court and bring the administration of justice to disrepute and undermine the confidence of the people in the ability of the Court to deliver free and fair justice — Conduct unbecoming of a lawyer — The so-called apology tendered by the contemner is not acceptable, not being sincere**

or remorseful and in garbed language justifying the unbecoming conduct — The allegations and submissions made by him prior to it may themselves amount to contempt of court — Contempt of Courts Act, 1971, Ss. 2(c) & 12

E. **Contempt of Court — Lawyer committing contempt — Role expected of a lawyer representing the interests of his client and as an officer of the Court**

Held :

(*a*) Normally, no Judge takes action for *in facie curiae* contempt against the lawyer unless he is impelled to do so. It is not the heat generated in the arguments but the language used, the tone and the manner in which it is expressed and the intention behind using it which determine whether it was calculated to insult, show disrespect, to overbear and overawe the court and to threaten and obstruct the course of justice. (Para 33)

(*b*) After going through the report of the learned Judge and the affidavits and the additional affidavits filed by the contemner and after hearing the learned counsel appearing for the contemner, we have come to the conclusion that there is every reason to believe that notwithstanding his denials, and disclaimers, the contemner had undoubtedly tried to browbeat, threaten, insult and show disrespect personally to the learned Judge. (Para 33)

The learned Judge's version, appears to be correct when he states that the contemner lost his temper when he started asking him questions. The complaining Judge had every right as member of the Bench to ask whatever questions he wanted to, to appreciate the merits or demerits of the case. There is no convention in India that only the senior member of the Bench could have asked questions. (Para 33)

The learned Judge's statement that the contemner threatened him with transfer and impeachment proceedings also gets corroboration from the contemner's own statement in the additional affidavit that he did tell the learned Judge that a Judge got himself transferred earlier on account of his inability to command the goodwill of the Bar due to lack of mutual reverence. (Para 33)

No one expects a lawyer to be subservient to the Court while presenting his case and not to put forward his arguments merely because the Court is against him. In fact, that is the moment when he is expected to put forth his best effort to persuade the Court. However, if, in spite of it, the lawyer finds that the Court is against him, he is not expected to be discourteous to the Court or to fling hot words or epithets or use disrespectful, derogatory or threatening language or exhibit temper which has the effect of overbearing the Court. The lawyer is not entitled to indulge in unbecoming conduct either by showing his temper or using unbecoming language. (Para 33)

The Judge concerned has reiterated his version in his reply to the contemner's affidavits and also denied the contemner's counter-allegations which were false and manufactured. Taking into consideration all the circumstances on record, the version of the incident given by the learned Judge has to be accepted as against that of the contemner. (Paras 35, 36 and 18)

To resent the questions asked by a Judge, to be disrespectful to him, to question his authority to ask the questions, to shout at him, to threaten him with transfer and impeachment, to use insulting language and abuse him, to dictate the order that he should pass, to create scenes in the court, to address him by losing temper are all acts calculated to interfere with and obstruct the course of justice. Such acts tend to overawe the court and to prevent it from performing its duty to administer justice. Such conduct brings the authority of the court and the administration of justice into disrespect and disrepute and undermines and erodes

the very foundation of the judiciary by shaking the confidence of the people in the ability of the court to deliver free and fair justice. (Paras 37 and 29)

(*c*) The contemner seems to be labouring under a grave misunderstanding of his role as an outspoken and fearless member of the Bar. Brazenness is not outspokenness and arrogance is not fearlessness. Use of intemperate language is not assertion of right nor is a threat an argument. Humility is not servility and courtesy and politeness are not lack of dignity. Self-restraint and respectful attitude towards the court, presentation of correct facts and law with a balanced mind and without overstatement, suppression, distortion or embellishment are requisites of good advocacy. A lawyer has to be a gentleman first. (Para 38)

The contemner was functioning both as a lawyer representing the interests of his client and as an officer of the court. He has not tried to defend his acts in either of these capacities except to deny them. However, it is necessary to observe that by indulging in the said acts, he has positively abused his position both as a lawyer and as an officer of the court, and has done distinct disservice to the litigants in general and to the profession of law and the administration of justice in particular. It pains us to note that the contemner is not only a senior member of the legal profession, but holds the high offices of the Chairman of the Bar Council of India, Member of the Bar Council of U.P., Chairman and Member, Executive Council and Academic Council of the National Law School University of India at Bangalore and President of the High Court Bar Association, Allahabad. Both as a senior member of the profession and as holder of the said high offices, special and additional duties were cast upon him to conduct himself as a model lawyer and officer of the court and to help strengthen the administration of justice by upholding the dignity and the majesty of the court. It was in fact expected of him to be zealous in maintaining the rule of law and in strengthening the people's confidence in the judicial institutions. To our dismay, it is found that he has acted exactly contrary to his obligations and has in reality set a bad example to others while at the same time contributing to weakening of the confidence of the people in the courts. (Para 43)

In the matter of Mr 'G', A Senior Advocate of the Supreme Court, (1955) 1 SCR 490 : AIR 1954 SC 557 : 1954 Cri LJ 1410, *Lalit Mohan Das* v. *Advocate General, Orissa*, 1957 SCR 167 : AIR 1957 SC 250, *relied on*

(*d*) The contemner has no doubt tendered an unconditional apology on 7-10-1994 by withdrawing from record all his applications, petitions, counter-affidavits, prayers and submissions made at the Bar and to the court earlier. This apology of the contemner has not been accepted by us firstly because we find that the apology is not a free and frank admission of the misdemeanour he indulged in the incident in question. Nor is there a sincere regret for the disrespect he showed to the learned Judge and the Court, and for the harm that he has done to the judiciary. On the other hand, the apology is couched in a sophisticated and garbed language exhibiting more an attempt to justify his conduct by reference to the circumstances in which he had indulged in it and to exonerate himself from the offence by pleading that the condition in which the 'situation' had developed was not an ideal one and were it ideal, the 'situation' should not have arisen. It is a clever and disguised attempt to refurbish his image and get out of a tight situation by not only not exhibiting the least sincere remorse for his conduct but by trying to blame the so-called circumstances which led to it. At the same time, he has attempted to varnish and re-establish himself as a valiant defender of his "alleged duties" as a lawyer. Secondly, from the very inception his attitude has been defiant and belligerent. In his affidavits and application, not only he has not shown any respect for the learned Judge, but has made counter-allegations against him and has asked

for initiation of contempt proceedings against him. He has even chosen to insinuate that the learned Judge, by not taking contempt action on the spot and instead writing the letter to the Acting Chief Justice of the High Court, had adopted a devious way and that he had also come to Delhi to meet 'meaningful' people. These allegations may themselves amount to contempt of court. Lastly, to accept any apology for a conduct of this kind and to condone it, would tantamount to a failure on the part of the Supreme Court to uphold the majesty of the law, the dignity of the court and to maintain the confidence of the people in the judiciary. The Supreme Court will be failing in its duty to protect the administration of justice from attempts to denigrate and lower the authority of the judicial officers entrusted with the sacred task of delivering justice. A failure on the part of the Supreme Court to punish the offender on an occasion such as this would thus be a failure to perform one of its essential duties solemnly entrusted to it by the Constitution and the people. For all these reasons, the so-called apology tendered by the contemner cannot be accepted and is rejected. (Para 44)

(*e*) We find the contemner guilty of the offence of the criminal contempt of the Court for having interfered with and obstructed the course of justice by trying to threaten, overawe and overbear the Court by using insulting, disrespectful and threatening language, and convict him of the said offence. Since the contemner is a senior member of the Bar and also adorns the high offices such as those of the Chairman of the Bar Council of India, the President of the U.P. High Court Bar Association, Allahabad and others, his conduct is bound to infect the members of the Bar all over the country. Hence an exemplary punishment has to be meted out to him. (Para 54)

The facts and circumstances of the present case justify our invoking the power under Article 129 read with Article 142 of the Constitution to award to the contemner a suspended sentence of imprisonment together with suspension of his practice as an advocate in the manner directed herein. The contemner is accordingly sentenced for his conviction for the offence of criminal contempt as under :

(*a*) The contemner, Vinay Chandra Mishra, is hereby sentenced to undergo simple imprisonment for a period of six weeks. However, in the circumstances of the case, the sentence will remain suspended for a period of four years and may be activated in case the contemner is convicted for any other offence of contempt of court within the said period; and

(*b*) the contemner shall stand suspended from practising as an advocate for a period of three years from today with the consequence that all elective and nominated offices/posts at present held by him in his capacity as an advocate, shall stand vacated by him forthwith. (Para 55)

F **Constitution of India — Arts. 129 and 142 — Jurisdiction and power of Supreme Court to take cognizance of any contempt of court and to award punishment for it, held, not circumscribed by any statute — Power apart from the Contempt of Courts Act, 1971 — Hence neither that Act nor the Advocates Act, 1961 could be pressed into service to restrict the jurisdiction of Supreme Court under Arts. 129 and 142 to punish an advocate found guilty of criminal contempt of court — Court's power extends to cancelling or suspending the licence of such advocate — Supreme Court acting under Arts. 129 and 142 can impose punishments it can impose under S. 38, Advocates Act — Contention seeking to restrict power under Art. 129 on the basis of Arts. 19(1)(a) & (2) and 19(1)(g) & (6) not well-founded**

G. Constitution of India — Art. 142(1) — Power of Supreme Court under, held, cannot be limited or conditioned by any statutory provision — Prem Chand Garg case wrong on this aspect

Held :

The jurisdiction of the Supreme Court under Article 129 is independent of the statutory law of contempt enacted by Parliament under Entry 77 of List I of Seventh Schedule of the Constitution. This jurisdiction under Article 129 is sui generis. The jurisdiction to take cognizance of the contempt as well as to award punishment for it being constitutional, it cannot be controlled by any statute. Neither, therefore, the Contempt of Courts Act, 1971 nor the Advocates Act, 1961 can be pressed into service to restrict the said jurisdiction. In this regard the observations in *Prem Chand Garg case* were made with regard to the extent of the Supreme Court's power under Article 142(1) in the context of fundamental rights. Those observations have no bearing on the present issue. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of the Supreme Court. Once the Supreme Court is in seisin of a matter before it, it has power to issue any order or direction to do complete justice in the matter. (Para 46)

Delhi Judicial Service Assn. v. *State of Gujarat*, (1991) 4 SCC 406; *Union Carbide Corpn.* v. *Union of India*, (1991) 4 SCC 584; *Harbans Singh* v. *State of U.P.*, (1982) 2 SCC 101 : 1982 SCC (Cri) 361; *Mohd. Anis* v. *Union of India*, 1994 Supp (1) SCC 145 : 1994 SCC (Cri) 251, *followed*

Prem Chand Garg v. *Excise Commr., U.P.*, 1963 Supp (1) SCR 885 : AIR 1963 SC 996, *overruled in this aspect*

K.M. Nanavati v. *State of Bombay*, (1961) 1 SCR 497 : AIR 1961 SC 112 : (1961) 1 Cri LJ 173; *A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602 : 1988 SCC (Cri) 372, *cited*

The argument that the powers of suspending and removing the advocate from practice having been vested exclusively in the disciplinary committees of the State Bar Council and the Bar Council of India, as the case may be, the Supreme Court is denuded of its power to impose such punishment both under Articles 129 and 142 of the Constitution is rejected. If the Supreme Court could impose such punishments in appeal under Section 38, Advocates Act, there is no reason why it cannot do so under Article 129 read with Article 142. (Paras 45 to 50)

What is further, the jurisdiction and powers of the Supreme Court under Article 142 which are supplementary in nature and are provided to do complete justice in any matter, are independent of the jurisdiction and powers of the Supreme Court under Article 129 which cannot be trammelled in any way by any statutory provision including the provisions of the Advocates Act or the Contempt of Courts Act. (Para 51)

Hence, there is no restriction or limitation on the nature of punishment that the Supreme Court may award while exercising its contempt jurisdiction and the said punishments can be the punishments the Supreme Court may impose while exercising the said jurisdiction. (Para 51)

The freedom of speech and expression cannot be used for committing contempt of court nor can the legal profession be practised by committing the contempt of court. The right to continue to practise is subject to the law of contempt. The law does not mean merely the statute law but also the constitutional provisions. The right, therefore, is subject to the restrictions placed by the law of contempt as contained in the statute — in the present case, the Contempt of Courts Act, 1971 as well as to the jurisdiction of the Supreme Court and of the High Court to take action under Articles 129 and 215 of the Constitution respectively. There is

no conflict between the provisions of Articles 129 and 215, and Article 19(1)(*a*) and Article 19(1)(*g*) read with Articles 19(2) and 19(6) respectively. (Para 52)

H. **Words and phrases — "Contempt of Court" — Definition under common law**

Under the common law definition, "contempt of court" is defined as an act or omission calculated to interfere with the due administration of justice. This covers criminal contempt (that is, acts which so threaten the administration of justice that they require punishment) and civil contempt (disobedience of an order made in a civil cause). (Para 28)

I. **Contempt of Court — Generally — Need and justification for vesting the extraordinary power in Court to punish for contempt of court — Object is to uphold the majesty of the law and of the administration of justice — Judiciary in a democratic written Constitution has been assigned a special role and hence the need to protect its dignity and authority — Constitution of India, Arts. 129 & 215 and 32, 226 & 136**

The rule of law is the foundation of a democratic society. The judiciary is the guardian of the rule of law. Hence judiciary is not only the third pillar, but the central pillar of the democratic State. In a democracy like ours, where there is a written Constitution which is above all individuals and institutions and where the power of judicial review is vested in the superior courts, the judiciary has a special and additional duty to perform, viz., to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. (Para 39)

If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. (Para 39)

It is for this purpose that the courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalising them and obstructing them from discharging their duties without fear or favour. When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. 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 disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded. (Para 39)

J. **High Court — Practice and procedure — Questions by member of the Bench — Junior member of the Bench, held, not barred in any way by any convention or otherwise from putting questions to the Bar — In any case, no counsel or third party can take exception and must answer the question**

Held :

Every member of the Bench is on a par with the other member or members of the Bench and has a right to ask whatever questions he wants to, to appreciate the merits or demerits of the case. There is no convention in any Court in India that a junior member of a Bench is not supposed to put any question to the bar and if any

questions are to be asked he should do so through the senior member of the Bench. If there be such a convention, it is for the learned Judges forming the Bench to observe it inter se. No lawyer or a third party can have any right or say in the matter and can make either an issue of it or refuse to answer the questions on that ground. The lawyer or the litigant concerned has to answer the questions put to him by any member of the Bench. (Para 33)

M-R/14229/C

Advocates who appeared in this case :

D.P. Gupta, Solicitor General, P.N. Duda, P.P. Rao and Rajeev Dhavan, Senior Advocates (R.D. Upadhyay, V.C. Misra, P. Parameswaran, R.B. Misra, Shiv Pujan Singh and Anil Kumar Jha, Advocates, with them) for the appearing parties.

By Post for the Petitioner.

The Judgment of the Court was delivered by

SAWANT, J.— On 10-3-1994, Justice S.K. Keshote of the Allahabad High Court addressed a letter to the Acting Chief Justice of that Court as follows:

"No. SKK/ALL/8/94 10-3-1994

Dear Brother Actg. Chief Justice,

Though on 9-3-1994 itself I orally narrated about the misbehaviour of Shri V.C. Mishra with me in the Court but I thought it advisable to give you the same in writing also.

On 9-3-1994 I was sitting with Justice Anshuman Singh in Court No. 38. In the list of fresh cases of 9-3-1994 at Sr. No. 5 FAFO Record No. 22793 M/s *Bansal Forgings Ltd.* v. *U.P. Financial Corpn.* filed by Smt S.V. Misra was listed. Shri V.C. Mishra appeared in this case when the case was called.

Brief facts of that case

M/s Bansal Forgings Ltd. took loan from U.P. Financial Corporation and it made default in payment of instalment of the same. The Corporation proceeded against the Company under Section 29 of the U.P. Financial Corporation Act. The Company filed a civil suit against the Corporation and it has also filed an application for grant of temporary injunction. Counsel for the Corporation suo motu put appearance in the matter before trial court and prayed for time for filing of reply. The learned trial court passed an order on the said date that the Corporation will not seize the factory of the Company. The Company shall pay the amount of instalment and it will furnish also security for the disputed amount. The court directed to furnish security on 31-1-1994 and case was fixed on 15-3-1994.

Against said order of the trial court this appeal has been filed and arguments have been advanced that that Court has no jurisdiction to pass the order for payment of instalment of loan and further no security could have been ordered.

I put a question to Shri Mishra under which provision this order has been passed. On putting of question he started to shout and said that no

question could have been put to him. He will get me transferred or see that impeachment motion is brought against me in Parliament. He further said that he has turned up many Judges. He created a good scene in the Court. He asked me to follow the practice of this Court. In sum and substance it is a matter where except to abuse me of mother and sister he insulted me like anything. What he wanted to convey to me was that admission is as a course and no arguments are heard, at this stage.

It is not the question of insulting of a Judge of this institution but it is a matter of institution as a whole. In case dignity of Judiciary is not being maintained then where this institution will stand. In case a Senior Advocate, President of Bar and Chairman of Bar Council of India behaves in Court in such manner what will happen to other advocates.

Since the day I have come here I am deciding the cases on merits. In case a case has merits it is admitted but not as a matter of course. In this Court probably advocates do not like the consideration of cases on their merits at the stage of admission. In case dignity of Judiciary is not restored then it is very difficult for the Judges to discharge their judicial function without fear and favour.

I am submitting this matter to you in writing to bring this mishappening in the Court with the hope that you will do something for restoration of dignity of Judiciary.

Thanking you,

Yours sincerely,
Sd/-
(Jus. S.K. Keshote) "

2. The Acting Chief Justice, Shri V.K. Khanna forwarded the said letter to the then Chief Justice of India by his letter of 5-4-1994. The learned Chief Justice of India constituted this Bench to hear the matter on 15-4-1994.

3. On 15-4-1994, this Court took the view that there was a prima facie case of criminal contempt of court committed by Shri Vinay Chandra Mishra (hereinafter referred to as the 'contemner') and issued a notice against him to show cause why contempt proceedings be not initiated against him. By the same order, Shri D.P. Gupta, the learned Solicitor General of India was requested to assist the Court in the matter. Pursuant to the notice, the contemner filed his reply by affidavit dated 10-5-1994 and also an application seeking discharge of show-cause notice, and in the alternative for an inquiry to be held into the incident referred to by Justice Keshote in his letter which had given rise to the contempt proceedings. It is necessary at this stage to refer to the material portions of both the affidavit and the application filed by the contemner. After referring to his status as a Senior Advocate of the Allahabad High Court and his connections with the various law organisations in different capacities to impress upon the Court that he had a deep involvement in the purity, integrity and solemnity of judicial process, he has submitted in the affidavit that but for his deep commitments to the norms of judicial processes as evidenced by his said status and

connections, he would have adopted the usual expedient of submitting his unconditional regrets. But the facts and circumstances of this case were such which induced him to "state the facts and seek the verdict of the Court" whether he had committed the alleged contempt or whether it could be "a judge committing contempt of his own court". He has then stated the facts which according to him form the 'genesis' of the present controversy. They are as follows:

"*A.* A Private Ltd. Co. had taken an instalment loan from U.P. Financial Corporation, which provides under its constituent Act (Section 29) for some sort of self-help in case of default of instalments.

B. A controversy arose between the said Financial Corporation and the borrower as a result of which, the borrower had to file a civil suit seeking an injunction against the Corporation for not opting for the non-judicial sale of their assets.

C. The civil court granted the injunction against putting the assets to sale, but at the same time directed furnishing security for the amount due.

D. Being aggrieved by the condition of furnishing security, which in law would be tantamount to directing a mortgagor to furnish security for payment of mortgage loan, even when he satisfies the Court that a stay is called for — the property mortgaged being a pre-existing security for its payment.

E. The Company filed an FAFO being No. 229793 of 1994 against the portion of the order directing furnishing of security.

F. The said FAFO came for preliminary hearing before Hon'ble Justice Anshuman Singh and the Applicant of this petition on 9-3-1994, in which I argued for the debtor-Company.

G. When the matter was called on Board, the Applicant took charge of the court proceedings and virtually foreclosed attempts made by the Senior Judge to intervene. The Applicant Judge inquired from me as to under what law the impugned order was passed to which I replied that it was under various rules of Order 39 CPC. That Applicant therefore conveyed to me that he was going to set aside the entire order, against a portion of which I had come in appeal, because in his view the Lower Court was not competent to pass such an order as Order 39 did not apply to the facts.

H. I politely brought to the notice of the Applicant Judge that being the appellant I had the dominion over the case and it could not be made worse, just because I had come to High Court.

I. The Applicant Judge apparently lost his temper and told me in no unconcealed term that he would set aside the order in toto, disregarding what I had said.

J. Being upset over, what I felt was an arbitrary approach to judicial process I got emotionally perturbed and my professional and institutional

sensitivity got deeply wounded and I told the Applicant Judge that it was not the practice in this Court to dismiss cases without hearing or to upset judgments or portions of judgments, which have not been appealed against. Unfortunately the Applicant Judge took it unsportingly and apparently lost his temper and directed the stenographer to take down the order for setting aside of the whole order.

K. At this juncture, the Hon'ble Senior Judge intervened, whispered something to the Applicant Judge and directed the case to be listed before some other Bench. It was duly done and by an order of the other Court dated 18-3-1994 Hon'ble Justices B.M. Lal and S.K. Verma, the points raised by me before the Applicant Judge were accepted. A copy of the said order is reproduced as Annexure I to this affidavit.

L. I find it necessary to mention that the exchange that took place between me and the Applicant Judge got a little heated up. In the moment of heat the Applicant Judge made the following observations:

'I am from the Bar and if need be I can take to goondaism.'

Adding in English—

'I never opted for Allahabad. I had opted for Gujarat and Himachal Pradesh. I do not know why the Chief Justice of India disregarded my options and transferred me to this place, which I never liked.'

Provoked by this I asked him whether he was creating a scene to create conditions for getting himself transferred as also talked earlier."

After narrating the above incident, the contemner has gone on to deny that he had referred to any impeachment, though according to him he did mention that "a judge got himself transferred earlier on account of his inability to command the goodwill of the Bar due to lack of mutual reverence".

4. The contemner has further denied the allegations made by Justice Keshote that as soon as the case was called out, he (i.e. Justice Keshote) asked him the provision under which the impugned order was passed and that he had replied that the Court had no jurisdiction to ask the same and should admit and grant the stay order. According to him, such a reply could only be attributed to one who is 'mad' and that considering his practice of thirty-five years at the Bar and his responsible status as a member of the Bar, it is unbelievable that he would reply in such a "foolish manner". The contemner has further denied that he had abused the learned Judge since according to him he had never indulged in abusing anybody. With regard to the said allegations against him, the contemner has stated that the same are vague and, therefore, "nothing definite is warranted to reply".

5. He has further contended in his affidavit that if the learned Judge was to be believed that he had committed the contempt, the Senior Judge who was to direct the court proceedings would have initiated proceedings under "Article 129 of the Constitution" for committing contempt *in facie curiae*. He has also stated that the learned Judge himself did not direct such proceedings against him which he could have. He has found fault that

instead of doing so, the learned Judge had "deferred the matter for the next day and adopted a devious way of writing to the Acting Chief Justice for doing something about it". He has then expressed his 'uncomprehension' with (*sic* why) the learned Judge should have come to the Supreme Court when he had ample and sufficient legal and constitutional powers to arraign him at the Bar for what was attributed to him.

6. The contemner has then gone on to complain that the "language used" by the learned Judge "in the Court extending a threat to resort to goondaism is acting in a way which is professionally perverse and approximating to creating an unfavourable public opinion about the awesomeness of judicial process, lowering or tending to lower the authority of any Court" which amounted to contempt by a Judge punishable under Section 16 of the Contempt of Courts Act, 1971. He has then gone on to submit "under compulsion of" his "institutional and professional conscience" and for "upholding professional standards expected of both the Bench and the Bar of this Court" that this Court may order a thorough investigation into the incident in question to find out whether a contempt has been committed by him punishable under "Article 215" of the Constitution or by the Judge under Section 16 of the Contempt of Courts Act.

7. He has further stated that the entire Bar at Allahabad knows that he was unjustly 'roughed' by the Judge and was being punished for taking a "fearless and non-servile stand" and that he is being prosecuted for asserting the right of audience and using "the liberty to express his views" when a Judge takes a course "which in the opinion of the Bar is irregular". He has also contended that any punishment meted out to the "outspoken lawyer" will completely emasculate the freedom of the profession and make the Bar "a subservient, tail-wagging appendage to the judicial branch, which is an anathema to a healthy democratic judicial system".

8. He has made a complaint that he was feeling handicapped in not being provided with the copy of the letter/report of the Acting Chief Justice of the Allahabad High Court and he has also been unable to gauge the "rationale of the applicant in not having initiated proceedings" against him either immediately or a day following, when he chose to address a letter to the Acting Chief Justice. He has then contended that he wanted to make it clear that he was seeking a formal inquiry not for any vindication of any personal hurt but to make things safe for the profession which in a small way by a quirk of destiny come to his keeping also. He has also stated that he would be untrue and faithless to his office if he subordinated the larger interests of the profession and dignity of the judicial process for a small thing of seeking his little safety. The contemner goes on to state that he did not opt for filing a contempt against the learned Judge as in normal course of arguments, sometimes altercations take place between a Judge and the arguing advocate, which may technically be contempt on either side but there being no intention, provisions of contempt are not attracted. In support of his said case, he has reproduced an extract from Oswald's *Contempt of Court*, 3rd Edn., by Robertson. The said extract is as follows:

"An advocate is at liberty, when addressing the Court in regular course, to combat and contest strongly any adverse views of the Judge or Judges expressed on the case during its argument, to object to and protest against any course which the Judge may take and which the advocate thinks irregular or detrimental to the interests of his client, and to caution juries against any interference by the Judge with their functions, or with the advocate when addressing them, or against any strong view adverse to his client expressed by the presiding Judge upon the facts of a case before the verdict of the jury thereon. An advocate ought to be allowed freedom and latitude both in speech and in the conduct of his client's case. It is said that a Scotch advocate was arguing before a Court in Scotland, when one of the Judges, not liking his manner, said to him, 'It seems to me, Mr Blank, that you are endeavouring in every way to show your contempt for the Court.' 'No', was the quick rejoinder, 'I am endeavouring in every way to conceal it'."

9. In the end, he has stated that he had utmost respect and regard for the courts and he never intended nor intends not to pay due respect to the courts which under the law they are entitled to and it is for this reason that instead of defending himself through an advocate, he had left to the mercy of this Court to judge and decide the right and wrong. He has also stated that it is for this reason that he had not relied upon the provisions of the Constitution under Articles 129 and 215 and Section 16 of the Contempt of Courts Act and to save himself on the technicality and jurisdictional competence.

10. Lastly, he has reiterated that he had always paid due regard to the courts and he was paying the same and will continue to pay the same and he "neither intended nor intends to commit contempt of any court".

11. Along with the aforesaid affidavit was forwarded by the contemner, a petition stating therein that he had not gone beyond the legitimate limits of fearless, honest and independent obligations of an advocate and it was Justice Keshote himself who had lost his temper and extended threats to him which were such as would be punishable under Section 16 of the Contempt of Courts Act, 1971 (hereinafter referred to as the 'Act'). He has prayed that the notice issued to him be discharged and if in any case, this Court does not feel inclined to discharge the notice, he "seeks his right to inquiry and production of evidence directly or by affidavits" as this Court may direct. He has further stated in that petition that he is moving an independent application for contempt proceedings to be drawn against the learned Judge and it would be in the interests of justice and fair play if the two are heard together. It has to be noted that the contemner has throughout this affidavit as well as the petition referred to Justice Keshote as 'applicant', although he knew very well that contempt proceedings had been initiated suo motu by this Court on the basis of the letter written by Justice Keshote to the Acting Chief Justice of the High Court. His manner of reference to the learned Judge also reveals the respect in which he holds the learned Judge.

12. The contemner has also filed another petition on the same day as stated in the aforesaid petition wherein he has prayed that on the facts stated in the reply affidavit to the show-cause notice for contempt proceedings against him, this Court be pleased to draw proceedings under Section 16 of the Act against the learned Judge for committing contempt of his own court and hold an inquiry. In this petition, he has stated that in his reply to the contempt notice, he has brought the whole truth before this Court which according to him was witnessed by the Senior Judge of the Bench, Justice Anshuman Singh and a large number of advocates. Once again referring to Justice Keshote as the applicant, he has stated that the learned Judge in open court conveyed to him (i.e. the contemner) that he can take to goondaism if need arises, that he also talked disparagingly against the Chief Justice of India for not transferring him to the place for which he had opted and talked to the contemner scurrilously and in a manner unworthy of a Judge and also attempted to gag the contemner from discharging his duties as an advocate. The contemner has further contended that as a common law principle relating to contempt of courts, a Judge is liable for contempt of his own court as much as any other person associated with judicial proceedings and outside, and that the aforesaid principle has been given statutory recognition under Section 16 of the Act. He has further contended that the behaviour of the learned Judge was so unworthy that the senior colleague on the Bench apart from "disregarding with the desire of the applicant to dismiss the entire order" against a part of which an appeal had been filed, released the case from the board and did not think of taking recourse to the obvious and well-known procedure of initiating contempt proceedings against him for the alleged contempt committed in the face of the Court. He has further contended that "the adoption of devious ways of reaching the Acting Chief Justice by letter and reportedly coming to Delhi for meeting meaningful people" is "itself seeking (*sic*) about the infirmity of the case" of the Judge. He has in the end reiterated his prayer for an inquiry into the behaviour of the learned Judge if the notice of contempt was not discharged against him in view of the denial by him of the conduct alleged against him.

13. This Court gave four weeks' time as desired by the contemner to file an additional affidavit giving more facts and details. The Court also made clear that the cause-title of the proceedings was misleading since Justice Keshote had not initiated the proceedings. The proceedings were initiated suo motu by this Court. A direction was given to the Registry to correct the cause-title.

14. On 30-6-1994 the contemner filed his supplementary/additional counter-affidavit. In this affidavit, he raised objections to the maintainability "of initiating contempt proceedings" against him. His first objection was to the assumption of jurisdiction by this Court to punish for an act of contempt committed in respect of another court of record which is invested with identical and independent power for punishing for contempt of itself. According to him, this Court can take cognizance only of contempt committed in respect of itself. He has also demanded that in view of the

point of law raised by him, the matter be placed before the Constitution Bench and that notice be issued to the Attorney General of India and all the Advocates General of the States. He has then gone on to deny the statements made by the learned Judge in the letter written to the Acting Chief Justice of the High Court and in view of the said denial by him, he has asked for the presence of the learned Judge in the Court for being cross-examined by him, i.e., the contemner. He has further stated that if the contempt proceedings are taken against him, the statement of Justice Anshuman Singh who was the Senior Judge on the Bench before which the incident took place, would also be necessary. He has also taken exception to Justice Keshote's speaking in the Court except through the Senior Judge on the Bench which, according to him had been the practice in the Allahabad High Court, and has alleged that the learned Judge did not follow the said convention. In the end, he has reiterated that he has utmost respect and regard for the courts and he has never intended nor intends not to pay due regard to the courts.

15. On 15-7-1994 this Court passed an order wherein it is recorded that on 15-4-1994 the court had issued a notice to the contemner to show cause as to why criminal contempt proceedings be not initiated against him and notice was issued on its own motion. The Court heard the contemner in person as well as his learned counsel. The Court perused the counter-affidavit and the additional affidavit of the contemner and was of the view that it was a fit case where criminal contempt proceedings be initiated against the contemner. Accordingly, the Court directed that the proceedings be initiated against him. The contemner was given an opportunity to file any material in reply or in defence within another eight weeks. He was also allowed to file the affidavit of any other person apart from himself in support of his defence. Shri Gupta, learned Solicitor General was appointed as the prosecutor to conduct the proceedings. The affidavits filed by the contemner were directed to be sent to Justice Keshote making it clear that he might offer his comments regarding the factual averments in the said affidavits.

16. In view of the said order, the Court dismissed the contemner's Application No. 2560 of 1994 praying for discharge of the notice. The contemner thereafter desired to withdraw his Application No. 2561 of 1994 seeking initiation of proceedings against the learned Judge for contempt of his own court, by stating that he was doing so "at this stage reserving his right to file a similar application at a later stage". The Court without any comment on the statement made by the contemner, dismissed the said application as withdrawn.

17. Justice Keshote by a letter of 20-8-1994 forwarded his comments on the counter-affidavit and the supplementary/additional counter-affidavit filed by the contemner. The learned Judge denied that he took charge of the court proceedings and virtually foreclosed the attempts made by the Senior Judge to intervene, as was alleged by the contemner. He stated that being a member of the Bench, he put a question to the contemner as to under which provision, the order under appeal had been passed by the trial court, and upon that the contemner started shouting and said that he would get him

transferred or see to it that impeachment motion was brought against him in Parliament. According to the learned Judge, the contemner said many more things as already mentioned by him in his letter dated 10-3-1994. He further stated that the contemner created a scene which made it difficult to continue the court proceedings and ultimately when it became difficult to hear all the slogans, insulting words and threats, he requested his learned brother on the Bench to list that case before another Bench and to retire to the chamber. Accordingly, the order was made by the other learned member of the Bench and both of them retired to their chambers.

18. The learned Judge also stated that the contemner has made wrong statement when he states "that applicant, therefore, conveyed to me that he was going to set aside the entire order, against portion of which I had come in appeal because in his view, the lower court was not competent to pass such order as Order 39 did not apply to the facts". The learned Judge stated that he neither made any such statement nor conveyed to the contemner, as suggested by him. He reiterates that except one sentence, viz., "that under which provision this order had been made by the trial court" nothing was said by him. According to the learned Judge, it was a case where the contemner did not permit the court proceedings to be proceeded and both the Judges ultimately had to retire to the chambers. The learned Judge alleges that the counter-affidavit manufactures a defence. He has denied the contents of para 6(H) and (I) of the counter-affidavit by stating that nothing of the kind as alleged therein had happened. According to the learned Judge, it was a case where the contemner lost his temper on the question being put to him by him, i.e., the learned Judge. He has stated that instead of losing his temper and creating a scene and threatening and terrorising him, the contemner should have argued the matter and encouraged the new junior Judge. The learned Judge has further denied the following averment, viz., "unfortunately, the applicant Judge took it unsportingly and apparently lost his temper and directed the stenographer to take down the order for setting aside of the whole order" made in para 6(J) of the counter-affidavit, as wrong. He has pointed out that in the Division Bench, it is the senior member who dictates order/judgments. He has also denied the statements attributed to him in other paragraphs of the affidavit and in particular, has stated that he did not make the following observations: "I am from the Bar and if need be I can take to goondaism" and has alleged that the said allegations are absolutely wrong. He has also denied that he ever made the statements as follows: "I never opted for Allahabad. I had opted for Gujarat and Himachal Pradesh. I do not know why the Chief Justice of India disregarded my options and transferred me to this place which I never liked." According to him, the said allegations are manufactured with a view to create a defence. He has denied the allegations made against him in the additional/supplementary affidavits as wrong and has stated that what actually happened in the Court was stated in his letter of 10-3-1994.

19. On 7-10-1994, the contemner filed his unconditional written apology in the following words:

"*1.* In deep and regretful realization of the fact that a situation like the one which has given rise to the present proceedings, and which in an ideal condition should never have arisen, subjects me to deep anguish and remorse and a feeling of moral guilt. The feeling has been compounded by the fact of my modest association with the profession as the Senior Advocate for some time and also being the President of the High Court Bar Association for multiple terms (from which I have resigned a week or ten days back), and also being the Chairman of the Bar Council of India for the third five-year term. The latter two being elective posts convey with its holding an element of trust by my professional fraternity which expectations of setting up an example of an ideal advocate, which includes generating an intra-professional culture between the Bar and the Bench, under which the first looks upon the second with respect and resignation, the second upon the first with courtesy and consideration. It also calls for cultivation of a professional attitude amongst the lawyers to learn to be good and sporting losers.

2. Guilty realizing my failure at approximating these standards resulting in the present proceedings, *nolo contendere* I submit my humble and unconditional apologies for the happenings in the Court of Justice S.K. Keshote at Allahabad High Court on 9-3-1994, and submit myself at the Hon. Court's sweet will.

3. I hereby withdraw from record all my applications, petitions, counter-affidavits, and prayers made to the court earlier to the presented (sic) of this statement. I, also, withdraw all submissions made at the Bar earlier and rest my matter with the present statement alone, and any submissions that may be made in support of or in connection with statement."

20. On that day, the matter was adjourned to 24-11-1994 to enable the learned counsel for the parties to make further submissions on the apology and to argue the case on all points, since the Court stated that it may not be inclined to accept the apology as tendered. The learned counsel for all the parties including the contemner, Bar Council of India and the State Bar Council of U.P. (who were allowed to intervene) were heard and the matter was reserved for judgment.

21. Thereafter, the State Bar Council of U.P. also submitted its written submissions on 26-11-1994 along with an application for intervention. We have perused the said submissions.

22. We may first deal with the preliminary objection raised by the contemner and the State Bar Council, viz., that this Court cannot take cognizance of the contempt of the High Courts. The contention is based on two grounds. The first is that Article 129 vests this Court with the power to punish only for the contempt of itself and not of the High Courts. Secondly, the High Court is also another court of record vested with identical and independent power of punishing for contempt of itself.

23. The contention ignores that the Supreme Court is not only the highest court of record, but under various provisions of the Constitution, is also charged with the duties and responsibilities of correcting the lower courts and tribunals and of protecting them from those whose misconduct tends to prevent the due performance of their duties. The latter functions and powers of this Court are independent of Article 129 of the Constitution. When, therefore, Article 129 vests this Court with the powers of the court of record including the power to punish for contempt of itself, it vests such powers in this Court in its capacity as the highest court of record and also as a court charged with the appellate and superintending powers over the lower courts and tribunals as detailed in the Constitution. To discharge its obligations as the custodian of the administration of justice in the country and as the highest court imbued with supervisory and appellate jurisdiction over all the lower courts and tribunals, it is inherently deemed to have been entrusted with the power to see that the stream of justice in the country remains pure, that its course is not hindered or obstructed in any manner, that justice is delivered without fear or favour and for that purpose all the courts and tribunals are protected while discharging their legitimate duties. To discharge this obligation, this Court has to take cognizance of the deviation from the path of justice in the tribunals of the land, and also of attempts to cause such deviations and obstruct the course of justice. To hold otherwise would mean that although this Court is charged with the duties and responsibilities enumerated in the Constitution, it is not equipped with the power to discharge them.

24. This subject has been dealt with elaborately by this Court in *Delhi Judicial Service Assn.* v. *State of Gujarat*[1]. We may do no better than quote from the said decision the relevant extracts: (SCC pp. 437-54)

> "*18.* There is therefore no room for any doubt that this Court has wide power to interfere and correct the judgment and orders passed by any court or tribunal in the country. In addition to the appellate power, the Court has special residuary power to entertain appeal against any order of any court in the country. The plenary jurisdiction of this Court to grant leave and hear appeals against any order of a court or tribunal, confers power of judicial superintendence over all the courts and tribunals in the territory of India including subordinate courts of Magistrate and District Judge. This Court has, therefore, supervisory jurisdiction over all courts in India.
>
> *19.* Article 129 provides that the Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 215 contains similar provision in respect of High Court. Both the Supreme Court as well as High Courts are courts of record having powers to punish for contempt including the power to punish for contempt of itself. The Constitution does not define

[1] (1991) 4 SCC 406

'Court of Record'. This expression is well recognised in juridical world. In Jowitt's *Dictionary of English Law*, 'Court of Record' is defined as:

> 'A court whereof the acts and judicial proceedings are enrolled for a perpetual memorial and testimony, and which has power to fine and imprison for contempt of its authority.'

In Wharton's *Law Lexicon*, Court of Record is defined as:

> 'Courts are either of record where their acts and judicial proceedings are enrolled for a perpetual memorial and testimony and they have power to fine and imprison; or not of record being courts of inferior dignity, and in a less proper sense the King's Courts — and these are not entrusted by law with any power to fine or imprison the subject of the realm, unless by the express provision of some Act of Parliament. These proceedings are not enrolled or recorded.'

In *Words and Phrases* (Permanent Edn., Vol. 10, p. 429) 'Court of Record' is defined as under:

> 'Court of Record is a court where acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony, which rolls are called the 'record' of the court, and are of such high and supereminent authority that their truth is not to be questioned.'

Halsbury's Laws of England, 4th Edn., Vol. 10, para 709, p. 319, states:

> 'Another manner of division is into courts of record and courts not of record. Certain courts are expressly declared by statute to be courts of record. In the case of courts not expressly declared to be courts of record, the answer to the question whether a court is a court of record seems to depend in general upon whether it has power to fine or imprison, by statute or otherwise, for contempt of itself or other substantive offences; if it has such power, it seems that it is a court of record.... The proceedings of a court of record preserved in its archives are called records, and are conclusive evidence of that which is recorded therein.'

* * *

23. The question whether in the absence of any express provision a Court of Record has inherent power in respect of contempt of subordinate or inferior courts, has been considered by English and Indian courts.

* * *

These authorities show that in England the power of the High Court to deal with the contempt of inferior court was based not so much on its historical foundation but on the High Court's inherent jurisdiction being a court of record having jurisdiction to correct the orders of those courts.

24. In India prior to the enactment of the Contempt of Courts Act, 1926, High Court's jurisdiction in respect of contempt of subordinate and inferior courts was regulated by the principles of Common Law of

England. The High Courts in the absence of statutory provision exercised power of contempt to protect the subordinate courts on the premise of inherent power of a Court of Record.

* * *

26. The English and the Indian authorities are based on the basic foundation of inherent power of a Court of Record, having jurisdiction to correct the judicial orders of subordinate courts. The King's Bench in England and High Courts in India being superior Courts of Record and having judicial power to correct orders of subordinate courts enjoyed the inherent power of contempt to protect the subordinate courts. The Supreme Court being a Court of Record under Article 129 and having wide power of judicial supervision over all the courts in the country, must possess and exercise similar jurisdiction and power as the High Courts had prior to Contempt Legislation in 1926. Inherent powers of a superior Court of Record have remained unaffected even after codification of Contempt Law.

* * *

28. ... The Parliament's power to legislate in relation to law of contempt relating to Supreme Court is limited, therefore the Act does not impinge upon this Court's power with regard to the contempt of subordinate courts under Article 129 of the Constitution.

29. Article 129 declares the Supreme Court a court of record and it further provides that the Supreme Court shall have all the powers of such a court *including the power to punish for contempt of itself.* The expression used in Article 129 is not restrictive instead it is extensive in nature. If the Framers of the Constitution intended that the Supreme Court shall have power to punish for contempt of itself only, there was no necessity of inserting the expression '*including the power to punish for contempt of itself*'. The article confers power on the Supreme Court to punish for contempt of itself and in addition, it confers some additional power relating to contempt as would appear from the expression 'including'. The expression 'including' has been interpreted by courts, to extend and widen the scope of power. The plain language of Article 129 clearly indicates that this Court as a court of record has power to punish for contempt of itself and also something else which could fall within the inherent jurisdiction of a court of record. In interpreting the Constitution, it is not permissible to adopt a construction which would render any expression superfluous or redundant. The courts ought not to accept any such construction. While construing Article 129, it is not permissible to ignore the significance and impact of the inclusive power conferred on the Supreme Court. Since the Supreme Court is designed by the Constitution as a court of record and as the Founding Fathers were aware that a superior court of record has inherent power to indict a person for the contempt of itself as well as of courts inferior to it, the expression 'including' was deliberately inserted in the

article. Article 129 recognised the existing inherent power of a court of record in its full plenitude including the power to punish for the contempt of inferior courts. If Article 129 is susceptible to two interpretations, we would prefer to accept the interpretation which would preserve the inherent jurisdiction of this Court being the superior court of record, to safeguard and protect the subordinate judiciary, which forms the very backbone of administration of justice. The subordinate courts administer justice at the grassroot level, their protection is necessary to preserve the confidence of people in the efficacy of courts and to ensure unsullied flow of justice at its base level.

* * *

31. We have already discussed a number of decisions holding that the High Court being a court of record has inherent power in respect of contempt of itself as well as of its subordinate courts even in the absence of any express provision in any Act. A fortiori the Supreme Court being the Apex Court of the country and superior court of record should possess the same inherent jurisdiction and power for taking action for contempt of itself as well as for the contempt of subordinate and inferior courts. It was contended that since High Court has power of superintendence over the subordinate courts under Article 227 of the Constitution, therefore, High Court has power to punish for the contempt of subordinate courts. Since the Supreme Court has no supervisory jurisdiction over the High Courts or other subordinate courts, it does not possess powers which High Courts have under Article 215. This submission is misconceived. Article 227 confers supervisory jurisdiction on the High Court and in exercise of that power High Court may correct judicial orders of subordinate courts, in addition to that, the High Court has administrative control over the subordinate courts. Supreme Court's power to correct judicial orders of the subordinate courts under Article 136 is much wider and more effective than that contained under Article 227. Absence of administrative power of superintendence over the High Courts and subordinate courts does not affect this Court's wide power of judicial superintendence of all courts in India. Once there is power of judicial superintendence, all the courts whose orders are amenable to correction by this Court would be subordinate courts and therefore this Court also possesses similar inherent power as the High Court has under Article 215 with regard to the contempt of subordinate courts. The jurisdiction and power of a superior Court of Record to punish contempt of subordinate courts was not founded on the Court's administrative power of superintendence, instead the inherent jurisdiction was conceded to superior Court of Record on the premise of its judicial power to correct the errors of subordinate courts.

* * *

36. Advent of freedom, and promulgation of Constitution have made drastic changes in the administration of justice necessitating new judicial

approach. The Constitution has assigned a new role to the Constitutional Courts to ensure rule of law in the country. These changes have brought new perceptions. In interpreting the Constitution, we must have regard to the social, economic and political changes, need of the community and the independence of judiciary. The court cannot be a helpless spectator, bound by precedents of colonial days which have lost relevance. Time has come to have a fresh look at the old precedents and to lay down law with the changed perceptions keeping in view the provisions of the Constitution. 'Law', to use the words of Lord Coleridge, 'grows; and though the principles of law remain unchanged, yet their application is to be changed with the changing circumstances of the time'. The considerations which weighed with the Federal Court in rendering its decision in *Gauba*[2] and *Jaitly case*[3] are no more relevant in the context of the constitutional provisions.

37. Since this Court has power of judicial superintendence and control over all the courts and tribunals functioning in the entire territory of the country, it has a corresponding duty to protect and safeguard the interest of inferior courts to ensure the flow of the stream of justice in the courts without any interference or attack from any quarter. The subordinate and inferior courts do not have adequate power under the law to protect themselves, therefore, it is necessary that this Court should protect them. Under the constitutional scheme this Court has a special role, in the administration of justice and the powers conferred on it under Articles 32, 136, 141 and 142 form part of the basic structure of the Constitution. The amplitude of the power of this Court under these articles of the Constitution cannot be curtailed by law made by Central or State legislature. If the contention raised on behalf of the contemners is accepted, the courts all over India will have no protection from this Court. No doubt High Courts have power to persist for the contempt of subordinate courts but that does not affect or abridge the inherent power of this Court under Article 129. The Supreme Court and the High Courts both exercise concurrent jurisdiction under the constitutional scheme in matters relating to fundamental rights under Articles 32 and 226 of the Constitution, therefore this Court's jurisdiction and power to take action for contempt of subordinate courts would not be inconsistent to any constitutional scheme. There may be occasions when attack on Judges and Magistrates of subordinate courts may have wide repercussions throughout the country, in that situation it may not be possible for a High Court to contain the same, as a result of which the administration of justice in the country may be paralysed, in that situation the Apex Court must intervene to ensure smooth functioning of courts. The Apex Court is duty bound to take effective steps within the constitutional provisions to ensure a free and fair administration of justice throughout the country,

2 *K.L. Gauba* v. *Hon'ble the Chief Justice and Judges of the High Court of Judicature at Lahore*, AIR 1942 FC 1 : 1941 FCR 54 : 43 Cri LJ 311

3 *Purshottam Lal Jaitly* v. *King-Emperor*, 1944 FCR 364

for that purpose it must wield the requisite power to take action for contempt of subordinate courts. Ordinarily, the High Court would protect the subordinate court from any onslaught on their independence, but in exceptional cases, extraordinary situation may prevail affecting the administration of public justice or where the entire judiciary is affected, this Court may directly take cognizance of contempt of subordinate courts. We would like to strike a note of caution that this Court will sparingly exercise its inherent power in taking cognizance of the contempt of subordinate courts, as ordinarily matters relating to contempt of subordinate courts must be dealt with by the High Courts. The instant case is of exceptional nature, as the incident created a situation where functioning of the subordinate courts all over the country was adversely affected, and the administration of justice was paralysed, therefore, this Court took cognizance of the matter.

38. ...It is true that courts constituted under a law enacted by Parliament or the State legislature have limited jurisdiction and they cannot assume jurisdiction in a matter, not expressly assigned to them, but that is not so in the case of a superior court of record constituted by the Constitution. Such a court does not have a limited jurisdiction instead it has power to determine its own jurisdiction. No matter is beyond the jurisdiction of a superior court of record unless it is expressly shown to be so, under the provisions of the Constitution. In the absence of any express provision in the Constitution, the Apex Court being a court of record has jurisdiction in every matter and if there be any doubt, the Court has power to determine its jurisdiction. If such determination is made by High Court, the same would be subject to appeal to this Court, but if the jurisdiction is determined by this Court it would be final.

* * *

We therefore hold that this Court being the Apex Court and a superior court of record has power to determine its jurisdiction under Article 129 of the Constitution, and as discussed earlier it has jurisdiction to initiate or entertain proceedings for contempt of subordinate courts. This view does not run counter to any provision of the Constitution."

The propositions of law laid down and the observations made in this decision conclusively negate the contention that this Court cannot take cognizance of the contempt committed of the High Court.

25. The contemner has also contended that notwithstanding the decision in *Delhi Judicial Service Assn. case*[1], the matter should be referred to a larger Bench because according to him, the decision does not lay down the correct proposition of law when it gives this Court the jurisdiction under Article 129 of the Constitution to take cognizance of the contempt of the High Court. Neither the contemner nor the learned counsel appearing on his behalf has pointed out to us any specific infirmity in the said decision. We are not only in complete agreement with the law laid down on the point in the said decision but are also unable to see how the legal position to the contrary will be, consistent with this Court's wide-ranging jurisdiction and

its duties and responsibilities as the highest court of the land as pointed out above. Hence, we reject the said request.

26. The contemner has further contended that it will be necessary to hold an inquiry into the allegations made by the learned Judge by summoning the learned Judge for examination to verify the version of the incident given by him as against that given by the contemner. According to him, in view of the conflicting versions of the incident given by him and the learned Judge, it would be necessary for him to cross-examine the learned Judge. As the facts reveal, the contempt alleged is in the face of the Court. The learned Judge or the Bench could have itself taken action for the offence on the spot. Instead, the learned Judge probably thought that it would not be proper to be a prosecutor, a witness and the Judge himself in the matter and decided to report the incident to the learned Acting Chief Justice of his Court. There is nothing unusual in the course the learned Judge adopted, although the procedure adopted by the learned Judge has resulted in some delay in taking action for the contempt (see *Balogh* v. *Crown Court at St. Albans*[4]). The criminal contempt of court undoubtedly amounts to an offence but it is an offence sui generis and hence for such offence, the procedure adopted both under the common law and the statute law even in this country has always been summary. However, the fact that the process is summary does not mean that the procedural requirement, viz., that an opportunity of meeting the charge, is denied to the contemner. The degree of precision with which the charge may be stated depends upon the circumstances. So long as the gist of the specific allegations is made clear or otherwise the contemner is aware of the specific allegation, it is not always necessary to formulate the charge in a specific allegation. The consensus of opinion among the judiciary and the jurists alike is that despite the objection that the Judge deals with the contempt himself and the contemner has little opportunity to defend himself, there is a residue of cases where not only it is justifiable to punish on the spot but it is the only realistic way of dealing with certain offenders. This procedure does not offend against the principle of natural justice, viz., *nemo judex in sua causa* since the prosecution is not aimed at protecting the Judge personally but protecting the administration of justice. The threat of immediate punishment is the most effective deterrent against misconduct. The Judge has to remain in full control of the hearing of the case and he must be able to take steps to restore order as early and quickly as possible. The time factor is crucial. Dragging out the contempt proceedings means a lengthy interruption to the main proceedings which paralyses the court for a time and indirectly impedes the speed and efficiency with which justice is administered. Instant justice can never be completely satisfactory yet it does provide the simplest, most effective and least unsatisfactory method of dealing with disruptive conduct in court. So long as the contemner's interests are adequately safeguarded by giving him an opportunity of being heard in

4 1975 QB 73 (1974) 3 All ER 283 (1974) 3 WLR 314

his defence, even summary procedure in the case of contempt in the face of the court is commended and not faulted.

27. In the present case, although the contempt is in the face of the court, the procedure adopted is not only not summary but has adequately safeguarded the contemner's interests. The contemner was issued a notice intimating him the specific allegations against him. He was given an opportunity to counter the allegations by filing his counter-affidavit and additional counter/supplementary affidavit as per his request, and he has filed the same. He was also given an opportunity to file an affidavit of any other person that he chose or to produce any other material in his defence, which he has not done. However, in the affidavit which he has filed, he has requested for an examination of the learned Judge. We have at length dealt with the nature of *in facie curiae* contempt and the justification for adopting summary procedure and punishing the offender on the spot. In such procedure, there is no scope for examining the Judge or Judges of the court before whom the contempt is committed. To give such a right to the contemner is to destroy not only the raison d'être for taking action for contempt committed in the face of the court but also to destroy the very jurisdiction of the court to adopt proceedings for such conduct. It is for these reasons that neither the common law nor the statute law countenances the claim of the offender for examination of the Judge or Judges before whom the contempt is committed. Section 14 of our Act, i.e., the Contempt of Courts Act, 1971 deals with the procedure when the action is taken for the contempt in the face of the Supreme Court and the High Court. Sub-section (3) of the said section deals with a situation where *in facie curiae* contempt is tried by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed. The provision in specific terms and for obvious reasons, states that in such cases it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, to appear as a witness and the statement placed before the Chief Justice shall be treated as the evidence in the case. The statement of the learned Judge has already been furnished to the contemner and he has replied to the same. We have, therefore, to proceed by treating the statement of the learned Judge and the affidavits filed by the contemner and the reply given by the learned Judge to the said affidavits, as evidence in the case.

28. We may now refer to the matters in dispute to examine whether the contemner is guilty of the contempt of court. Under the common law definition, "contempt of court" is defined as an act or omission calculated to interfere with the due administration of justice. This covers criminal contempt (that is, acts which so threaten the administration of justice that they require punishment) and civil contempt (disobedience of an order made in a civil cause). Section 2(*a*), (*b*) and (*c*) of the Act defines the contempt of court as follows:

> "2. *Definitions.*— In this Act, unless the context otherwise requires,—

(*a*) 'contempt of court' means civil contempt or criminal contempt;

(*b*) 'civil contempt' means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

(*c*) 'criminal contempt' means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

(*i*) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or

(*ii*) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(*iii*) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;"

29. From the facts which have been narrated above, it is clear that the allegations against the contemner, if true, would amount to criminal contempt as defined under Section 2(*c*) of the Act. It is in the light of this definition of the "criminal contempt" that we have to examine the facts on record.

30. The essence of the contents of Justice Keshote's letter is that when he put a question to the contemner as to under which provision the order was passed by the lower court, the contemner "started to shout and said that no question could have been put to him". The contemner further said that he would get the learned Judge transferred or see that impeachment motion was brought against him in Parliament. He also said that he had "turned up many judges". He also created a scene in the Court. The learned Judge has further stated in his letter that in sum and substance it was a matter where "except to abuse him of mother and sister", he insulted him "like anything". The contemner, according to the learned Judge, wanted to convey to him that admission was a matter of course and no arguments were to be heard at that stage. The learned Judge has given his reaction to the entire episode by pointing out that this is not a question of insulting a Judge but the institution as a whole. In case the dignity of the judiciary was not maintained then he "did not know where the institution would stand, particularly when contemner who is a Senior Advocate, President of the Bar and Chairman of the Bar Council of India behaved in the court in such manner which will have its effect on other advocates as well". He has further stated that in case the dignity of the judiciary is not restored, it would be very difficult for the Judges to discharge the judicial function without fear or favour. At the end of his letter, he has appealed to the learned Acting Chief Justice for "restoration of dignity of the judiciary".

31. The contemner, as pointed out above, by filing an affidavit has denied the version of the episode given by the learned Judge and has stated that when the matter was called on, the learned Judge (he has referred to him as the 'applicant') took charge of the court proceedings and virtually foreclosed the attempts made by the Senior Judge to intervene. The learned Judge enquired from the contemner as to under which law the impugned order was passed to which the latter replied that it was under various rules of Order 39 CPC. The learned Judge then conveyed to the contemner that he was going to set aside the entire order although against a portion of it only he had come in appeal. According to the contemner, he then politely brought to the notice of the learned Judge that being the appellant, he had the dominion over the case and it could not be made worse just because he had come to High Court. According to the contemner, the learned Judge then apparently lost his temper and told him that he would set aside the order in toto disregarding what he had said. The contemner has then proceeded to state that "being upset over what" he felt was an arbitrary approach to judicial process he "got emotionally perturbed" and "his professional and institutional sensitivity got deeply wounded" and he told the applicant-Judge that "it was not the practice" of that Court to dismiss a case without hearing or to upset judgments or portions of judgments which have not been appealed against. According to the contemner, "unfortunately the applicant-Judge took it unsportingly and apparently lost his temper and directed the stenographer to take down the order for setting aside of the whole order". The contemner has then stated that he "found it necessary to mention that the exchange that took place between him and the applicant-Judge got a little heated up". In the moment of heat the applicant-Judge made the following observations:

> "I am from the Bar and if need be I can take to goondaism. I never opted for Allahabad. I had opted for Gujarat and Himachal Pradesh. I do not know why the Chief Justice of India disregarded my options and transferred me to this place, which I never liked."

According to the contemner, he was "provoked by this" and asked the learned Judge "whether he was creating a scene to create conditions for getting himself transferred as also talked earlier". The contemner has denied that he had referred to any impeachment although according to him, he did say that "a Judge got himself transferred earlier on account of his inability to command the goodwill of the Bar due to lack of mutual reverence". He has also denied that when the learned Judge asked him as to under which provision the order was passed, he had replied that the Court had no jurisdiction to ask the same and should admit and grant the stay order. He has added that such a reply could only be attributed to one who is mad and it is unbelievable that "he would reply in such a foolish manner". He has also denied that he had abused the learned Judge and the allegations made against him in that behalf were vague. According to the contemner, if he had committed the contempt, the senior member of the Bench would have initiated proceedings under "Article 129" of the Constitution for committing

contempt *in facie curiae*. He has also stated that even the learned Judge himself could have done so but he did not do so and deferred the matter for the next day and "adopted a devious way of writing to the acting Chief Justice for doing something about it" which shows that the version of the episode was not correct. The contemner has also then expressed his "uncomprehension" why the learned Judge should have come to this Court when he had ample and sufficient legal and constitutional powers to arraign the contemner at the "Bar for what was attributed" to him.

32. Before we refer to the other contentions raised by the contemner, the question is which of the two versions has to be accepted as correct. The contemner has no doubt asked for an inquiry and an opportunity to produce evidence. For reasons stated earlier, we declined his request for such inquiry, but gave him ample opportunity to produce whatever material he desired to, including the affidavits of whomsoever he desired. Our order dated 15-7-1994 is clear on the subject. Pursuant to the said order, the contemner has not filed his further affidavit or material or the affidavit of any other person. Instead he tendered a written apology dated 7-10-1994 which will be considered at the proper place. In his earlier counter and additional counter, he has stated that it is not he who had committed contempt but it is the learned Judge who had committed contempt of his own court. According to him, the learned Judge had gagged him from discharging his duties as an advocate and the statement of senior member of the Bench concerned was necessary. He has taken exception to the learned Judge speaking in the Court except through the Senior Judge of the Bench which according to him, had been the practice in the said High Court and has also alleged that the learned Judge did not follow the said convention.

33. Normally, no Judge takes action for *in facie curiae* contempt against the lawyer unless he is impelled to do so. It is not the heat generated in the arguments but the language used, the tone and the manner in which it is expressed and the intention behind using it which determine whether it was calculated to insult, show disrespect, to overbear and overawe the court and to threaten and obstruct the course of justice. After going through the report of the learned Judge and the affidavits and the additional affidavits filed by the contemner and after hearing the learned counsel appearing for the contemner, we have come to the conclusion that there is every reason to believe that notwithstanding his denials, and disclaimers, the contemner had undoubtedly tried to browbeat, threaten, insult and show disrespect personally to the learned Judge. This is evident from the manner in which even in the affidavits filed in this Court, the contemner has tried to justify his conduct. He has started narration of his version of the incident by taking exception to the learned Judge's taking charge of the court proceedings. We are unable to understand what exactly he means thereby. Every member of the Bench is on a par with the other member or members of the Bench and has a right to ask whatever questions he wants to, to appreciate the merits or demerits of the case. It is obvious that the contemner was incensed by the

fact that the learned Judge was asking the questions to him. This is clear from his contention that the learned Judge being a junior member of the Bench, was not supposed to ask him any question and if any questions were to be asked, he had to ask them through the senior member of the Bench because that was the convention of the Court. We are not aware of any such convention in any court at least in this country. Assuming that there is such a convention, it is for the learned Judges forming the Bench to observe it inter se. No lawyer or a third party can have any right or say in the matter and can make either an issue of it or refuse to answer the questions on that ground. The lawyer or the litigant concerned has to answer the questions put to him by any member of the Bench. The contemner has sought to rely on the so-called convention and to spell out his right from it not to have been questioned by the learned Judge. This contention coupled with his grievance that the learned Judge had taken charge of the proceedings, shows that the contemner was in all probability perturbed by the fact that the learned Judge was asking him questions. The learned Judge's version, therefore, appears to be correct when he states that the contemner lost his temper when he started asking him questions. The contemner has further admitted that he got "emotionally perturbed" and his "professional and institutional sensitivity got deeply wounded" because the learned Judge, according to him, apparently lost his temper and told him in no unconcealed terms that he would set aside the order in toto disregarding what he had said. The learned Judge's statement that the contemner threatened him with transfer and impeachment proceedings also gets corroboration from the contemner's own statement in the additional affidavit that he did tell the learned Judge that a Judge got himself transferred earlier on account of his inability to command the goodwill of the Bar due to lack of mutual reverence. No one expects a lawyer to be subservient to the Court while presenting his case and not to put forward his arguments merely because the Court is against him. In fact, that is the moment when he is expected to put forth his best effort to persuade the Court. However, if, in spite of it, the lawyer finds that the court is against him, he is not expected to be discourteous to the court or to fling hot words or epithets or use disrespectful, derogatory or threatening language or exhibit temper which has the effect of overbearing the court. Cases are won and lost in the court daily. One or the other side is bound to lose. The remedy of the losing lawyer or the litigant is to prefer an appeal against the decision and not to indulge in a running battle of words with the court. That is the least that is expected of a lawyer. Silence on some occasions is also an argument. The lawyer is not entitled to indulge in unbecoming conduct either by showing his temper or using unbecoming language.

34. The incident had undoubtedly created a scene in the court since even according to the contemner, the exchange between the learned Judge and him was "a little heated up" and the contemner asked the learned Judge "whether he was creating scene to create conditions for getting himself transferred as also talked earlier". He had also to remind the learned Judge that "a Judge

got himself transferred earlier on account of his inability to command the goodwill of the Bar due to lack of mutual reverence". He has further stated in his affidavit that "the entire Bar at Allahabad" knew that he was unjustly "roughed" by the Judge and was being punished for taking "a fearless and non-servile stand" and that he was being prosecuted for 'asserting' a right of audience and "using the liberty to express his views when a Judge takes a course which in the opinion of the Bar is irregular". He has also stated that any punishment meted out to the 'outspoken' lawyer will completely emasculate the freedom of the profession and make the Bar a subservient tail-wagging appendage to the judicial branch which is an anathema to a healthy democratic judicial system. He has further stated in his petition for taking contempt action against the learned Judge that the incident was "witnessed by a large number of advocates".

35. We have reproduced the contents of the letter written by the learned Judge and his reply to the affidavits filed by the contemner. The learned Judge's version is that when he put the question to the contemner as to under which provision, the lower court had passed the order in question, the contemner started shouting and said that no question could have been put to him. The contemner also stated that he would get him transferred or see that impeachment motion was brought against him in Parliament. He further said that he had "turned up" many judges and created a good scene in the Court. The contemner further asked him to follow the practice of the Court. The learned Judge has stated that in sum and substance, it was a matter where except "to abuse of his mother and sister", he had insulted him "like anything". The learned Judge has further stated that the contemner wanted to convey to him that admission of every matter was as a matter of course and no arguments were heard at the admission stage. He has reiterated the said version in his reply to the affidavits and in particular, has denied the allegations made against him by the contemner. He has defended his asking the question to the contemner since he was a member of the Bench. The learned Judge has stated that the contemner took exception to his asking the said question as if he had committed some wrong and started shouting. He has further stated that he had asked only the question referred to above and the contemner had created the scene on account of his putting the said question to him, and made it difficult to continue the court's proceedings. Ultimately, when it became impossible to hear all the slogans and insulting words and threats, he requested the senior learned member of the Bench to list that case before another Bench and to retire to the chamber. Accordingly, an order was made by the senior member of the Bench and both of them retired to the chamber. The learned Judge has denied that he had conveyed to the contemner that he was going to set aside the entire order against a portion of which the contemner had come in appeal. He has stated that it was a case where the contemner did not permit the court proceedings to be proceeded with and both the members of the Bench had ultimately to retire to the chambers. The learned Judge has stated that the defence of the conduct of the contemner in the counter-affidavit "was a manufactured" one. He has then

dealt with each paragraph of the contemner's counter-affidavit. He has also stated that there was no question of his having directed the stenographer to take down the order for setting aside of the whole order since that function was performed by the senior member of the Bench. He has also stated that the contemner has made absolutely wrong allegations when he states that he had made the following remarks: "I am from the Bar and if need be I can take to goondaism." He has also denied that he had said: "I never opted for Allahabad. I had opted for Gujarat and Himachal Pradesh. I do not know why the Chief Justice of India disregarded my options and transferred me to this place, which I never liked." He has stated that the contemner has made false allegations against him.

36. We have, by referring to the relevant portions of the affidavit and the counter-affidavit filed by the contemner, pointed out the various statements made in the said affidavits which clearly point to the veracity of the version given by the learned Judge and the attempted rationalisation of his conduct by the contemner. The said averments also lend force and truthfulness to the content of the learned Judge's letters. We are, taking into consideration all the circumstances on record, of the view that the version of the incident given by the learned Judge has to be accepted as against that of the contemner.

37. To resent the questions asked by a Judge, to be disrespectful to him, to question his authority to ask the questions, to shout at him, to threaten him with transfer and impeachment, to use insulting language and abuse him, to dictate the order that he should pass, to create scenes in the court, to address him by losing temper are all acts calculated to interfere with and obstruct the course of justice. Such acts tend to overawe the court and to prevent it from performing its duty to administer justice. Such conduct brings the authority of the court and the administration of justice into disrespect and disrepute and undermines and erodes the very foundation of the judiciary by shaking the confidence of the people in the ability of the court to deliver free and fair justice.

38. The stance taken by the contemner is that he was performing his duty as an outspoken and fearless member of the Bar. He seems to be labouring under a grave misunderstanding. Brazenness is not outspokenness and arrogance is not fearlessness. Use of intemperate language is not assertion of right nor is a threat an argument. Humility is not servility and courtesy and politeness are not lack of dignity. Self-restraint and respectful attitude towards the court, presentation of correct facts and law with a balanced mind and without overstatement, suppression, distortion or embellishment are requisites of good advocacy. A lawyer has to be a gentleman first. His most valuable asset is the respect and goodwill he enjoys among his colleagues and in the Court.

39. The rule of law is the foundation of a democratic society. The Judiciary is the guardian of the rule of law. Hence judiciary is not only the third pillar, but the central pillar of the democratic State. In a democracy like

ours, where there is a written Constitution which is above all individuals and institutions and where the power of judicial review is vested in the superior courts, the judiciary has a special and additional duty to perform, viz., to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. It is for this purpose that the courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalising them and obstructing them from discharging their duties without fear or favour. When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. 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 disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded.

40. It cannot be disputed and was not disputed before us that the acts indulged into by the contemner in the present case as stated by the learned Judge per se amount to criminal contempt of court. What was disputed, was their occurrence. We have held above that we are satisfied that the contemner did indulge in the said acts.

41. As held by this Court in *In the matter of Mr 'G', A Senior Advocate of the Supreme Court*[5], the Court, in dealing with cases of professional misconduct is not concerned

> "with ordinary legal rights, but with the special and rigid rules of professional conduct expected of and applied to a specially privileged class of persons who, because of their privileged status, are subject to certain disabilities which do not attach to other men and which do not attach even to them in a non-professional character. ... He [a legal practitioner] is bound to conduct himself in a manner befitting the high and honourable profession to whose privileges he has so long been admitted; and if he departs from the high standards which that profession has set for itself and demands of him in professional matters, he is liable to disciplinary action".

5 (1955) 1 SCR 490 AIR 1954 SC 557 1954 Cri LJ 1410

42. In *Lalit Mohan Das* v. *Advocate General, Orissa*[6], this Court observed:

> "A member of the Bar undoubtedly owes a duty to his client and must place before the Court all that can fairly and reasonably be submitted on behalf of his client. He may even submit that a particular order is not correct and may ask for a review of that order. At the same time, a member of the Bar is an officer of the Court and owes a duty to the Court in which he is appearing. He must uphold the dignity and decorum of the Court and must not do anything to bring the Court itself into disrepute. The appellant before us grossly overstepped the limits of propriety when he made imputations of partiality and unfairness against the Munsif in open Court. In suggesting that the Munsif followed no principle in his orders, the appellant was adding insult to injury, because the Munsif had merely upheld an order of his predecessor on the preliminary point of jurisdiction and Court fees, which order had been upheld by the High Court in revision. Scandalising the Court in such manner is really polluting the very fount of justice; such conduct as the appellant indulged in was not a matter between an individual member of the Bar and a member of the judicial service; it brought into disrepute the whole administration of justice. From that point of view, the conduct of the appellant was highly reprehensible."

43. The contemnor has obviously misunderstood his function both as a lawyer representing the interests of his client and as an officer of the court. Indeed, he has not tried to defend the said acts in either of his capacities. On the other hand, he has tried to deny them. Hence, much need not be said on this subject to remind him of his duties in both the capacities. It is, however, necessary to observe that by indulging in the said acts, he has positively abused his position both as a lawyer and as an officer of the court, and has done distinct disservice to the litigants in general and to the profession of law and the administration of justice in particular. It pains us to note that the contemnor is not only a senior member of the legal profession, but holds the high offices of the Chairman of the Bar Council of India, Member of the Bar Council of U.P., Chairman and Member, Executive Council and Academic Council of the National Law School University of India at Bangalore and President of the High Court Bar Association, Allahabad. Both as a senior member of the profession and as holder of the said high offices, special and additional duties were cast upon him to conduct himself as a model lawyer and officer of the court and to help strengthen the administration of justice by upholding the dignity and the majesty of the court. It was in fact expected of him to be zealous in maintaining the rule of law and in strengthening the people's confidence in the judicial institutions. To our dismay, we find that he has acted exactly contrary to his obligations and has in reality set a bad example to others while at the same time contributing to weakening of the confidence of the people in the courts.

6 1957 SCR 167 AIR 1957 SC 250

44. The contemner has no doubt tendered an unconditional apology on 7-10-1994 by withdrawing from record all his applications, petitions, counter-affidavits, prayers and submissions made at the Bar and to the court earlier. We have reproduced that apology verbatim earlier. In the apology he has pleaded that he has deeply and regretfully realised that the situation, meaning thereby the incident, should never have arisen and the fact that it arose has subjected him to anguish and remorse and a feeling of moral guilt. That feeling has been compounded with the fact that he was a senior advocate and was holding the elective posts of the President of the High Court Bar Association and the Chairman of the Bar Council of India which by their nature show that he was entrusted by his professional fraternity to set up an example of an ideal advocate. He has guiltily realised his failure to approximate to this standard resulting in the present proceedings and he was, therefore, submitting his unconditional apology for the incident in question. We have not accepted this apology, firstly because we find that the apology is not a free and frank admission of the misdemeanour he indulged in the incident in question. Nor is there a sincere regret for the disrespect he showed to the learned Judge and the Court, and for the harm that he has done to the judiciary. On the other hand, the apology is couched in a sophisticated and garbed language exhibiting more an attempt to justify his conduct by reference to the circumstances in which he had indulged in it and to exonerate himself from the offence by pleading that the condition in which the 'situation' had developed was not an ideal one and were it ideal, the 'situation' should not have arisen. It is a clever and disguised attempt to refurbish his image and get out of a tight situation by not only not exhibiting the least sincere remorse for his conduct but by trying to blame the so-called circumstances which led to it. At the same time, he has attempted to varnish and re-establish himself as a valiant defender of his "alleged duties" as a lawyer. Secondly, from the very inception his attitude has been defiant and belligerent. In his affidavits and application, not only he has not shown any respect for the learned Judge, but has made counter-allegations against him and has asked for initiation of contempt proceedings against him. He has even chosen to insinuate that the learned Judge, by not taking contempt action on the spot and instead writing the letter to the Acting Chief Justice of the High Court, had adopted a devious way and that he had also come to Delhi to meet 'meaningful' people. These allegations may themselves amount to contempt of court. Lastly, to accept any apology for a conduct of this kind and to condone it, would tantamount to a failure on the part of this Court to uphold the majesty of the law, the dignity of the court and to maintain the confidence of the people in the judiciary. The Court will be failing in its duty to protect the administration of justice from attempts to denigrate and lower the authority of the judicial officers entrusted with the sacred task of delivering justice. A failure on the part of this Court to punish the offender on an occasion such as this would thus be a failure to perform one of its essential duties solemnly entrusted to it by the Constitution and the

people. For all these reasons, we unhesitatingly reject the said so-called apology tendered by the contemner.

45. The question now is what punishment should be meted out to the contemner. We have already discussed the contempt jurisdiction of this Court under Article 129 of the Constitution. That jurisdiction is independent of the statutory law of contempt enacted by Parliament under Entry 77 of List I of Seventh Schedule of the Constitution. The jurisdiction of this Court under Article 129 is sui generis. The jurisdiction to take cognizance of the contempt as well as to award punishment for it being constitutional, it cannot be controlled by any statute. Neither, therefore, the Contempt of Courts Act, 1971 nor the Advocates Act, 1961 can be pressed into service to restrict the said jurisdiction. We had, during the course of the proceedings indicated that if we convict the contemner of the offence, we may also suspend his licence to practise as a lawyer. The learned counsel for the contemner and the interveners and also the learned Solicitor General appointed amicus curiae to assist the Court were requested to advance their arguments also on the said point. Pursuant to it, it was sought to be contended on behalf of the contemner and the U.P. Bar Association and the U.P. Bar Council that the Court cannot suspend the licence which is a power entrusted by the Advocates Act, 1961 specially made for the purpose, to the disciplinary committees of the State Bar Councils and of the Bar Council of India. The argument was that even the constitutional power under Articles 129 and 142 was circumscribed by the said statutory provisions and hence in the exercise of our power under the said provisions, the licence of an advocate was not liable either to be cancelled or suspended. A reference was made in this connection to the provisions of Sections 35 and 36 of the Advocates Act, which show that the power to punish the advocate is vested in the disciplinary committees of the State Bar Councils and the Bar Council of India. Under Section 37 of the Advocates Act, an appeal lies to the Bar Council of India, when the order is passed by the disciplinary committee of the State Bar Council. Under Section 38, the appeal lies to this Court when the order is made by the disciplinary committee of the Bar Council of India, either under Section 36 or in appeal under Section 37. The power to punish includes the power to suspend the advocate from practice for such period as the disciplinary committee concerned may deem fit under Section 35(3)(*c*) and also to remove the name of the advocate from the State roll of the Advocates under Section 35(3)(*d*). Relying on these provisions, it was contended that since the Act has vested the powers of suspending and removing the advocate from practice exclusively in the disciplinary committees of the State Bar Councils and the Bar Council of India, as the case may be, the Supreme Court is denuded of its power to impose such punishment both under Articles 129 and 142 of the Constitution. In support of this contention, reliance was placed on the observations of the majority of this Court in *Prem Chand Garg* v. *Excise Commr., U.P.*[7] relating to the powers of this Court under Article 142 which are as follows:

7 1963 Supp (1) SCR 885 : AIR 1963 SC 996

"In this connection, it may be pertinent to point out that the wide powers which are given to this Court for doing complete justice between the parties, can be used by this Court for instance, in adding parties to the proceedings pending before it, or in admitting additional evidence, or in remanding the case, or in allowing a new point to be taken for the first time. It is plain that in exercising these and similar other powers, this Court would not be bound by the relevant provisions of procedure if it is satisfied that a departure from the said procedure is necessary to do complete justice between the parties.

That takes us to the second argument urged by the Solicitor General that Article 142 and Article 32 should be reconciled by the adoption of the rule of harmonious construction. *In this connection, we ought to bear in mind that though the powers conferred on this Court by Article 142(1) are very wide, and the same can be exercised for doing complete justice in any case, as we have already observed, this Court cannot even under Article 142(1) make an order plainly inconsistent with the express statutory provisions of substantive law, much less, inconsistent with any constitutional provisions. There can, therefore, be no conflict between Article 142(1) and Article* 32. In the case of *K.M. Nanavati* v. *State of Bombay*[8] on which the Solicitor General relies, it was conceded, and rightly, that under Article 142(1) this Court had the power to grant bail in cases brought before it, and so, there was obviously a conflict between the power vested in this Court under the said Article and that vested in the Governor of the State under Article 161. The possibility of a conflict between these powers necessitated the application of the rule of harmonious construction. The said rule can have no application to the present case, because on a fair construction of Article 142(1), this Court has no power to circumscribe the fundamental right guaranteed under Article 32. The existence of the said power is itself in dispute, and so, the present case is clearly distinguishable from the case of *K.M. Nanavati*[8]."

46. Apart from the fact that these observations are made with reference to the powers of this Court under Article 142 which are in the nature of supplementary powers and not with reference to this Court's power under Article 129, the said observations have been explained by this Court in its later decisions in *Delhi Judicial Service Assn.* v. *State of Gujarat*[1] and *Union Carbide Corpn.* v. *Union of India*[9]. In para 51 of the former decision, it has been, with respect, rightly pointed out that the said observations were made with regard to the extent of this Court's power under Article 142(1) in the context of fundamental rights. Those observations have no bearing on the present issue. No doubt, it was further observed there that those observations have no bearing on the question in issue in that case as there was no provision in any substantive law restricting this Court's power to quash proceedings pending before subordinate courts. But it was also added there

8 (1961) 1 SCR 497 : AIR 1961 SC 112 : (1961) 1 Cri LJ 173

9 (1991) 4 SCC 584

that this Court's power under Article 142(1) to do complete justice was entirely of a different level and of a different quality. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this Court. Once this Court is in seisin of a matter before it, it has power to issue any order or direction to do complete justice in the matter. A reference was made in that connection to the concurring opinion of Justice A.N. Sen in *Harbans Singh* v. *State of U.P.*[10] where the learned Judge observed as follows: (SCC pp. 107-08, para 20)

> "Very wide powers have been conferred on this Court for due and proper administration of justice. Apart from the jurisdiction and powers conferred on this Court under Articles 32 and 136 of the Constitution, I am of the opinion that this Court retains and must retain, an inherent power and jurisdiction for dealing with any extraordinary situation in the larger interests of administration of justice and for preventing manifest injustice being done. This power must necessarily be sparingly used only in exceptional circumstances for furthering the ends of justice."

The Court has then gone on to observe there that no enactment made by Central or State legislature can limit or restrict the power of this Court under Article 142 of the Constitution, though the Court must take into consideration the statutory provisions regulating the matter in dispute. What would be the need of complete justice in a cause or matter, would depend upon the facts and circumstances of each case.

47. In the latter case, i.e., the *Union Carbide case*[9], the Constitution Bench in para 83 stated as follows: (SCC pp. 634-35)

> "It is necessary to set at rest certain misconceptions in the arguments touching the scope of the powers of this Court under Article 142(1) of the Constitution. These issues are matters of serious public importance. The proposition that a provision in any ordinary law irrespective of the importance of the public policy on which it is founded, operates to limit the powers of the Apex Court under Article 142(1) is unsound and erroneous. In both *Garg*[7] as well as *Antulay cases*[11] the point was one of violation of constitutional provisions and constitutional rights. The observations as to the effect of inconsistency with statutory provisions were really unnecessary in those cases as the decisions in the ultimate analysis turned on the breach of constitutional rights. We agree with Shri Nariman that the power of the Court under Article 142 insofar as quashing of criminal proceedings are concerned is not exhausted by Section 320 or 321 or 482 CrPC or all of them put together. The power under Article 142 is at an entirely different level and of a different quality. Prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142. Such prohibitions or limitations in the statutes might embody and reflect the scheme of a particular law,

10 (1982) 2 SCC 101 1982 SCC (Cri) 361
11 *A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602 1988 SCC (Cri) 372

taking into account the nature and status of the authority or the court on which conferment of powers — limited in some appropriate way — is contemplated. The limitations may not necessarily reflect or be based on any fundamental considerations of public policy. Shri Sorabjee, learned Attorney General, referring to *Garg case*[7], said that limitation on the powers under Article 142 arising from 'inconsistency with express statutory provisions of substantive law' must really mean and be understood as some express prohibition contained in any substantive statutory law. He suggested that if the expression 'prohibition' is read in place of 'provision' that would perhaps convey the appropriate idea. But we think that such prohibition should also be shown to be based on some underlying fundamental and general issues of public policy and not merely incidental to a particular statutory scheme or pattern. It will again be wholly incorrect to say that powers under Article 142 are subject to such express statutory prohibitions. That would convey the idea that statutory provisions override a constitutional provision. Perhaps, the proper way of expressing the idea is that in exercising powers under Article 142 and in assessing the needs of 'complete justice' of a cause or matter, the Apex Court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly. The proposition does not relate to the powers of the Court under Article 142, but only to what is or is not 'complete justice' of a cause or matter and in the ultimate analysis of the propriety of the exercise of the power. No question of lack of jurisdiction or of nullity can arise."

48. In view of these observations of the latter Constitution Bench on the point, the observations made by the majority in *Prem Chand Garg case*[7] are no longer a good law. This is also pointed out by this Court in the case of *Mohd. Anis* v. *Union of India*[12] by referring to the decisions of *Delhi Judicial Service* v. *State of Gujarat*[1] and *Union Carbide Corpn.* v. *Union of India*[9] by observing that statutory provisions cannot override the constitutional provisions and Article 142(1) being a constitutional power it cannot be limited or conditioned by any statutory provision. The Court has then observed that it is, therefore, clear that the power of the Apex Court under Article 142(1) of the Constitution cannot be diluted by statutory provisions and the said position in law is now well settled by the Constitution Bench decision in *Union Carbide case*[9].

49. The consequence of accepting the said contention advanced on behalf of the contemner and the other parties, will be twofold. This Court while exercising its power under Article 142(1) would not even be entitled to reprimand the advocate for his professional misconduct which includes exhibition of disrespect to the Court as per Rule 2 of Section I of Chapter II of Part VI of the Bar Council of India Rules made under the Advocates Act,

12 1994 Supp (1) SCC 145 : 1994 SCC (Cri) 251

which is also a contempt of court, since the reprimand of the advocate is a punishment which the disciplinary committees of the State Bar Councils and of the Bar Council of India are authorised to administer under Section 35 of the Advocates Act. Secondly, it would also mean that for any act of contempt of court, if it also happens to be an act of professional misconduct under the Bar Council of India Rules, the courts including this Court, will have no power to take action since the Advocates Act confers exclusive power for taking action for such conduct on the disciplinary committees of the State Bar Councils and the Bar Council of India, as the case may be. Such a proposition of law on the face of it deserves rejection for the simple reason that the disciplinary jurisdiction of the State Bar Councils and the Bar Council of India to take action for professional misconduct is different from the jurisdiction of the courts to take action against the advocates for the contempt of court. The said jurisdictions coexist independently of each other. The action taken under one jurisdiction does not bar an action under the other jurisdiction.

50. The contention is also misplaced for yet another and equally, if not more, important reason. In the matter of disciplinary jurisdiction under the Advocates Act, this Court is constituted as the final appellate authority under Section 38 of the Act as pointed out earlier. In that capacity this Court can impose any of the punishments mentioned in Section 35(3) of the Act including that of removal of the name of the advocate from the State roll and of suspending him from practice. If that be so, there is no reason why this Court while exercising its contempt jurisdiction under Article 129 read with Article 142 cannot impose any of the said punishments. The punishment so imposed will not only be not against the provisions of any statute, but in conformity with the substantive provisions of the Advocates Act and for conduct which is both a professional misconduct as well as the contempt of court. The argument has, therefore, to be rejected.

51. What is further, the jurisdiction and powers of this Court under Article 142 which are supplementary in nature and are provided to do complete justice in any matter, are independent of the jurisdiction and powers of this Court under Article 129 which cannot be trammelled in any way by any statutory provision including the provisions of the Advocates Act or the Contempt of Courts Act. As pointed out earlier, the Advocates Act has nothing to do with the contempt jurisdiction of the court including of this Court and the Contempt of Courts Act, 1971 being a statute cannot denude, restrict or limit the powers of this Court to take action for contempt under Article 129. It is not disputed that suspension of the advocate from practice and his removal from the State roll of advocates are both punishments. There is no restriction or limitation on the nature of punishment that this Court may award while exercising its contempt jurisdiction and the said punishments can be the punishments the Court may impose while exercising the said jurisdiction.

52. Shri P.P. Rao, learned counsel appearing for the High Court Bar Association of Allahabad contended that Articles 19(1)(*a*) and 19(2), and

19(1)(*g*) and 19(6) have to be read together and thus read the power to suspend a member of the legal profession from practice or to remove him from the roll of the State Bar Council is not available to this Court under Article 129. We have been unable to appreciate this contention. Article 19(1)(*a*) guarantees freedom of speech and expression which is subject to the provisions of Article 19(2) and, therefore, to the law in relation to the contempt of court as well. Article 19(1)(*g*) guarantees the right to practise any profession or to carry on any occupation, trade or business and is subject to the provisions of Article 19(6) which empowers the State to make a law imposing reasonable restrictions, in the interests of general public, on the exercise of the said right and, in particular, is subject to a law prescribing technical or professional qualifications necessary for practising the profession or carrying on the occupation, trade or business. On our part we are unable to see how these provisions of Article 19 can be pressed into service to limit the power of this Court to take cognizance of and punish for the contempt of court under Article 129. The contention that the power of this Court under Article 129 is subject to the provisions of Articles 19(1)(*a*) and 19(1)(*g*), is unexceptional. However, it is not pointed out to us as to how the action taken under Article 129 would be violative of the said provisions, since the said provisions are subject to the law of contempt and the law laying down technical and professional qualifications necessary for practising any profession, which includes the legal profession. The freedom of speech and expression cannot be used for committing contempt of court nor can the legal profession be practised by committing the contempt of court. The right to continue to practise is subject to the law of contempt. The law does not mean merely the statute law but also the constitutional provisions. The right, therefore, is subject to the restrictions placed by the law of contempt as contained in the statute — in the present case, the Contempt of Courts Act, 1971 as well as to the jurisdiction of this Court and of the High Court to take action under Articles 129 and 215 of the Constitution respectively. We, therefore, do not see any conflict between the provisions of Articles 129 and 215, and Article 19(1)(*a*) and Article 19(1)(*g*) read with Articles 19(2) and 19(6) respectively.

53. When the Constitution vests this Court with a special and specific power to take action for contempt not only of itself but of the lower courts and tribunals, for discharging its constitutional obligations as the highest custodian of justice in the land, that power is obviously coupled with a duty to protect all the limbs of the administration of justice from those whose actions create interference with or obstruction to the course of justice. Failure to exercise the power on such occasions, when it is invested specifically for the purpose, is a failure to discharge the duty. In this connection, we may refer to the following extract from the decision of this Court in *Chief Controlling Revenue Authority and Superintendent of Stamps* v. *Maharashtra Sugar Mills Ltd.*[13]:

13. 1950 SCR 536 : AIR 1950 SC 218

"But when a capacity or power is given to a public authority there may be circumstances which couple with the power a duty to exercise it. To use the language of Lord Cairns in the case of *Julius* v. *Bishop of Oxford*[14]:

> 'There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so'."

54. For the reasons discussed above, we find the contemner, Shri Vinay Chandra Mishra, guilty of the offence of the criminal contempt of the Court for having interfered with and obstructed the course of justice by trying to threaten, overawe and overbear the Court by using insulting, disrespectful and threatening language, and convict him of the said offence. Since the contemner is a senior member of the Bar and also adorns the high offices such as those of the Chairman of the Bar Council of India, the President of the U.P. High Court Bar Association, Allahabad and others, his conduct is bound to infect the members of the Bar all over the country. We are, therefore, of the view that an exemplary punishment has to be meted out to him.

55. The facts and circumstances of the present case justify our invoking the power under Article 129 read with Article 142 of the Constitution to award to the contemner a suspended sentence of imprisonment together with suspension of his practice as an advocate in the manner directed herein. We accordingly sentence the contemner for his conviction for the offence of criminal contempt as under:

(*a*) The contemner Vinay Chandra Mishra is hereby sentenced to undergo simple imprisonment for a period of six weeks. However, in the circumstances of the case, the sentence will remain suspended for a period of four years and may be activated in case the contemner is convicted for any other offence of contempt of court within the said period; and

(*b*) The contemner shall stand suspended from practising as an advocate for a period of three years from today with the consequence that all elective and nominated offices/posts at present held by him in his capacity as an advocate, shall stand vacated by him forthwith.

The contempt petition is disposed of in the above terms.

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14 (1880) 5 AC 214 (1874-80) All ER Rep 43

State Government to withdraw from acquisition. A declaration under Section 6 of the Act is made by notification only after formalities under Part VII of the Act which contains Sections 39 to 42 have been complied and the report of the Collector under Section 5-A(2) of the Act is before the State Government who consents to acquire the land on its satisfaction that it is needed for the company. A valuable right, thus, accrues to the company to oppose the proposed decision of the State Government withdrawing from acquisition. The State Government may have sound reasons to withdraw from acquisition but those must be made known to the company which may have equally sound reasons or perhaps more, which might persuade the State Government to reverse its decision withdrawing from acquisition. In this view of the matter it has to be held that Yadi (memo) dated 11-4-1991 and Yadi (memo) dated 3-5-1991 were issued without notice to the appellant (L&T Ltd.) and are, thus, not legal.

32. Accordingly all these appeals are allowed with costs; impugned judgment of the High Court is set aside. SCA No. 1568 of 1987 and SCA No. 5149 of 1989 filed in the High Court are dismissed and SCA No. 5171 of 1991 is allowed. Yadi (memo) dated 11-4-1991 and Yadi (memo) dated 3-5-1991 containing orders of the State Government withdrawing from acquisition of the land are quashed. A direction is issued to Respondents 1 and 2 to complete the acquisition proceeding in pursuance of the notification under Section 4 and declaration under Section 6 of the Land Acquisition Act.

(1998) 4 Supreme Court Cases 409

(BEFORE S.C. AGRAWAL, G.N. RAY, DR A.S. ANAND, S.P. BHARUCHA AND S. RAJENDRA BABU, JJ.)

SUPREME COURT BAR ASSOCIATION .. Petitioner;

Versus

UNION OF INDIA AND ANOTHER .. Respondents.

Writ Petition (C) No. 200 of 1995†, decided on April 17, 1998

A. **Constitution of India — Arts. 142 and 129 — Supreme Court's power of investigation or punishment for contempt of itself is inherent — Though by virtue of Art. 142(2), it is subject to law made by Parliament but such law cannot take away the inherent jurisdiction of Supreme Court — Contempt of Courts Act enacted by Parliament does not deal with Supreme Court's power regarding investigation and punishment for contempt of itself and therefore Supreme Court exercises this power under Art. 129 r/w Art. 142 — However, nature of punishment prescribed under that Act may act as a guide for Supreme Court — But the extent of punishment prescribed under that Act can apply only to High Court — S. 15 of the Act only prescribes procedural mode for taking cognizance of criminal contempt and is not a substantive provision — Contempt of Courts Act, 1971, Ss. 10, 15**

† Under Article 32 of the Constitution of India

B. Constitution of India — Arts. 129 & 142 and 144 — Jurisdiction of Supreme Court to punish an advocate for contempt of court — Different from jurisdiction to punish the advocate for professional misconduct — Former is conferred on the Supreme Court by Art. 129 r/w Art. 142 while the latter is exclusively conferred on the authorities such as State Bar Council or Bar Council of India created under the Advocates Act — Supreme Court while punishing an advocate for contempt of court cannot also punish him by suspending his licence for practise and removing his name from roll of State Bar Council — Such punishment can be imposed by the Bar Council pursuant to an elaborate enquiry — It cannot be imposed by the Supreme Court even by resort to appellate power under S. 38 of Advocates Act — Supreme Court while punishing the contemner advocate cannot exercise its appellate jurisdiction under S. 38 of the Act and impose any punishment prescribed under the Act — Whenever the Court of Record while finding an advocate guilty of contempt also records findings about his conduct and desires or refers the matter to be considered by the Bar Council, the Bar Council should "act in aid of the Supreme Court" as envisaged in Art. 144 and proceed in the manner prescribed in Advocates Act and Rules — But if the Bar Council fails to take any action Supreme Court may consider invoking S. 38 of the Act

C. Constitution of India — Art. 142 — Plenary power of Supreme Court under — Nature and scope — Court in exercise of power under Art. 142 cannot ignore any substantive statutory provision dealing with the subject — It is a residuary power, supplementary and complementary to the powers specifically conferred on the Supreme Court by statutes, exercisable to do complete justice between the parties wherever it is just and equitable to do so — It is intended to prevent any obstruction to the stream of justice

D. Constitution of India — Arts. 129 and 215 — Contempt of court — Jurisdiction of court — Not adversarial in nature — Party who brings to the notice of the court the contumacious conduct is only an informant and not a litigant — When and how the jurisdiction to be exercised stated

E. Constitution of India — Arts. 129 and 215 — Court of record — Meaning of — Words and phrases

F. Constitution of India — Arts. 129 and 215 — Punishment for contempt of court — Recognised and accepted punishments for civil and criminal contempt stated — Determination of what punishment to be imposed — Factors to be considered — To the extent the Contempt of Courts Act, 1971 identifies the nature or types of punishments which can be awarded in the case of established contempt, it does not impinge upon the inherent powers of the High Court under Article 215 either — No new type of punishment can be created or assumed — Contempt of Courts Act, 1971, Ss. 10 and 15 (Paras 33 to 37)

G. Constitution of India — Art. 124 — Supreme Court — Role of has always been of a law-maker and travels beyond merely dispute-settling

Held :

Article 129 vests the Supreme Court with all the powers of a court of record including the power to punish for contempt of itself. A court of record is a court, the records of which are admitted to be of evidentiary value and are not to be questioned when produced before any court. The power that courts of record enjoy to punish for contempt is a part of their inherent jurisdiction and is essential to enable the courts to administer justice according to law in a regular, orderly and effective manner and to uphold the majesty of law and prevent interference in the due administration of justice. (Paras 10 and 12)

Jowitt's *Dictionary of English Law*, First Edn. (p. 526); *Wharton's Law Lexicon*; Nigel Lowe and Brenda Sufrin: *Law of Contempt* (Third Edn.), *relied on*

Besides Article 129, the power to punish for contempt is also vested in the Supreme Court by virtue of Article 142(2). The power of the Supreme Court in respect of *investigation* or *punishment* of any contempt including contempt of itself, is expressly made "subject to the provisions of any law made in this behalf by Parliament" by Article 142(2). However, the power to punish for contempt being inherent in a court of record, it follows that no act of Parliament can take away that *inherent* jurisdiction of the court of record to punish for contempt and Parliament's power of legislation on the subject cannot, therefore, be so exercised as to stultify the status and dignity of the Supreme Court and/or the High Courts, though such a legislation may serve as a guide for the determination of the nature of punishment which the Supreme Court may impose in the case of established contempt. Though Parliament by virtue of Entry 77 List I is competent to enact a law relating to the powers of the Supreme Court with regard to contempt of itself and such a law may prescribe the nature of punishment which may be imposed on a contemner by virtue of the provisions of Article 129 read with Article 142(2), it has not enacted any law dealing with the powers of the Supreme Court with regard to investigation and punishment of contempt of itself. The Contempt of Courts Act does not deal with the powers of the Supreme Court to try or punish a contemner for committing contempt of the Supreme Court or the courts subordinate to it. Therefore, the Supreme Court exercises the power to investigate and punish for contempt of itself by virtue of the powers vested in it under Articles 129 and 142(2). The *nature of punishment* prescribed under the Contempt of Courts Act, 1971 may act as a guide for the Supreme Court but the extent of punishment as prescribed under that Act can apply only to the High Courts, because the 1971 Act ipso facto does not deal with the contempt jurisdiction of the Supreme Court, except that Section 15 of the Act prescribes *procedural mode* for taking cognizance of criminal contempt by the Supreme Court also. Section 15, however, is not a substantive provision conferring contempt jurisdiction. The judgment in *Sukhdev Singh case* as regards the *extent* of "maximum punishment" which can be imposed upon a contemner must, therefore, be construed as dealing with the powers of the High Courts only and not of the Supreme Court in that behalf. Therefore, the view that the *extent of punishment* which the Supreme Court can impose in exercise of its inherent powers to punish for contempt of itself and/or of subordinate courts can also be only to the extent prescribed under the Contempt of Courts Act, 1971 is doubtful. However, no final opinion need be expressed on that question since that issue, strictly speaking, does not arise for decision in this case. The question regarding the restriction or limitation on the *extent* of punishment, which *the Supreme Court* may award while exercising its contempt jurisdiction may be decided in a proper case, when so raised.

(Paras 19, 21, 38 and 29)

Sukhdev Singh v. *Hon'ble C.J., S. Teja Singh*, AIR 1954 SC 186 : 1954 SCR 454, *limited*

Pushpaben v. *Narandas V. Badiani*, (1979) 2 SCC 394 : 1979 SCC (Cri) 511; *S.K. Sarkar, Member, Board of Revenue* v. *Vinay Chandra Misra*, (1981) 1 SCC 436 : 1981 SCC (Cri) 175; *Mohd. Ikram Hussain* v. *State of U.P.*, AIR 1964 SC 1625 : (1964) 2 Cri LJ 590, *relied on*

The powers of the Supreme Court, under Article 129 read with Article 142 of the Constitution, being supplementary powers have "*to be used in exercise of its jurisdiction*" *in the case* under consideration by the Supreme Court. Moreover, a case of contempt of court is not stricto sensu a cause or a matter between the parties inter se. It is a matter between the court and the contemner. It is not, strictly speaking, tried as an adversarial litigation. The party, which brings the contumacious conduct

of the contemner to the notice of the court, whether a private person or the subordinate court, is only an *informant* and does not have the status of a *litigant* in the contempt of court case. (Para 41)

The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It is an unusual type of jurisdiction combining "the jury, the judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemner and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice. (Para 42)

The plenary powers of the Supreme Court under Article 142 of the Constitution are inherent in the Court and are *complementary* to those powers which are *specifically conferred on the Court by various statutes though are not limited by those statutes*. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of *supplementary* powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, *to prevent injustice* in the process of litigation and *to do complete justice between the parties*. This plenary jurisdiction is, thus, the residual source of power which the Supreme Court may draw upon as necessary *whenever it is just and equitable to do so* and in particular to ensure the observance of the due process of law, *to do complete justice between the parties*, while administering justice according to law. It is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Supreme Court to prevent "clogging or obstruction of the stream of justice". (Para 47)

However, the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to *ignore* the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by "ironing out the creases" *in a cause or matter before it*. Indeed the Supreme Court is not a court of restricted jurisdiction of only dispute-settling. The Supreme Court has always been a law-maker and its role travels beyond merely dispute-settling. It is a "problem-solver in the nebulous areas" but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by the

Supreme Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be *controlled* by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise *may come directly in conflict* with what has been expressly provided for in a statute dealing expressly with the subject. (Paras 47 and 48)

K. Veeraswami v. *Union of India*, (1991) 3 SCC 655 : 1991 SCC (Cri) 734; *Bonkya* v. *State of Maharashtra*, (1995) 6 SCC 447 : 1995 SCC (Cri) 1113; *Prem Chand Garg* v. *Excise Commr., U.P.*, AIR 1963 SC 996 : 1963 Supp (1) SCR 885, *relied on*

It is not possible to agree with the observations of the Bench in *V.C. Mishra case* that the law laid down by the majority in *Prem Chand Garg case* is "no longer a good law". In *Union Carbide Corpn.* v. *Union of India*; the *Delhi Judicial Service Assn. case* and *Mohd. Anis case* relied upon in *V.C. Mishra case* the Supreme Court did not say that substantive statutory provisions dealing expressly with the subject can be *ignored* by the Supreme Court while exercising powers under Article 142. The observations in the *Union Carbide case*, *A.R. Antulay case* and *Delhi Judicial Service Assn. case* go to show that they do not strictly speaking come into any conflict with the observations of the majority made in *Prem Chand Garg case*. The Court did not actually doubt the correctness of the observations in *Prem Chand Garg case*. (Paras 56 and 55)

Vinay Chandra Mishra, Re, (1995) 2 SCC 584, *overruled on this point*

Prem Chand Garg v. *Excise Commr., U.P.*, AIR 1963 SC 996 : 1963 Supp (1) SCR 885, *reaffirmed*

Mohd. Anis v. *Union of India*, 1994 Supp (1) SCC 145 : 1994 SCC (Cri) 251; *Delhi Judicial Service Assn.* v. *State of Gujarat*, (1991) 4 SCC 406 : (1991) 3 SCR 936; *Union Carbide Corpn.* v. *Union of India*, (1991) 4 SCC 584, *harmonised*

A.R. Antulay v. *R.S. Nayak*, (1988) 2 SCC 602 : 1988 SCC (Cri) 372; *State of U.P.* v. *Poosu*, (1976) 3 SCC 1 : 1976 SCC (Cri) 368 : (1976) 3 SCR 1005; *Ganga Bishan* v. *Jai Narain*, (1986) 1 SCC 75; *Navnit R. Kamani* v. *R.R. Kamani*, (1988) 4 SCC 387; *B.N. Nagarajan* v. *State of Mysore*, AIR 1966 SC 1942 : (1966) 3 SCR 682 : (1967) 1 LLJ 698; *Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413; *Harbans Singh* v. *State of U.P.*, (1982) 2 SCC 101 : 1982 SCC (Cri) 361; *K.M. Nanavati* v. *State of Bombay*, AIR 1961 SC 112 : (1961) 1 SCR 497, *cited*

The power of the Supreme Court to punish for contempt of court, though quite wide, is yet limited and cannot be expanded to include the power to determine whether an advocate is also guilty of "professional misconduct" in a summary manner, giving a go-by to the procedure prescribed under the Advocates Act. The power to do complete justice under Article 142 is in a way, corrective power, which gives preference to equity over law but it cannot be used to deprive a professional lawyer of the due process contained in the Advocates Act, 1961 by suspending his licence to practise in a summary manner while dealing with a case of contempt of court. (Para 43)

In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing "professional misconduct", depending upon the gravity or nature of his contumacious conduct, but the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an advocate by suspending his licence or by removal of his name from the roll of the State Bar Council for proven professional misconduct *vests exclusively* in the statutory authorities created under the Advocates Act, 1961, while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts. (Para 57)

After the coming into force of the Advocates Act, 1961, exclusive power for punishing an advocate for "professional misconduct" has been conferred on the State

Bar Council concerned and the Bar Council of India. That Act contains a detailed and complete mechanism for suspending or revoking the licence of an advocate for his "professional misconduct". Since, the jurisdiction to grant licence to a law graduate to practise as an advocate vests exclusively in the Bar Council of the State concerned, the jurisdiction to suspend his licence for a specified term or to revoke it also vests in the same body. Since the suspension or revocation of licence of an advocate has not only civil consequences but also penal consequences, the punishment being in the nature of penalty, the provisions have to be strictly construed. Punishment by way of suspending the licence of an advocate can only be imposed by the competent statutory body after the *charge* is established against the advocate in a manner prescribed by the Act and the Rules framed thereunder.

(Paras 58 and 71)

Bar Council of Maharashtra v. *M.V. Dabholkar*, (1975) 2 SCC 702, *relied on*

In *V.C. Mishra, Re, case*, the Bench relied upon its appellate jurisdiction under Section 38 of the Advocates Act also to support its order of suspending the licence of the contemner. The Supreme Court is indeed the final appellate authority under Section 38 of the Act but it is not possible to agree with the view that the Supreme Court can in exercise of its appellate jurisdiction under Section 38 of the Act impose one of the punishments prescribed under that Act while punishing a contemner advocate in a contempt case. "Professional misconduct" of the advocate concerned is not a matter directly in issue in the contempt of court case. While dealing with a contempt of court case, the Supreme Court is obliged to examine whether the conduct complained of amounts to contempt of court and if the answer is in the affirmative, then to sentence the contemner for contempt of court by imposing any of the recognised and accepted punishments for committing contempt of court. Keeping in view the elaborate procedure prescribed under the Advocates Act, 1961 and the Rules framed thereunder it follows that a complaint of professional misconduct is required to be *tried* by the Disciplinary Committee of the Bar Council, like the trial of a criminal case by a court of law and an advocate may be punished on the basis of evidence led before the Disciplinary Committee of the Bar Council after being afforded an opportunity of hearing. The delinquent advocate may be suspended from practice for a specified period or even removed from the rolls of the advocates or imposed any other punishment as provided under the Act. The enquiry is a detailed and elaborate one and is not of a *summary nature*. It is therefore, not permissible for the Supreme Court to punish an advocate for "professional misconduct" in exercise of the appellate jurisdiction by converting itself as the statutory body exercising "original jurisdiction". Indeed, if in a given case the Bar Council concerned on being apprised of the contumacious and blameworthy conduct of the advocate by the High Court or the Supreme Court does not take any action against the said advocate, the Supreme Court may well have the jurisdiction in exercise of its appellate powers under Section 38 of the Act read with Article 142 of the Constitution to proceed suo motu and send for the records from the Bar Council and pass appropriate orders against the advocate concerned. In an appropriate case, the Supreme Court may consider the exercise of appellate jurisdiction even suo motu provided there is some cause pending before the Bar Council concerned, and the Bar Council does "not act" or fails to act, by sending for the record of that cause and pass appropriate orders. However, the exercise of powers under the contempt jurisdiction cannot be confused with the appellate jurisdiction under Section 38 of the Act. The two jurisdictions are separate and distinct. It is, therefore, not possible to subscribe to the contrary view expressed by the Bench in *V.C. Mishra case* because in that case the Bar Council had not declined to deal with the matter and take appropriate action against the advocate concerned. Since there was no cause pending before the Bar

Council, the Supreme Court could not exercise its appellate jurisdiction in respect of a matter which was *never* under consideration of the Bar Council. It must, therefore, be held that the Supreme Court cannot in exercise of its jurisdiction under Article 142 read with Article 129 of the Constitution, while punishing a contemner for committing contempt of court, also impose a punishment of suspending his licence to practise, where the contemner happens to be an advocate. Such a punishment cannot even be imposed by taking recourse to the appellate powers under Section 38 of the Act while dealing with a case of contempt of court (and not an appeal relating to professional misconduct as such). To that extent, the law laid down in *Vinay Chandra Mishra, Re* is not good law and we overrule it. (Paras 76 to 78)

Vinay Chandra Mishra, Re, (1995) 2 SCC 584, *overruled on this point*

O.N. Mohindroo v. *District Judge, Delhi*, (1971) 3 SCC 5, *relied on*

In *V.C. Mishra case* the Bench relied upon its inherent powers under Article 142 to punish him by suspending his licence, without the Bar Council having been given any opportunity to deal with his case under the Act. It is not possible to accept that approach. Wider the amplitude of its power under Article 142, the greater is the need of care for the Supreme Court to see that the power is used with restraint without pushing back the limits of the Constitution so as to function within the bounds of its own jurisdiction. To the extent the Supreme Court makes the statutory authorities and other organs of the State perform their duties in accordance with law, its role is unexceptionable but it is not permissible for the Supreme Court to "take over" the role of the statutory bodies or other organs of the State and "perform" their functions. (Para 82)

The Bar Council which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette is also obliged to act "in aid of the Supreme Court". Whenever a court of record records its findings about the conduct of an advocate while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the Bar Council concerned, appropriate action should be initiated by the Bar Council concerned in accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette. Nothing is more destructive of public confidence in the administration of justice than incivility, rudeness or disrespectful conduct on the part of a counsel towards the court or disregard by the court of the privileges of the Bar. In case the Bar Council, even after receiving "reference" from the Court, fails to take action against the advocate concerned, the Supreme Court might consider invoking its powers under Section 38 of the Act by sending for the record of the proceedings from the Bar Council and passing appropriate orders. Of course, the appellate powers under Section 38 would be available to the Supreme Court only and not to the High Courts. (Para 79)

In a given case it may be possible, for the Supreme Court or the High Court, to prevent the contemner advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, the Supreme Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practise as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practise as an advocate in other courts or tribunals. (Para 80)

Suggested Case Finder Search Text (*inter alia*) :

(1) "constitution of india" supreme 142
search in catch words only

Search again and add:

(129 or contempt)

(2) contempt (bar or practise or practice)

Advocates who appeared in this case :

T.R. Andhyarujina, Solicitor General, Kapil Sibal and Dr Rajeev Dhavan, Senior Advocates (R.S. Suri, M.K. Giri, Ranbir Yadav, S.C. Gupta, Arun Pednekar, Vijay Pandeta, Rajesh Kr. Sharma, R.D. Upadhyay, Subrat Birla, P. Parameswaran, A. Subba Rao, R.B. Misra, Kamlendra Misra, R.P. Wadhwani, V.C. Mishra in person and M.M. Kashyap, Advocates, with them) for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. (1995) 6 SCC 447 : 1995 SCC (Cri) 1113, *Bonkya* v. *State of Maharashtra* 432*e-f*
2. (1995) 2 SCC 584, *Vinay Chandra Mishra, Re* 417*a*, 418*d*, 430*c-d*, 433*e-f*, 437*f*, 438*b-c*, 442*g*, 444*e*, 444*g-h*, 446*b*, 446*e-f*
3. 1994 Supp (1) SCC 145 : 1994 SCC (Cri) 251, *Mohd. Anis* v. *Union of India* 433*f-g*, 434*d-e*, 437*f*
4. (1991) 4 SCC 584, *Union Carbide Corpn.* v. *Union of India* 433*f-g*, 434*a*, 434*b*, 434*d*, 436*e-f*, 437*f*, 437*g-h*, 438*a-b*
5. (1991) 4 SCC 406 : (1991) 3 SCR 936, *Delhi Judicial Service Assn.* v. *State of Gujarat* 433*f-g*, 434*b*, 434*d*, 434*e*, 437*f*, 437*g-h*
6. (1991) 3 SCC 655 : 1991 SCC (Cri) 734, *K. Veeraswami* v. *Union of India* 432*d-e*
7. (1988) 4 SCC 387, *Navnit R. Kamani* v. *R.R. Kamani* 435*f-g*
8. (1988) 2 SCC 602 : 1988 SCC (Cri) 372, *A.R. Antulay* v. *R.S. Nayak* 435*a-b*, 435*b*, 436*a*, 436*f*, 436*g-h*, 437*g-h*
9. (1986) 1 SCC 75, *Ganga Bishan* v. *Jai Narain* 435*f-g*
10. (1982) 2 SCC 101 : 1982 SCC (Cri) 361, *Harbans Singh* v. *State of U.P.* 435*g*
11. (1981) 1 SCC 436 : 1981 SCC (Cri) 175, *S.K. Sarkar, Member, Board of Revenue* v. *Vinay Chandra Misra* 426*a*
12. (1979) 2 SCC 394 : 1979 SCC (Cri) 511, *Pushpaben* v. *Narandas V. Badiani* 425*e-f*
13. (1976) 3 SCC 1 : 1976 SCC (Cri) 368 : (1976) 3 SCR 1005, *State of U.P.* v. *Poosu* 435*f-g*
14. (1975) 2 SCC 702, *Bar Council of Maharashtra* v. *M.V. Dabholkar* 441*e*, 442*h*
15. (1971) 3 SCC 5, *O.N. Mohindroo* v. *District Judge, Delhi* 443*e*
16. AIR 1966 SC 1942 : (1966) 3 SCR 682 : (1967) 1 LLJ 698, *B.N. Nagarajan* v. *State of Mysore* 435*f-g*
17. AIR 1965 SC 745 : (1965) 1 SCR 413, *Special Reference No. 1 of 1964* 435*f-g*
18. AIR 1964 SC 1625 : (1964) 2 Cri LJ 590, *Mohd. Ikram Hussain* v. *State of U.P.* 426*b*
19. AIR 1963 SC 996 : 1963 Supp (1) SCR 885, *Prem Chand Garg* v. *Excise Commr., U.P.* 432*g*, 433*e-f*, 433*f*, 434*a*, 434*d-e*, 435*a*, 435*b*, 436*f*, 436*g-h*, 437*b-c*, 437*f-g*, 437*g*, 437*h*, 438*b-c*
20. AIR 1961 SC 112 : (1961) 1 SCR 497, *K.M. Nanavati* v. *State of Bombay* 433*c*, 433*e*, 436*c-d*
21. AIR 1954 SC 186 : 1954 SCR 454, *Sukhdev Singh* v. *Hon'ble C.J., S. Teja Singh* 426*c-d*, 428*f-g*

The Judgment of the Court was delivered by

DR ANAND, J.— In *Vinay Chandra Mishra, Re*[1] this Court found the contemner, an advocate, guilty of committing criminal contempt of court for having interfered with and

> "obstructing the course of justice by trying to threaten, overawe and overbear the Court by using insulting, disrespectful and threatening language".

While awarding punishment, keeping in view the gravity of the contumacious conduct of the contemner, the Court said: (SCC p. 626, para 55)

> "55. The facts and circumstances of the present case justify our invoking the power under Article 129 read with Article 142 of the Constitution to award to the contemner a suspended sentence of imprisonment together with suspension of his practice as an advocate in the manner directed herein. We accordingly sentence the contemner for his conviction for the offence of criminal contempt as under:
>
> (*a*) The contemner Vinay Chandra Mishra is hereby sentenced to undergo simple imprisonment for a period of six weeks. However, in the circumstances of the case, the sentence will remain suspended for a period of four years and may be activated in case the contemner is convicted for any other offence of contempt of court within the said period; and
>
> (*b*) The contemner shall stand suspended from practising as an advocate for a period of three years from today with the consequence that all elective and nominated offices/posts at present held by him in his capacity as an advocate, shall stand vacated by him forthwith."

2. Aggrieved by the direction that the "contemner shall stand suspended from practising as an advocate for a period of three years" issued by this Court by invoking powers under Articles 129 and 142 of the Constitution, the Supreme Court Bar Association, through its Honorary Secretary, has filed this petition under Article 32 of the Constitution of India, seeking the following relief:

> "Issue an appropriate writ, direction, or declaration, declaring that the Disciplinary Committees of the Bar Councils set up under the Advocates Act, 1961, alone have exclusive jurisdiction to inquire into and suspend or debar an advocate from practising law for professional or other misconduct, arising out of punishment imposed for contempt of court or otherwise and further declare that the Supreme Court of India or any High Court in exercise of its inherent jurisdiction has no such original jurisdiction, power or authority in that regard, notwithstanding the contrary view held by this Hon'ble Court in Contempt Petition (Crl.) No. 3 of 1994 dated 10-3-1995†."

1 (1995) 2 SCC 584

† *Vinay Chandra Mishra, Re*, (1995) 2 SCC 584

3. On 21-3-1995, while issuing rule in the writ petition, the following order was made by the Division Bench:

> "The question which arises is whether the Supreme Court of India can while dealing with contempt proceedings exercise power under Article 129 of the Constitution or under Article 129 read with Article 142 of the Constitution or under Article 142 of the Constitution can debar a practising lawyer from carrying on his profession as a lawyer for any period whatsoever. We direct notice to issue on the Attorney General of India and on the respondents herein. Notice will also issue on the application for interim stay. Having regard to the importance of the aforesaid question we further direct that this petition be placed before a Constitution Bench of this Court."

4. That is how this writ petition has been placed before this Constitution Bench.

5. The only question which we are called upon to decide in this petition is whether the punishment for established contempt of court committed by an advocate can include punishment to debar the advocate concerned from practice by suspending his licence (sanad) for a specified period, in exercise of its powers under Article 129 read with Article 142 of the Constitution of India.

6. Dealing with this issue, the three-Judge Bench in *Vinay Chandra Mishra case*[1] opined: (SCC p. 620, para 45)

> "*45*. The question now is what punishment should be meted out to the contemner. We have already discussed the contempt jurisdiction of this Court under Article 129 of the Constitution. That jurisdiction is independent of the statutory law of contempt enacted by Parliament under Entry 77 of List I of Seventh Schedule of the Constitution. The jurisdiction of this Court under Article 129 is sui generis. The jurisdiction to take cognizance of the contempt as well as to award punishment for it being constitutional, it cannot be controlled by any statute. Neither, therefore, the Contempt of Courts Act, 1971 nor the Advocates Act, 1961 can be pressed into service to restrict the said jurisdiction."

7. The Court repelled the arguments advanced on behalf of the contemner, the U.P. Bar Association and the U.P. Bar Council, that the Court cannot while punishing the contemner with any of the "traditional" or "accepted" punishments for contempt, also suspend his licence to practise as an advocate, since that power is specifically entrusted by the Advocates Act, 1961 to the Disciplinary Committees of the State Bar Council and/or the Bar Council of India. The Bench opined: (SCC p. 624, para 51)

> "*51*. What is further, the jurisdiction and powers of this Court under Article 142 which are supplementary in nature and are provided to do complete justice in any matter, are independent of the jurisdiction and powers of this Court under Article 129 which cannot be trammelled in any way by any statutory provision including the provisions of the

Advocates Act or the Contempt of Courts Act. As pointed out earlier, the Advocates Act has nothing to do with the contempt jurisdiction of the court including of this Court and the Contempt of Courts Act, 1971 being a statute cannot denude, restrict or limit the powers of this Court to take action for contempt under Article 129."

8. Mr Kapil Sibal, learned Senior Counsel appearing for the Supreme Court Bar Association, and Dr Rajeev Dhavan, Senior Advocate appearing for the Bar Council of U.P. and Bar Council of India, assailed the correctness of the above findings and submitted that powers conferred on this Court by Article 142, though very wide in their amplitude, can be exercised only to "do complete justice in any case or cause pending before it" and since the issue of "professional misconduct" is not the subject-matter of "any cause" pending before this Court while dealing with a case of contempt of court, it could not make any order either under Article 142 or 129 to suspend the licence of an advocate contemner, for which punishment, statutory provisions otherwise exist. According to the learned counsel, a court of record under Article 129 of the Constitution does not have any power to suspend the licence of a lawyer to practise because that is not a punishment which can be imposed under its jurisdiction to punish for contempt of court and that Article 142 of the Constitution cannot also be pressed into aid to make an order which has the effect of assuming "jurisdiction" which expressly vests in another statutory body constituted under the Advocates Act, 1961. The learned Solicitor General submitted that under Article 129 read with Article 142 of the Constitution, this Court can neither create a "jurisdiction" nor create a "punishment" not otherwise permitted by law and that since the power to punish an advocate (for "professional misconduct") by suspending his licence vests exclusively in a statutory body constituted under the Advocates Act, this Court cannot assume that jurisdiction under Article 142 or 129 or even under Section 38 of the Advocates Act, 1961.

9. To appreciate the submissions raised at the Bar, let us first notice Article 129 of the Constitution, it reads:

> "129. *Supreme Court to be a court of record.*—The Supreme Court shall be a court of record and shall have all the power of such a court including the power to punish for contempt of itself."

10. The article on its plain language vests this Court with all the powers of a court of record including the power to punish for contempt of itself.

11. The expression *court of record* has not been defined in the Constitution of India. Article 129 however, declares the Supreme Court to be a court of record, while Article 215 declares a High Court also to be a court of record.

12. A court of record is a court, the records of which are admitted to be of evidentiary value and are not to be questioned when produced before any court. The power that courts of record enjoy to punish for contempt is a part of their inherent jurisdiction and is essential to enable the courts to administer justice according to law in a regular, orderly and effective manner and to uphold the majesty of law and prevent interference in the due administration of justice.

13. According to Jowitt's *Dictionary of English Law*, First Edn. (p. 526) a court of record has been defined as:

> "A court whereof the acts and judicial proceedings are enrolled for a perpetual memory and testimony, and which has power to fine and imprison for contempt of its authority."

14. *Wharton's Law Lexicon* explains a court of record as:

> "Record, courts of, those whose judicial acts and proceedings are enrolled on parchment, for a perpetual memorial and testimony; which rolls are called the records of the court, and are of such high and supereminent authority that their truth is not to be called in question. Courts of record are of two classes — superior and inferior. Superior courts of record include the House of Lords, the Judicial Committee, the court of appeal, the High Court, and a few others. The Mayor's Court of London, the County Courts, Coroner's Courts, and other are inferior courts of record, of which the County Courts are the most important. *Every superior court of record has authority to fine and imprison for contempt of its authority; an inferior court of record can only commit for contempts committed in open court, in facie curiae.*"(emphasis provided)

15. Nigel Lowe and Brenda Sufrin in their treatise on the *Law of Contempt* (Third Edn.) (Butterworths 1996), while dealing with the jurisdiction and powers of a court of record in respect of criminal contempt say:

> "*The contempt jurisdiction of courts of record forms part of their inherent jurisdiction.*
>
> The power that courts of record enjoy to punish contempts is part of their inherent jurisdiction. The juridical basis of the inherent jurisdiction has been well described by Master Jacob as being:
>
> 'the authority of the judiciary to uphold, to protect and to fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner'.
>
> Such a power is not derived from statute nor truly from the common law but instead flows from the very concept of a court of law.
>
> * * *
>
> *All courts of record have an inherent jurisdiction to punish contempts committed in their face but the inherent power to punish contempts committed outside the court resides exclusively in superior courts of record.*
>
> * * *
>
> *Superior courts of record have an inherent superintendent jurisdiction to punish contempts committed in connection with proceedings before inferior courts.*" (emphasis ours)

16. Entry 77 of List I of the Seventh Schedule of the Constitution provides for:

> "77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court."

17. Entry 14 of List III of the Seventh Schedule provides for legislation in respect of:

"14. Contempt of court, but not including contempt of the Supreme Court."

18. The language of Entry 77 of List I and Entry 14 of List III of the Seventh Schedule demonstrates that the legislative power of Parliament and of the State Legislature extends to legislate with respect to matters connected with contempt of court by the Supreme Court or the High Court, subject however, to the qualification that such legislation cannot denude, abrogate or nullify, the power of the Supreme Court to punish for contempt under Article 129 or vest that power in some other court.

19. Besides Article 129, the power to punish for contempt is also vested in the Supreme Court by virtue of Article 142(2).

20. Article 142 of the Constitution reads:

"142. *Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.*—(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) *Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall*, as respects the whole of the territory of India, *have all and every power to make any order for* the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or *punishment of any contempt of itself*."

(emphasis supplied)

21. It is, thus, seen that the power of this Court in respect of *investigation* or *punishment* of any contempt including contempt of itself, is expressly made "subject to the provisions of any law made in this behalf by Parliament" by Article 142(2). However, the power to punish for contempt being inherent in a court of record, it follows that no act of Parliament can take away that *inherent* jurisdiction of the court of record to punish for contempt and Parliament's power of legislation on the subject cannot, therefore, be so exercised as to stultify the status and dignity of the Supreme Court and/or the High Courts, though such a legislation may serve as a guide for the determination of the nature of punishment which this Court may impose in the case of established contempt. Parliament has not enacted any law dealing with the powers of the Supreme Court with regard to investigation and punishment of contempt of itself, (we shall refer to Section 15 of the Contempt of Courts Act, 1971, later on) and this Court, therefore, exercises the power to investigate and punish for contempt of itself by virtue of the powers vested in it under Articles 129 and 142(2) of the Constitution of India.

22. The first legislation to deal with contempt of courts in this country was the Contempt of Courts Act, 1926. It was enacted with a view to define and limit the powers of *certain* courts for punishing contempts of court. The preamble to that Act stated:

> "Whereas doubts have arisen as to the powers of a High Court of Judicature to punish contempts of courts and whereas it is expedient to resolve these doubts and to define and limit the powers exercisable by *High Courts* and *Chief Courts* in punishing contempts of courts, it is hereby enacted as follows:"

Section 2(*i*) says:

> "2. (*i*) Subject to the provisions of sub-section (*iii*), the High Courts of Judicature established by Letters Patent shall have and exercise the same jurisdiction, powers and authority in accordance with the same procedure and practice, in respect of contempts of courts subordinate to them as they have and exercise in respect of contempts of themselves."

23. Since the Act was enacted with a view to "remove doubts about the powers of the High Court to punish for contempt", it made no distinction between one Letters Patent High Court and another though it did distinguish between the Letters Patent High Courts and the Chief Courts. The doubt as a result of conflict of judicial opinion, whether the High Court could punish for contempt of a court subordinate to it, was removed by enactment of Section 2 of the Act (*supra*). The Contempt of Courts Act, 1926 was repealed by the Contempt of Courts Act, 1952. The 1952 Act made two significant departures from the 1926 Act. First, the expression "High Court" was defined to include the Courts of the Judicial Commissioner which had been excluded from the purview of the 1926 Act and secondly, the High Courts, including the Court of a Judicial Commissioner, were conferred jurisdiction to inquire into and "try contempt of itself or of any court subordinate to it", irrespective of whether the contempt was alleged to have been committed within or outside the local limits of its jurisdiction and irrespective of whether the person alleged to be guilty of committing contempt was within or outside such limits. In the matter of imposition of punishment for contempt of court, Section 4 of the 1952 Act provided:

> "4. *Limit of punishment for contempt of court.*—Save as otherwise expressly provided by any law for the time being in force, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:
>
> Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court:
>
> Provided further that notwithstanding anything elsewhere contained in any law for the time being in force, no High Court shall impose a sentence in excess of that specified in this section for any contempt either in respect of itself or of a court subordinate to it."

24. Thus, under the existing legislation dealing with contempt of court, the *High Courts* and Chief Courts were vested with the power to try a person for committing contempt of court and to punish him for established contempt. The legislation itself prescribed the nature and type, as well as the extent of, *punishment* which could be imposed on a contemner by the High Courts or the Chief Courts. The second proviso to Section 4 of the 1952 Act (*supra*) expressly restricted the powers of the courts not to "impose any sentence in excess of what is specified in the section" for any contempt either of itself or of a court subordinate to it.

25. After the Constitution of India was promulgated in 1950, it appears that on 1-4-1960, a Bill was introduced in the Lok Sabha "to consolidate and amend the law relating to contempt of court". The Bill was examined by the Government which felt that law relating to contempt of courts was "uncertain, undefined and unsatisfactory" and that in the light of the constitutional changes which had taken place in the country, it was advisable to have the entire law on the subject scrutinised by a special committee to be set up for the purpose. Pursuant to that decision, the Ministry of Law on 29-7-1961 set up a Committee under the Chairmanship of Shri H.N. Sanyal, Additional Solicitor General of India. The Committee came to be known as *Sanyal Committee* and it was required:

> "(*i*) to examine the law relating to contempt of courts generally, and in particular, the law relating to the procedure for the punishment thereof;
>
> (*ii*) to suggest amendments therein with a view to clarifying and reforming the law wherever necessary; and
>
> (*iii*) to make recommendations for codification of the law in the light of the examination made."

26. The Committee, inter alia, opined that Parliament or the legislature concerned has the power to legislate in relation to the substantive law of contempt of the Supreme Court and the High Courts subject only to the qualification that the legislature cannot take away the powers of the Supreme Court or the High Court, as a court of record, to punish for contempt nor vest that power in some other court.

27. After the submission of the *Sanyal Committee Report*, the Contempt of Courts Act, 1952, was repealed and replaced by the Contempt of Courts Act, 1971 which Act was enacted to "define and limit the powers of certain courts in punishing contempts of courts and to regulate their procedure in relation thereto". It would be proper to notice some of the relevant provisions of the 1971 Act at this stage. Sections 2(*a*), (*b*) and (*c*) of the Contempt of Courts Act, 1971 define contempt of court as follows:

> "2. *Definitions*.—In this Act, unless the context otherwise requires,—
>
> (*a*) 'contempt of court' means civil contempt or criminal contempt;
>
> (*b*) 'civil contempt' means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

(*c*) 'criminal contempt' means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

(*i*) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or

(*ii*) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(*iii*) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner."

Section 10 provides:

"10. *Power of High Court to punish contempts of subordinate courts.*— Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code, 1860 (45 of 1860) ."

The *punishment* for committing contempt of court is provided in Section 12 of the 1971 Act which reads:

"12. *Punishment for contempt of court.*—(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation.—An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary, shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment

may be enforced, with the leave of the court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer."

28. An analysis of the above provision shows that sub-section (1) of Section 12 provides that in a case of established contempt, the contemner may be punished:

(*a*) with simple imprisonment by detention in a civil prison; or

(*b*) with fine; or

(*c*) with both.

A careful reading of sub-section (2) of Section 12 reveals that the Act places an embargo on the court *not* to impose a sentence in excess of the sentence prescribed under sub-section (1). A close scrutiny of sub-section (3) of Section 12 demonstrates that the legislature intended that in the case of civil contempt a sentence of fine alone should be imposed except where the court considers that the ends of justice make it necessary to pass a sentence of imprisonment also. Dealing with imposition of punishment under Section 12(3) of the Act, in the case of *Pushpaben* v. *Narandas V. Badiani*[2] this Court opined: (SCC p. 396, para 6)

"6. A close and careful interpretation of the extracted section leaves no room for doubt that the legislature intended that a *sentence of fine alone should be imposed in* normal circumstances. The statute, however, confers special power on the Court *to pass a sentence of imprisonment if it thinks that ends of justice so require.* Thus before a Court passes the extreme sentence of imprisonment, it must give special reasons after a proper application of its mind that a sentence of imprisonment alone is called for in a particular situation. Thus, the sentence of imprisonment is an exception while sentence of fine is the rule." (emphasis supplied)

29. Section 10 of the 1971 Act like Section 2 of the 1926 Act and Section 4 of the 1952 Act recognises the power which a High Court already possesses as a court of record for punishing for contempt of itself, which jurisdiction has now the sanction of the Constitution also by virtue of Article 215. The Act, however, does not deal with the powers of the Supreme Court

2 (1979) 2 SCC 394 : 1979 SCC (Cri) 511

to try or punish a contemner for committing contempt of the Supreme Court or the courts subordinate to it and the constitutional provision contained in Articles 142(2) and 129 of the Constitution alone deal with the subject.

30. In *S.K. Sarkar, Member, Board of Revenue* v. *Vinay Chandra Misra*[3] this Court opined: (SCC p. 441, para 15)

> "*15.* Articles 129 and 215 preserve all the powers of the Supreme Court and the High Court, respectively, as a court of record which include the power to punish the contempt of itself. As pointed out by this Court in *Mohd. Ikram Hussain* v. *State of U.P.*[4], there are *no curbs on the power of the High Court to punish for contempt of itself except those contained in the Contempt of Courts Act.* Articles 129 and 215 do not define as to what constitutes contempt of court. Parliament has, by virtue of the aforesaid entries in List I and List III of the Seventh Schedule, power to define and limit the powers of the courts in punishing contempt of court and to regulate their procedure in relation thereto. Indeed, this is what is stated in the preamble of the Act of 1971." (emphasis supplied)

31. In *Sukhdev Singh* v. *Hon'ble C.J., S. Teja Singh*[5] while recognising that the power of the High Court to institute proceedings for contempt and punish the contemner when found necessary is a special jurisdiction which is inherent in all courts of record, the Bench opined that "the maximum punishment is now limited to six months' simple imprisonment or a fine of Rs 2000 or both" because of the provision of Contempt of Courts Act.

32. In England, according to *Halsbury's Laws of England*, 4th Edn., para 97:

> "*There is no statutory limit to the length of the term of imprisonment which may be imposed for contempt of court by the court of appeal, High Court or Crown Court.* Similarly the statutory provisions relating to the suspension of sentences of imprisonment have no application to committals for contempt.
>
> Although there is no limit to the length of the term which may be imposed, the punishment should be commensurate to the offence. Thus, where contempt is committed owing to a mistaken view of the rights of the offender, the punishment, where imprisonment is deemed necessary, should be for a definite period and should not be severe."

Paras 99 and 100 to 105 of *Halsbury's Laws* deal with the other punishments which may be imposed for contempt of court.

> "99. *Fines and security for good behaviour.—The court may, as an alternative or in addition to committing a contemner, impose a fine or require security for good behaviour.*
>
> *As in the case of imprisonment, there is no statutory limit to the amount of a fine which the court can impose.*

3 (1981) 1 SCC 436 : 1981 SCC (Cri) 175
4 AIR 1964 SC 1625 : (1964) 2 Cri LJ 590
5 AIR 1954 SC 186 : 1954 SCR 454

100. *Other remedies.*—As a further alternative to ordering committal, the court may, in its discretion, adopt the more lenient course of granting an injunction to restrain repetition of the act of contempt. The court may also penalise a party in contempt by ordering him to pay the costs of the application.

* * *

103. *Fine.—The court may, as an alternative to committal or sequestration, impose a fine for civil contempt.*

In assessing the amount of the fine, account should be taken of the seriousness of the contempt and the damage done to the public interest.

104. *Other remedies.—The court may, in its own discretion, grant an injunction, in lieu of committal or sequestration,* to restrain the commission or repetition of a civil contempt. The court may in lieu of any other penalty require the contemner to pay the costs of the motion on a common fund basis.

* * *

105. *Costs.*—The costs of an application for committal are in the discretion of the court, and should be asked for on the hearing of the application. The respondent can as a general rule only be ordered to pay costs if he has been guilty of contempt. An action is maintainable in the Queen's Bench Division to enforce an order made in the Chancery Division to pay the costs of a motion for committal."(emphasis supplied)

33. Thus, the recognised and accepted punishments for civil or criminal contempt of court in English law, which have been followed and accepted by the courts in this country and incorporated in the Indian law insofar as, civil contempt, is concerned are:

(*i*) sequestration of assets;

(*ii*) fine;

(*iii*) committal to prison.

34. The object of punishment being both curative and corrective, these coercions are meant to assist an individual complainant to enforce his remedy and there is also an element of public policy for punishing civil contempt, since the administration of justice would be undermined if the order of any court of law is to be disregarded with impunity. Under some circumstances, compliance of the order may be secured without resort to coercion, through the contempt power. For example, disobedience of an order to pay a sum of money may be effectively countered by attaching the earnings of the contemner. In the same manner, committing the person of the defaulter to prison for failure to comply with an order of specific performance of conveyance of property, may be met also by the court directing that the conveyance be completed by an appointed person. Disobedience of an undertaking may in the like manner be enforced through process other than committal to prison as for example where the breach of undertaking is to deliver possession of property in a landlord-tenant dispute.

Apart from punishing the contemner, the court to maintain the majesty of law may direct the police force to be utilised for recovery of possession and burden the contemner with costs, exemplary or otherwise.

35. Insofar as criminal contempt of court is concerned, which charge is required to be established like a criminal charge, it is punishable by—

(*i*) fine; or

(*ii*) by fixed period of simple imprisonment or detention in a civil prison for a specified period; or

(*iii*) both.

36. In deciding whether a contempt is serious enough to merit imprisonment, the court will take into account the likelihood of interference with the administration of justice and the culpability of the offender. The intention with which the act complained of is done is a material factor in determining what punishment, in a given case, would be appropriate.

37. The nature and types of punishment which a court of record can impose in a case of established contempt under the common law have now been specifically incorporated in the Contempt of Courts Act, 1971 insofar as the High Courts are concerned and therefore to the extent the Contempt of Courts Act, 1971 identifies the nature or types of punishments which can be awarded in the case of established contempt, it does not impinge upon the inherent powers of the High Court under Article 215 either. No new type of punishment can be created or assumed.

38. As already noticed, Parliament by virtue of Entry 77 List I is competent to enact a law relating to the powers of the Supreme Court with regard to contempt of itself and such a law may prescribe the nature of punishment which may be imposed on a contemner by virtue of the provisions of Article 129 read with Article 142(2). Since, no such law has been enacted by Parliament, the *nature of punishment* prescribed under the Contempt of Courts Act, 1971 may act as a guide for the Supreme Court but the extent of punishment as prescribed under that Act can apply only to the High Courts, because the 1971 Act ipso facto does not deal with the contempt jurisdiction of the Supreme Court, except that Section 15 of the Act prescribes *procedural mode* for taking cognizance of criminal contempt by the Supreme Court also. Section 15, however, is not a substantive provision conferring contempt jurisdiction. The judgment in *Sukhdev Singh case*[5] as regards the *extent* of "maximum punishment" which can be imposed upon a contemner must, therefore, be construed as dealing with the powers of the High Courts only and not of this Court in that behalf. We are, therefore, doubtful of the validity of the argument of the learned Solicitor General that the *extent of punishment* which the Supreme Court can impose in exercise of its inherent powers to punish for contempt of itself and/or of subordinate courts can also be only to the extent prescribed under the Contempt of Courts Act, 1971. We, however, do not express any final opinion on that question since that issue, strictly speaking, does not arise for our decision in this case. The question regarding the restriction or limitation

on the *extent* of punishment, which *this* Court may award while exercising its contempt jurisdiction may be decided in a proper case, when so raised.

39. Suspending the licence to practise of any professional like a lawyer, doctor, chartered accountant etc. when such a professional is found guilty of committing contempt of court, for any specified period, is not a recognised or accepted punishment which a court of record either under the common law or under the statutory law can impose on a contemner in addition to any of the other recognised punishments.

40. The suspension of an advocate from practise and his removal from the State roll of advocates are both punishments specifically provided for under the Advocates Act, 1961, for proven "professional misconduct" of an advocate. While exercising its contempt jurisdiction under Article 129, the only *cause* or matter before this Court is regarding commission of contempt of court. There is no cause of professional misconduct, properly so called, pending before the Court. This Court, therefore, in exercise of its jurisdiction under Article 129 cannot take over the jurisdiction of the Disciplinary Committee of the Bar Council of the State or the Bar Council of India to punish an advocate by suspending his licence, which punishment can only be imposed after a finding of "professional misconduct" is recorded in the manner prescribed under the Advocates Act and the Rules framed thereunder.

41. When this Court is seized of a matter of contempt of court by an advocate, there is no "case, cause or matter" before the Supreme Court regarding his "professional misconduct" even though, in a given case, the contempt committed by an advocate may also amount to an abuse of the privilege granted to an advocate by virtue of the licence to practise law but no issue relating to his suspension from practise is the subject-matter of the case. The powers of this Court, under Article 129 read with Article 142 of the Constitution, being supplementary powers have "*to be used in exercise of its jurisdiction*" *in the case* under consideration by this Court. Moreover, a case of contempt of court is not stricto sensu a cause or a matter between the parties inter se. It is a matter between the court and the contemner. It is not, strictly speaking, tried as an adversarial litigation. The party, which brings the contumacious conduct of the contemner to the notice of the court, whether a private person or the subordinate court, is only an *informant* and does not have the status of a *litigant* in the contempt of court case.

42. The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It is an unusual type of jurisdiction combining "the jury, the judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being

maligned. In the general interest of the community it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemner and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice.

43. The power of the Supreme Court to punish for contempt of court, though quite wide, is yet limited and cannot be expanded to include the power to determine whether an advocate is also guilty of "professional misconduct" in a summary manner, giving a go-by to the procedure prescribed under the Advocates Act. The power to do complete justice under Article 142 is in a way, corrective power, which gives preference to equity over law but it cannot be used to deprive a professional lawyer of the due process contained in the Advocates Act, 1961 by suspending his licence to practice in a summary manner while dealing with a case of contempt of court.

44. In *Re, V.C. Mishra case*[1] while imposing the punishment of suspended simple imprisonment, the Bench, as already noticed, punished the contemner also by *suspending* his licence to practise as an advocate for a specified period. The Bench dealing with that aspect opined: (SCC p. 624, para 51)

> *"It is not disputed that suspension of the advocate from practice and his removal from the State roll of advocates are both punishments. There is no restriction or limitation on the nature of punishment that this Court may award while exercising its contempt jurisdiction and the said punishments can be the punishments the Court may impose while exercising the said jurisdiction."* (emphasis supplied)

45. In taking this view, the Bench relied upon Articles 129 and 142 of the Constitution besides Section 38 of the Advocates Act, 1961. The Bench observed: (SCC p. 624, paras 49-50)

> "Secondly, it would also mean that for any act of contempt of court, if it also happens to be an act of professional misconduct under the Bar Council of India Rules, the courts including this Court, will have no power to take action *since the Advocates Act confers exclusive power for taking action* for such conduct on the Disciplinary Committees of the State Bar Councils and the Bar Council of India, as the case may be. Such a proposition of law on the face of it deserves rejection for the simple reason that *the disciplinary jurisdiction of the State Bar Councils and the Bar Council of India to take action for professional misconduct is different from the jurisdiction of the courts to take action against the advocates for the contempt of court.* The said jurisdictions coexist independently of each other. *The action taken under one jurisdiction does not bar an action under the other jurisdiction.*

The contention is also misplaced for yet another and equally, if not more, important reason. In the matter of disciplinary jurisdiction under the Advocates Act, this Court is constituted as the final appellate authority *under Section 38 of the Act* as pointed out earlier. In that capacity *this Court can impose any of the punishments mentioned in Section 35(3) of the Act including that of removal of the name of the advocate from the State roll and of suspending him from practice.* If that be so, there is no reason why this Court while exercising its contempt jurisdiction under Article 129 read with Article 142 cannot impose any of the said punishments. The punishment so imposed will not only be not against the provisions of any statute, but in conformity with the substantive provisions of the Advocates Act and for conduct which is both a professional misconduct as well as the contempt of court. The argument has, therefore, to be rejected." (emphasis supplied)

46. These observations, as we shall presently demonstrate and we say so with utmost respect, are too widely stated and do not bear closer scrutiny. After recognising that the disciplinary jurisdiction of the State Bar Council and the Bar Council of India to take action for professional misconduct is different from the jurisdiction of the courts to take action against the advocates for the contempt of court, how could the Court invest itself with the jurisdiction of the Disciplinary Committee of the Bar Council to *punish* the advocate concerned for "professional misconduct" in addition to imposing the punishment of suspended sentence of imprisonment for committing contempt of court.

47. The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are *complementary* to those powers which are *specifically conferred on the Court by various statutes though are not limited by those statutes.* These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of *supplementary* powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, *to prevent injustice* in the process of litigation and *to do complete justice between the parties.* This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary *whenever it is just and equitable to do so* and in particular to ensure the observance of the due process of law, *to do complete justice between the parties*, while administering justice according to law. There is no doubt that it is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Court to prevent "clogging or obstruction of the stream of justice". It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to *ignore* the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the

Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practice, a power otherwise statutorily available *only* to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article 142. The construction of Article 142 must be functionally informed by the salutary purposes of the article, viz., *to do complete justice between the parties*. It cannot be otherwise. As already noticed in a case of contempt of court, the contemner and the court cannot be said to be litigating parties.

48. The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is *necessary for doing complete justice* "between the parties in any cause or matter pending before it". The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by "ironing out the creases" *in a cause or matter before it*. Indeed this Court is not a court of restricted jurisdiction of only dispute-settling. It is well recognised and established that this Court has always been a law-maker and its role travels beyond merely dispute-settling. It is a "problem-solver in the nebulous areas" (see *K. Veeraswami* v. *Union of India*[6] but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be *controlled* by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise *may come directly in conflict* with what has been expressly provided for in a statute dealing expressly with the subject.

49. In *Bonkya* v. *State of Maharashtra*[7] a Bench of this Court observed: (SCC p. 458, para 23)

> "*23.* The amplitude of powers available to this Court under Article 142 of the Constitution of India is normally speaking not conditioned by any statutory provision but it cannot be lost sight of that this Court exercises jurisdiction under Article 142 of the Constitution with a view to do justice between the parties but *not in disregard of the relevant statutory provisions.*" (emphasis supplied)

50. Dealing with the powers of this Court under Article 142, in *Prem Chand Garg* v. *Excise Commr., U.P.*[8] it was said by the Constitution Bench:

> "In this connection, it may be pertinent to point out that the wide powers which are given to this Court for doing complete justice between the parties, can be used by this Court, for instance, in adding parties to

6 (1991) 3 SCC 655 : 1991 SCC (Cri) 734

7 (1995) 6 SCC 447 : 1995 SCC (Cri) 1113

8 AIR 1963 SC 996 : 1963 Supp (1) SCR 885

the proceedings pending before it, or in admitting additional evidence, or in remanding the case, or in allowing a new point to be taken for the first time. It is plain that in exercising these and similar other powers, *this Court would not be bound by the relevant provisions of procedure if it is satisfied that a departure from the said procedure is necessary* to do complete justice between the parties.

That takes us to the second argument urged by the Solicitor General that Article 142 and Article 32 should be reconciled by the adoption of the rule of harmonious construction. In this connection, *we ought to bear in mind that though the powers conferred on this Court by Article 142(1) are very wide, and the same can be exercised for doing complete justice in any case, as we have already observed, this Court cannot even under Article 142(1) make an order plainly inconsistent with the express statutory provisions of substantive law, much less, inconsistent with any constitutional provisions.* There can, therefore be no conflict between Article 142(1) and Article 32. In the case of *K.M. Nanavati* v. *State of Bombay*[9] on which the Solicitor General relies, it was conceded, and rightly, that under Article 142(1) this Court had the power to grant bail in cases brought before it, and so, there was obviously a conflict between the power vested in this Court under the said article and that vested in the Governor of the State under Article 161. The possibility of a conflict between these powers necessitated the application of the rule of harmonious construction. The said rule can have no application to the present case, because *on a fair construction of Article 142(1), this Court has no power to circumscribe the fundamental right guaranteed under Article 32.* The existence of the said power is itself in dispute, and so, the present is clearly distinguishable from the case of *K.M. Nanavati*[9]."

(emphasis ours)

51. In *Re, Vinay Chandra Mishra case*[1] the three-Judge Bench did notice the observations in *Prem Chand Garg case*[8] but opined: (SCC p. 623, para 48)

"In view of these observations of the latter Constitution Bench on the point, the observations made by the majority in *Prem Chand Garg case*[8] *are no longer a good law.* This is also pointed out by this Court in the case of *Mohd. Anis* v. *Union of India*[10] by referring to the decisions of *Delhi Judicial Service Assn.* v. *State of Gujarat*[11] and *Union Carbide Corpn.* v. *Union of India*[12] by observing that statutory provisions cannot override the constitutional provisions and Article 142(1) being a constitutional power it cannot be limited or conditioned by any statutory provision. The Court has then observed that it is, therefore, clear that the power of the Apex Court under Article 142(1) of the Constitution cannot be diluted by statutory provisions and the said position in law is now

9 AIR 1961 SC 112 : (1961) 1 SCR 497
10 1994 Supp (1) SCC 145 : 1994 SCC (Cri) 251
11 (1991) 4 SCC 406 : (1991) 3 SCR 936
12 (1991) 4 SCC 584

well settled by the Constitution Bench decision in *Union Carbide case*[12]." (emphasis supplied)

Commenting upon the observations in *Prem Chand Garg case*[8] the Bench further opined: (SCC pp. 621-22, para 46)

"*46*. Apart from the fact that these observations are made with reference to the powers of this Court under Article 142 which are in the nature of supplementary powers and not with reference to this Court's power under Article 129, the said observations have been explained by this Court in its latter decisions in *Delhi Judicial Service Assn.* v. *State of Gujarat*[11] and *Union Carbide Corpn.* v. *Union of India*[12]. In para 51 of the former decision, it has been, with respect, rightly pointed out that the said observations were made with regard to the extent of this Court's power under Article 142(1) in the context of fundamental rights. Those observations have no bearing on the present issue. No doubt, it was further observed there that those observations have no bearing on the question in issue in that case as there was no provision in any substantive law restricting this Court's power to quash proceedings pending before subordinate courts. But it was also added there that this Court's power under Article 142(1) to do complete justice was entirely of a different level and of a different quality."

52. As we shall presently see, there is nothing said in either *Delhi Judicial Service Assn. case*[11] or the *Union Carbide case*[12] from which it may be possible to hold that the law laid down in *Prem Chand Garg case*[8] is "no longer a good law". Besides, we also find that in *Mohd. Anis case*[10] referred to by the Bench, there is no reference made to *Prem Chand Garg case*[8] at all.

53. In *Delhi Judicial Service Assn.* v. *State of Gujarat*[11] the following questions fell for determination: (SCR Headnote)

"(*a*) whether the Supreme Court has inherent jurisdiction or power to punish for contempt of subordinate or inferior courts under Article 129 of the Constitution, (*b*) whether the inherent jurisdiction and power of the Supreme Court is restricted by the Contempt of Courts Act, 1971, (*c*) whether the incident interfered with the due administration of justice and constituted contempt of court, and (*d*) what punishment should be awarded to the contemners found guilty of contempt."

The Court observed: (SCC pp. 462-63, paras 50 and 51)

"*50*. Article 142(1) of the Constitution provides that the Supreme Court in exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any 'cause' or 'matter' pending before it. The expression 'cause' or 'matter' would include any proceeding pending in court and it would cover almost every kind of proceeding in court including civil or criminal. The inherent power of this Court under Article 142 coupled with the plenary and residuary powers under Articles 32 and 136 embraces power to quash criminal proceedings pending before any court to do complete justice in the matter before this Court.

* * *

51. Mr Nariman urged that Article 142(1) does not contemplate any order contrary to statutory provisions. He placed reliance on the Court's observations in *Prem Chand Garg* v. *Excise Commr., U.P.*[8] (SCR at p. 899) and *A.R. Antulay* v. *R.S. Nayak*[13] where the Court observed that though the powers conferred on this Court under Article 142(1) are very wide, *but in exercise of that power the court cannot make any order plainly inconsistent with the express statutory provisions of substantive law.* It may be noticed that in *Prem Chand Garg*[8] and *Antulay case*[13] observations with regard to the extent of this Court's power under Article 142(1) were made in the context of fundamental rights. *Those observations have no bearing on the question in issue as there is no provision in any substantive law restricting this Court's power* to quash proceedings pending before subordinate court. This Court's power under Article 142(1) to do 'complete justice' is entirely of different level and of a different quality. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this Court. Once this Court has seisin of a cause or matter before it, it has power to issue any order or direction to do 'complete justice' in the matter. This constitutional power of the Apex Court cannot be limited or restricted by provisions contained in statutory law."

The Bench went on to say:

"No enactment made by Central or State Legislature can limit or restrict the power of this Court under Article 142 of the Constitution, *though while exercising power under Article 142 of the Constitution, the Court must take into consideration the statutory provisions regulating the matter in dispute.* What would be the need of 'complete justice' in a cause or matter would depend upon the facts and circumstances of each case and *while exercising that power the Court would take into consideration the express provisions of a substantive statute.* Once this Court has taken seisin of a case, cause or matter, it has power to pass any order or issue direction as may be necessary to do complete justice in the matter. This has been the consistent view of this Court as would appear from the decisions of this Court in *State of U.P.* v. *Poosu*[14]; *Ganga Bishan* v. *Jai Narain*[15]; *Navnit R. Kamani* v. *R.R. Kamani*[16]; *B.N. Nagarajan* v. *State of Mysore*[17]; *Special Reference No. 1 of 1964*[18] and *Harbans Singh* v. *State of U.P.*[19]" (emphasis supplied)

13 (1988) 2 SCC 602 : 1988 SCC (Cri) 372
14 (1976) 3 SCC 1 : 1976 SCC (Cri) 368 : (1976) 3 SCR 1005
15 (1986) 1 SCC 75
16 (1988) 4 SCC 387
17 AIR 1966 SC 1942 : (1966) 3 SCR 682 : (1967) 1 LLJ 698
18 AIR 1965 SC 745 : (1965) 1 SCR 413
19 (1982) 2 SCC 101 : 1982 SCC (Cri) 361

In *A.R. Antulay* v. *R.S. Nayak*[13] a seven-Judge Bench of this Court said: (SCC p. 730, para 206)

> "*206.* The reliance placed in this context on the provisions contained in Articles 140 and 142 of the Constitution and Section 401 read with Section 386 of the CrPC does not also help. Article 140 is only a provision enabling Parliament to confer supplementary powers on the Supreme Court to enable it to deal more effectively to exercise the jurisdiction conferred on it by or under the Constitution. Article 142 is also not of much assistance. In the first place, the operative words in that article, again are 'in the exercise of its jurisdiction'. The Supreme Court was hearing an appeal from the order of discharge and connected matters. There was no issue or controversy or discussion before it as to the comparative merits of a trial before a Special Judge vis-à-vis one before the High Court. There was only an oral request said to have been made, admittedly, after the judgment was announced. Wide as the powers under Article 141 are, they do not in my view, envisage an order of the type presently in question. The *Nanavati case*[9], to which reference was made by Shri Jethmalani, involved a totally different type of situation. Secondly, it is one of the contentions of the appellant that an order of this type, far from being necessary for doing complete justice in the cause or matter pending before the court, has actually resulted in injustice, an aspect discussed a little later. Thirdly, *however wide and plenary the language of the article, the directions given by the court should not be inconsistent with, repugnant to or in violation of the specific provisions of any statute. If the provisions of the 1952 Act read with Article 139-A and Sections 406-407 of the CrPC do not permit the transfer of the case from a Special Judge to the High Court, that effect cannot be achieved indirectly.*" (emphasis supplied)

54. In *Union Carbide Corpn.* v. *Union of India*[12] a Constitution Bench of this Court dealt with the ambit and scope of the powers of this Court under Article 142 of the Constitution. The Bench considered the observations of the majority in *Prem Chand Garg* v. *Excise Commr., U.P.*[8] as well as the observations made in *A.R. Antulay* v. *R.S. Nayak*[13] and observed: (SCC pp. 634-35, para 83)

> "*83. It is necessary to set at rest certain misconceptions in the arguments touching the scope of the powers of this Court under Article 142(1) of the Constitution. These issues are matters of serious public importance. The proposition that a provision in any ordinary law irrespective of the importance of the public policy on which it is founded, operates to limit the powers of the Apex Court under Article 142(1) is unsound and erroneous. In both* Garg[8] *as well as* Antulay[13] cases *the point was one of violation of constitutional provisions and constitutional rights. The observations as to the effect of inconsistency with statutory provisions were really unnecessary in those cases as the decisions in the ultimate analysis turned on the breach of constitutional rights. We agree with Shri Nariman that the power of the Court under Article 142 insofar as quashing of criminal proceedings are concerned is*

not exhausted by Section 320 or 321 or 482 CrPC or all of them put together. The power under Article 142 is at an entirely different level and of a different quality. Prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions of limitations on the constitutional powers under Article 142. Such prohibitions or limitations in the statutes might embody and reflect the scheme of a particular law, taking into account the nature and status of the authority or the court on which conferment of powers — limited in some appropriate way — is contemplated. The limitations may not necessarily reflect or be based on any fundamental considerations of public policy. Shri Sorabjee, learned Attorney General, referring to Garg case[8]*, said that limitation on the powers under Article 142 arising from 'inconsistency with express statutory provisions of substantive law' must really mean and be understood as some express prohibition contained in any substantive statutory law. He suggested that if the expression 'prohibition' is read in place of 'provision' that would perhaps convey the appropriate idea. But we think that such prohibition should also be shown to be based on some underlying fundamental and general issues of public policy and not merely incidental to a particular statutory scheme or pattern. It will again be wholly incorrect to say that powers under Article 142 are subject to such express statutory prohibitions. That would convey the idea that statutory provisions override a constitutional provision. Perhaps, the proper way of expressing the idea is that in exercising powers under Article 142 and in assessing the needs of 'complete justice' of a cause or matter, the Apex Court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly.* The proposition does not relate to the powers of the Court under Article 142, but only to what is or is not 'complete justice' of a cause or matter and in the ultimate analysis of the propriety of the exercise of the power. *No question of lack of jurisdiction or of nullity can arise.*" (emphasis supplied)

55. Thus, a careful reading of the judgments in *Union Carbide Corpn.* v. *Union of India*[12]; the *Delhi Judicial Service Assn. case*[11] and *Mohd. Anis case*[10] relied upon in *V.C. Mishra case*[1] show that the Court did not actually doubt the correctness of the observations in *Prem Chand Garg case*[8]. As a matter of fact, it was observed that in the established facts of those cases, the observations in *Prem Chand Garg case*[8] had "no relevance". This Court did not say in any of those cases that substantive statutory provisions dealing expressly with the subject can be *ignored* by this Court while exercising powers under Article 142.

56. As a matter of fact, the observations on which emphasis has been placed by us from the *Union Carbide case*[12], *A.R. Antulay case*[13] and *Delhi Judicial Service Assn. case*[11] go to show that they do not strictly speaking come into any conflict with the observations of the majority made in *Prem Chand Garg case*[8]. It is one thing to say that "prohibitions or limitations in a

statute" cannot come in the way of exercise of jurisdiction under Article 142 *to do complete justice* between the parties in the pending "cause or matter" arising out of that statute, but quite a different thing to say that while exercising jurisdiction under Article 142, this Court can altogether *ignore* the substantive provisions *of a statute*, dealing with the subject and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. This Court did not say so in *Union Carbide case*[12] either expressly or by implication and on the contrary it has been held that the Apex Court *will take note of the express provisions of any* substantive statutory law and regulate the exercise of its power and discretion accordingly. We are, therefore, unable to persuade ourselves to agree with the observations of the Bench in *V.C. Mishra case*[1] that the law laid down by the majority in *Prem Chand Garg case*[8] is "no longer a good law".

57. In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing "professional misconduct", depending upon the gravity or nature of his contumacious conduct, but the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an advocate by suspending his licence or by removal of his name from the roll of the State Bar Council for proven professional misconduct *vests exclusively* in the statutory authorities created under the Advocates Act, 1961, while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts.

58. After the coming into force of the Advocates Act, 1961, exclusive power for punishing an advocate for "professional misconduct" has been conferred on the State Bar Council concerned and the Bar Council of India. That Act contains a detailed and complete mechanism for suspending or revoking the licence of an advocate for his "professional misconduct". Since the suspension or revocation of licence of an advocate has not only civil consequences but also penal consequences, the punishment being in the nature of penalty, the provisions have to be strictly construed. Punishment by way of suspending the licence of an advocate can only be imposed by the competent statutory body after the *charge* is established against the advocate in a manner prescribed by the Act and the Rules framed thereunder.

59. Let us now have a quick look at some of the relevant provisions of the Advocates Act, 1961.

60. The Act, besides laying down the essential functions of the Bar Council of India provides for the enrolment of advocates and setting up of disciplinary authorities to chastise and, if necessary, punish members of the profession for professional misconduct. That punishment may include suspension from practice for a specified period or reprimand or removal of the name from the roll of the advocates. Various provisions of the Act deal with functions of the State Bar Councils and the Bar Council of India. We

need not, however, refer to all those provisions in this judgment except to the extent their reference is necessary.

61. According to Section 30, every advocate whose name is entered in the State roll of advocates shall be entitled, as of right, to practise throughout the territories to which the Act extends, in all courts including the Supreme Court of India. Section 33 provides that no person shall, on or after the appointed day, be entitled to practise in any court or before any authority or person unless he is enrolled as an advocate under the Act.

62. Chapter V of the Act deals with the "Conduct of Advocates". After a complaint is received alleging professional misconduct by an advocate by the Bar Council, the Bar Council entrusts the inquiry into the case of misconduct to the Disciplinary Committee constituted under Section 9 of the Act. Section 35 lays down that if on receipt of a complaint or otherwise, a State Bar Council has reason to believe that any advocate on its roll has been *guilty of professional or other misconduct*, it shall refer the case for disposal to its Disciplinary Committee. Section 36 provides that where on receipt of a complaint or otherwise, the Bar Council of India has reason to believe that any advocate whose name is entered on any State roll is guilty of professional or other misconduct, it shall refer the case to the Disciplinary Committee. Section 37 provides for an appeal to the Bar Council of India against an order made by the Disciplinary Committee of a State Bar Council. Any person aggrieved by an order made by the Disciplinary Committee of the Bar Council of India may prefer an appeal to the Supreme Court of India under Section 38 of the Act.

63. Section 42(1) of the Act confers on the Disciplinary Committee of the Bar Council, powers of a civil court under the Code of Civil Procedure and Section 42(2) enacts that its proceedings shall be "deemed" to be judicial proceedings for the purposes mentioned therein.

64. Section 49 of the Act lays down that the Bar Council of India may make Rules for discharging its functions under the Act and in particular such Rules may prescribe, inter alia, the standards of professional conduct to be observed by the advocates and the procedure to be followed by the Disciplinary Committee of the Bar Council while dealing with a case of professional misconduct of an advocate. The Bar Council of India has framed Rules called "*The Bar Council of India Rules*" (hereinafter referred to as "the Rules") in exercise of its rule-making power under the Advocates Act, 1961.

65. Part VII of the Rules deals with *disciplinary proceedings* against the advocates. In Chapter I of Part VII provisions have been made to deal with complaints of professional misconduct received against advocates as well as for the procedure to be followed by the Disciplinary Committees of the State Bar Councils and the Bar Council of India to deal with such complaints received under Sections 35 and 36 of the Act. Rule 1 of Chapter I of Part VII of the Rules provides that a complaint against an advocate shall be in the form of a petition duly signed and verified as required under the Code of

Civil Procedure, and shall be accompanied by the fees as prescribed by the Rules. On the complaint being found to be in order, the same shall be registered and placed before the Bar Council for such order as it may deem fit to pass. Sub-rule (2) provides that before referring a complaint made under Section 35(1) of the Act to one of its Disciplinary Committees the Bar Council may require the complainant to furnish better particulars and the Bar Council "may also call for the comments from the advocate complained against".

66. Rules 3 and 4 of Chapter I Part VII provide for the procedure to be followed in dealing with such complaints. These Rules read:

> "3. (1) After a complaint has been referred to a Disciplinary Committee by the Bar Council, the Registrar shall expeditiously send a notice to the advocate concerned requiring him to show cause within a specified date on the complaint made against him and to submit the statement of defence, documents and affidavits in support of such defence, and further informing him that in case of his non-appearance on the date of hearing fixed, the matter shall be heard and determined in his absence.
>
> *Explanation*: Appearance includes, unless otherwise directed, appearance by an advocate or through duly authorised representative.
>
> (2) If the Disciplinary Committee requires or permits, a complainant may file a replication within such time as may be fixed by the Committee.
>
> 4. The Chairman of the Disciplinary Committee shall fix the date, hour and place of the enquiry which shall not ordinarily be later than thirty days from the receipt of the reference. The Registrar shall give notice of such date, hour and place to the complainant or other person aggrieved, the advocate concerned and the Attorney General or the Additional Solicitor General of India or the Advocate General, as the case may be, and shall also serve on them copies of the complaint and such other documents mentioned in Rule 24 of this Chapter as the Chairman of the Committee may direct at least ten days before the date fixed for the enquiry."

67. Rules 5, 6 and 7 deal with the manner of service of notice, summoning of witnesses and appearance of the parties before the Disciplinary Committee. At any stage of the proceedings, the Disciplinary Committee may appoint an advocate to appear as amicus curiae and in case either of the parties absent themselves, the Committee may proceed ex parte against the absenting party and decide the case. Sub-rule (1) of Rule 8 provides:

> "The Disciplinary Committee shall hear the Attorney General or the Additional Solicitor General of India or the Advocate General, as the case may be or their advocate, and parties or their advocates, if they desire to be heard, and determine the matter on documents and affidavits unless it is of the opinion that it should be in the interest of justice to permit cross-examination of the deponents or to take oral evidence, in which case the procedure for the trial of civil suits shall as far as possible be followed."

Rules 9 and 10 deal with the manner of recording evidence during the enquiry into a complaint of professional misconduct and the maintenance of record by the Committee. Rule 14(1) lays down as follows:

"The finding of the majority of the members of the Disciplinary Committee shall be the finding of the Committee. The reason given in support of the finding may be given in the form of a judgment, and in the case of a difference of opinion, any member dissenting shall be entitled to record his dissent giving his own reason. It shall be competent for the Disciplinary Committee to award such costs as it thinks fit."

Rule 16 provides:

"16. (1) The Secretary of a State Bar Council shall send to the Secretary of the Bar Council of India quarterly statements of the complaints received and the stage of the proceedings before the State Bar Council and Disciplinary Committees in such manner as may be specified from time to time.

(2) The Secretary of the Bar Council of India may however call for such further statements and particulars as he considers necessary."

68. An appeal from the final order of the Disciplinary Committee of the Bar Council of a State is provided to the Bar Council of India under Section 37 of the Act and the procedure for filing such an appeal is detailed in Rules 19(2) to 31.

69. The object of referring to the various provisions of the Advocates Act, 1961 and the Rules framed thereunder is to demonstrate that an *elaborate* and *detailed procedure*, almost akin to that of a regular trial of a case by a court, has been prescribed to deal with a complaint of professional misconduct against an advocate before he can be *punished* by the Bar Council by revoking or suspending his licence or even for reprimanding him.

70. In *Bar Council of Maharashtra* v. *M.V. Dabholkar*[20] a seven-Judge Bench of this Court analysed the scheme of the Advocates Act, 1961 and, inter alia, observed: (SCC p. 709, para 24)

"*24.* The scheme and the provisions of the Act indicate that the constitution of State Bar Councils and Bar Council of India *is for one of the principal purposes* to see that the standards of professional conduct and etiquette laid down by the Bar Council of India are observed and preserved. The Bar Councils therefore entertain cases of misconduct against advocates. The Bar Councils are to safeguard the rights, privilege and interests of advocates. The Bar Council is a body corporate. The Disciplinary Committees are constituted by the Bar Council. The Bar Council is not the same body as its Disciplinary Committee. *One of the principal functions of the Bar Council in regard to standards of professional conduct and etiquette of advocates is to receive complaints against advocates and if the Bar Council has reason to believe that any advocate has been guilty of professional or other misconduct it shall refer the case for disposal to its Disciplinary Committee.* The Bar Council of a State may also of its own motion if it has reason to believe that any advocate has been guilty of professional or

20 (1975) 2 SCC 702

other misconduct it shall refer the case for disposal to its Disciplinary Committee. It is apparent that a State Bar Council not only receives a complaint but is required to apply its mind to find out whether there is any reason to believe that any advocate has been guilty of professional or other misconduct. The Bar Council of a State acts on that reasoned belief. *The Bar Council has a very important part to play, first in the reception of complaints, second, in forming reasonable belief of guilt of professional or other misconduct and finally in making reference of the case to its Disciplinary Committee.* The initiation of the proceeding before the Disciplinary Committee is by the Bar Council of a State. *A most significant feature is that no litigant and no member of the public can straightway commence disciplinary proceedings against an advocate. It is the Bar Council of a State which initiates the disciplinary proceedings.*" (emphasis supplied)

71. Thus, after the coming into force of the Advocates Act, 1961 with effect from 19-5-1961, matters connected with the *enrolment* of advocates as also their punishment for professional misconduct is governed by the provisions of that Act only. Since, the jurisdiction to grant licence to a law graduate to practise as an advocate vests exclusively in the Bar Council of the State concerned, the jurisdiction to suspend his licence for a specified term or to revoke it also vests in the same body.

72. The letters patent of the Chartered High Courts as well as of the other High Courts earlier did vest power in those High Courts *to admit* an advocate to practice. The power of suspending from practice being incidental to that of admitting to practice also vested in the High Courts. However, by virtue of Section 50 of the Advocates Act, with effect from the date when a State Bar Council is constituted under the Act, the provisions of the letters patent of any High Court and "of any other law" insofar as they relate to the admission and enrolment of a legal practitioner or confer on the legal practitioner the right to practise in any court or before any authority or a person as also the provisions relating to the "suspension or removal" of legal practitioners, whether under the letters patent of any High Court or of any other law, have been repealed. These powers *now* vest exclusively, under the Advocates Act, in the Bar Council of the State concerned. Even in England the courts of justice are now relieved from disbarring advocates from practice after the power of calling to the Bar has been delegated to the Inns of Court. The power to disbar the advocate also now vests exclusively in the Inns of Court and a detailed procedure has been laid therefor.

73. In *V.C. Mishra, Re, case*[1] the Bench relied upon its appellate jurisdiction under Section 38 (*supra*) also to support its order of suspending the licence of the contemner.

74. Dealing with the right of appeal conferred by Sections 37 and 38 of the Act, the Constitution Bench in *M.V. Dabholkar case*[20] observed: (SCC p. 711, para 28)

"28. Where a right of appeal to courts against an administrative or judicial decision is created by statute, the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words 'a person aggrieved' may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one 'a person aggrieved'. Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words 'a person aggrieved' is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words 'persons aggrieved' in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. *The test is whether the words 'person aggrieved' include 'a person who has a genuine grievance because an order has been made which prejudicially affects his interests'*. It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette." (emphasis supplied)

75. In *O.N. Mohindroo* v. *District Judge, Delhi*[21] it has been held that an appeal to the Supreme Court under Section 38 of the Act is not a restricted appeal. It is not an appeal on a question of law alone but also on questions of fact and under that section the Supreme Court has the jurisdiction to pass any order it deems fit on such an appeal but

> "no order of the Disciplinary Committee of the Bar Council of India shall be varied by the Supreme Court so as to prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard".

76. This Court is indeed the final appellate authority under Section 38 of the Act but we are not persuaded to agree with the view that this Court can in exercise of its appellate jurisdiction under Section 38 of the Act impose one of the punishments prescribed under that Act while punishing a contemner advocate in a contempt case. "Professional misconduct" of the advocate concerned is not a matter directly in issue in the contempt of court case. While dealing with a contempt of court case, this Court is obliged to examine whether the conduct complained of amounts to contempt of court and if the answer is in the affirmative, then to sentence the contemner for contempt of court by imposing any of the recognised and accepted punishments for committing contempt of court. Keeping in view the

21 (1971) 3 SCC 5

elaborate procedure prescribed under the Advocates Act, 1961 and the Rules framed thereunder it follows that a complaint of professional misconduct is required to be *tried* by the Disciplinary Committee of the Bar Council, like the trial of a criminal case by a court of law and an advocate may be punished on the basis of evidence led before the Disciplinary Committee of the Bar Council after being afforded an opportunity of hearing. The delinquent advocate may be suspended from practice for a specified period or even removed from the rolls of the advocates or imposed any other punishment as provided under the Act. The enquiry is a detailed and elaborate one and is not of a *summary nature*. It is therefore, not permissible for this Court to punish an advocate for "professional misconduct" in exercise of the appellate jurisdiction by converting itself as the statutory body exercising "original jurisdiction". Indeed, if in a given case the Bar Council concerned on being apprised of the contumacious and blameworthy conduct of the advocate by the High Court or this Court does not take any action against the said advocate, this Court may well have the jurisdiction in exercise of its appellate powers under Section 38 of the Act read with Article 142 of the Constitution to proceed suo motu and send for the records from the Bar Council and pass appropriate orders against the advocate concerned. In an appropriate case, this Court may consider the exercise of appellate jurisdiction even suo motu provided there is some cause pending before the Bar Council concerned, and the Bar Council does "not act" or fails to act, by sending for the record of that cause and pass appropriate orders.

77. However, the exercise of powers under the contempt jurisdiction cannot be confused with the appellate jurisdiction under Section 38 of the Act. The two jurisdictions are separate and distinct. We are, therefore, unable to persuade ourselves to subscribe to the contrary view expressed by the Bench in *V.C. Mishra case*[1] because in that case the Bar Council had not declined to deal with the matter and take appropriate action against the advocate concerned. Since there was no cause pending before the Bar Council, this Court could not exercise its appellate jurisdiction in respect of a matter which was *never* under consideration of the Bar Council.

78. Thus, to conclude we are of the opinion that this Court cannot in exercise of its jurisdiction under Article 142 read with Article 129 of the Constitution, while punishing a contemner for committing contempt of court, also impose a punishment of suspending his licence to practice, where the contemner happens to be an advocate. Such a punishment cannot even be imposed by taking recourse to the appellate powers under Section 38 of the Act while dealing with a case of contempt of court (and not an appeal relating to professional misconduct as such). To that extent, the law laid down in *Vinay Chandra Mishra, Re*[1] is not good law and we overrule it.

79. An advocate who is found guilty of contempt of court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case. The learned

Solicitor General informed us that there have been cases where the Bar Council of India taking note of the contumacious and objectionable conduct of an advocate, had initiated disciplinary proceedings against him and even punished him for "professional misconduct", on the basis of his having been found guilty of committing contempt of court. We do not entertain any doubt that the Bar Council of the State or Bar Council of India, as the case may be, when apprised of the established contumacious conduct of an advocate by the High Court or by this Court, would rise to the occasion, and take appropriate action against such an advocate. Under Article 144 of the Constitution "all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court". The Bar Council which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette is also obliged to act "in aid of the Supreme Court". It must, whenever facts warrant, rise to the occasion and discharge its duties uninfluenced by the position of the contemner advocate. It must act in accordance with the prescribed procedure, whenever its attention is drawn by this Court to the contumacious and unbecoming conduct of an advocate which has the tendency to interfere with due administration of justice. It is possible for the High Courts also to draw the attention of the Bar Council of the State to a case of professional misconduct of a contemner advocate to enable the State Bar Council to proceed in the manner prescribed by the Act and the Rules framed thereunder. There is no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the courts and the majesty of law and prevent any interference in the administration of justice. Learned counsel for the parties present before us do not dispute and rightly so that whenever a court of record records its findings about the conduct of an advocate while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the Bar Council concerned, appropriate action should be initiated by the Bar Council concerned in accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette. Nothing is more destructive of public confidence in the administration of justice than incivility, rudeness or disrespectful conduct on the part of a counsel towards the court or disregard by the court of the privileges of the Bar. In case the Bar Council, even after receiving "reference" from the Court, fails to take action against the advocate concerned, this Court might consider invoking its powers under Section 38 of the Act by sending for the record of the proceedings from the Bar Council and passing appropriate orders. Of course, the appellate powers under Section 38 would be available to this Court only and not to the High Courts. We, however, hope that such a situation would not arise.

80. In a given case it may be possible, for this Court or the High Court, to prevent the contemner advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of

contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practice as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practice as an advocate in other courts or tribunals.

81. We are conscious of the fact that the conduct of the contemner in *V.C. Mishra case*[1] was highly contumacious and even atrocious. It was unpardonable. The contemner therein had abused his professional privileges while practising as an advocate. He was holding a very senior position in the Bar Council of India and was expected to act in a more reasonable way. He did not. These factors appear to have influenced the Bench in that case to itself punish him by suspending his licence to practice also while imposing a suspended sentence of imprisonment for committing contempt of court but while doing so this Court vested itself with a jurisdiction where none exists. The position would have been different had a reference been made to the Bar Council and the Bar Council did not take any action against the advocate concerned. In that event, as already observed, this Court in exercise of its appellate jurisdiction under Section 38 of the Act read with Article 142 of the Constitution of India, might have exercised suo motu powers and sent for the proceedings from the Bar Council and passed appropriate orders for punishing the contemner advocate for professional misconduct after putting him on notice as required by the *proviso* to Section 38 which reads thus:

> "Provided that no order of the Disciplinary Committee of the Bar Council of India shall be varied by the Supreme Court so as to prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard."

But it could not have done so in the first instance.

82. In *V.C. Mishra case*[1] the Bench relied upon its inherent powers under Article 142 to punish him by suspending his licence, without the Bar Council having been given any opportunity to deal with his case under the Act. We cannot persuade ourselves to agree with that approach. It must be remembered that wider the amplitude of its power under Article 142, the greater is the need of care for this Court to see that the power is used with restraint without pushing back the limits of the Constitution so as to function within the bounds of its own jurisdiction. To the extent this Court makes the statutory authorities and other organs of the State perform their duties in accordance with law, its role is unexceptionable but it is not permissible for the Court to "take over" the role of the statutory bodies or other organs of the State and "perform" their functions.

83. Upon the basis of what we have said above, we answer the question posed in the earlier part of this order in the negative. The writ petition succeeds and is ordered accordingly.

facilitate the investigation — Respondents permitted to raise all contentions for discharge at the appropriate stage

Rajesh Bajaj v. *State NCT of Delhi*, (1999) 3 SCC 259 : 1999 SCC (Cri) 401 : JT (1999) 2 SC 112, *followed*

ORDER

1. Leave granted.

2. We heard both sides.

3. In view of the decision of this Court in *Rajesh Bajaj* v. *State NCT of Delhi*[1] we set aside the impugned order with a view to facilitate investigation to be completed. The investigating agency can proceed with the investigation of the case and reach a final conclusion on their own, either way. If the persons shown as accused in the FIR are to be arrested in the meanwhile we direct that those persons shall be released on bail on executing a self bond for such sum as the arresting officer may deem fit.

4. If the investigation reaches the conclusion that a final report under Section 173 of the Criminal Procedure Code has to be laid against the respondents, we permit the respondents to raise all their contentions for a discharge at the appropriate stage.

5. The respondents as well as the appellants would render all assistance to the investigating officer to complete the investigation as expeditiously as possible.

6. The investigating officer is permitted to take samples of any article which he suspects to be contraband. This is observed for the purpose of avoiding the possibility of seizing the whole goods during the investigation stage.

7. This order will be without prejudice to the contentions of the respondents that no offence has been committed and also of the contentions of the appellants that offence has been committed.

8. We make it clear that this order will not prejudice the civil rights of both parties in respect of the case involved.

9. These appeals are disposed of accordingly.

(2001) 8 Supreme Court Cases 650

(BEFORE K.T. THOMAS AND S.N. VARIAVA, JJ.)

PRAVIN C. SHAH . . Appellant;

Versus

K.A. MOHD. ALI AND ANOTHER . . Respondents.

Civil Appeal No. 3050 of 2000[*], decided on October 9, 2001

A. **Contempt of Court — Guilty advocate's duty to purge self of contempt — High Court Rule stipulating that advocate found guilty of contempt of court must purge himself before being permitted to appear in**

[*] From the Judgment and Order dated 19-2-2001 of the Disciplinary Committee of the Bar Council of India, New Delhi in DCA No. 34 of 1998

courts again — Held, Bar Council cannot overrule such a rule, which concerns the orderly conduct of court proceedings and is therefore within the jurisdiction of High Court — Clarified that power vested in High Court to formulate rules for regulating proceedings inside the court, including the conduct of advocates, is distinct from control over an advocate's right to practise law, which is the exclusive domain of the Bar Council — Where respondent guilty advocate continued to appear before various courts despite non-acceptance of his apology by Supreme Court held, Bar Council of India erred in setting aside the order of the Bar Council of Kerala, based partly on R. 11 of the relevant Rules of Kerala High Court, imposing punishment of debarring him from acting or pleading in any court till he gets himself purged of the contempt of court by an order of the appropriate court — Advocates Act, 1961, S. 34(1)

B. Contempt of Courts Act, 1971 — Ss. 2(c) & 12 — Purging by contemnor of the guilt of criminal contempt of court — Held, merely undergoing penalty imposed is not sufficient, but there is no need for any particular mode to be followed — What is required is (i) genuine remorse; and (ii) seeking pardon of court and communicating to court one's resolve not to repeat contumacious act — Formal apology lacking in genuine remorse and sincerity, unacceptable to court, is not sufficient — Only if apology is accepted by court can it be said that contemnor has purged himself — Words and Phrases — "Purging"

C. Contempt of Courts Act, 1971 — S. 2(b) — Purging by contemnor of guilt of civil contempt — Held, obeying the order of the court and/or undoing the wrong done would amount to purging in a substantial manner — However merely undergoing penalty imposed would not be sufficient

D. Advocates Act, 1961 — S. 30 — Right of advocates to practise — Held, envelops a number of acts to be performed in discharge of professional duties — Such acts include providing counsel to clients, giving legal opinions whenever sought, drafting instruments, pleadings, affidavits or other documents and participating in conferences involving the law — Words and Phrases — "Practise"

E. Advocates Act, 1961 — Ss. 30, 6(c), 7(b) — Advocate's right to practise — Held, Bar Council exercises control over — Whereas High Court has power to formulate rules for regulating proceedings inside the court, including the conduct of advocates during such proceedings — Clarified that court cannot be deprived of control or supervision of proceedings inside a court, merely because the right of an advocate is involved

F. High Courts — Rules framed by High Court under S. 34(1) of Advocates Act, 1961 regarding conditions and practise of advocates — Rule in, providing that advocate guilty of contempt of court not to appear in court until after purging himself of contempt — Directions issued by Supreme Court that in future in case of conviction of any advocate for contempt of court, Registrar of that High Court to intimate fact to all courts within the jurisdiction of the High Court

The respondent Advocate was found guilty of criminal contempt of court in two cases by the Kerala High Court. He was sentenced to pay a fine of Rs 10,000 in one matter and Rs 2000 in the other. His appeals to the Supreme

Court failed except to the extent that the Rs 2000 fine was set aside. He tendered an apology before the Supreme Court, which the Court did not accept. Thereafter, he continued to appear and conduct cases in various courts, in Ernakulam Distt. in Kerala.

The appellant, representing a residents' association, brought this fact to the notice of the Bar Council of Kerala, which initiated disciplinary proceedings against the respondent. The State Bar Council finally debarred him from "acting or pleading in any court till he gets himself purged of the contempt of court by an order of the appropriate court" as punishment. In reaching its decision the State Bar Council took into account Rule 11 of the Kerala High Court Rules under Section 34(1), Advocates Act regarding "conditions and practice of advocates", requiring such purging.

The Bar Council of India allowed the advocate's appeal and set aside the order of the State Bar Council, primarily on the finding that the powers of the Bar Council had been usurped by the High Court Rule.

Disposing of the appeal, the Supreme Court

Held :

In the impugned order the Disciplinary Committee of the Bar Council of India rightly stated that "the exercise of the disciplinary powers over the advocates is exclusively vested with the Bar Council and this power cannot be taken away by the High Court either by a judicial order or by making a rule". This is precisely the legal position adumbrated by the Constitution Bench of the Supreme Court in *Supreme Court Bar Assn.* v. *Union of India*.

Supreme Court Bar Assn. v. *Union of India*, (1998) 4 SCC 409, *relied on*

But having informed themselves of the correct legal position regarding the powers of the Bar Council the members of the Disciplinary Committee of the Bar Council of India embarked on a very erroneous concept when it observed that to say that an advocate who had been found guilty of contempt of court shall not be permitted to appear, act or plead in a court unless he has purged himself of the contempt would amount to usurpation of powers of Bar Council."

(Para 12)

Rule 11 of the Kerala High Court Rules framed under Section 34(1) of the Advocates Act, 1961 is not a provision intended for the Disciplinary Committee of the Bar Council of the State or the Bar Council of India. It is a matter entirely concerning the dignity and the orderly functioning of the courts. The right of the advocate to practise envelops a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions etc. Rule 11 has nothing to do with all the acts done by an advocate during his practice except his performance inside the court. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by the Bar Council in exercise of its disciplinary powers. The right to practise, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must have the major supervisory power. Hence the court cannot be divested of the control or supervision of the court merely because it may involve the right of an advocate. (Para 16)

When the Rules stipulate that a person who committed contempt of court cannot have the unreserved right to continue to appear and plead and conduct cases in the courts without any qualm or remorse, the Bar Council cannot overrule such a regulation concerning the orderly conduct of court proceedings. Courts of law are structured in such a design as to evoke respect and reverence for the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who was found guilty of contempt of court on the previous hour, standing in the court and arguing a case or cross-examining a witness on the same day, unaffected by the contemptuous behaviour he hurled at the court, would erode the dignity of the court besides impairing the confidence of the public in the efficacy of the institution of the courts. This necessitates vesting of power with the High Court to formulate rules for regulating the proceedings inside the court including the conduct of advocates during such proceedings. That power should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the High Court should be in control of the former. (Para 17)

Prayag Das v. *Civil Judge, Bulandshahr*, AIR 1974 All 133, *approved*

Hadkinson v. *Hadkinson*, (1952) 2 All ER 567 : 1952 P 285 (CA), *relied on*

Rule 11 of the Rules is a self-operating provision. When the first postulate of it is completed (that the advocate has been found guilty of contempt of court) his authority to act or plead in any court stands snapped for the time being. If he does such things without the express permission of the court he would again be guilty of contempt of court besides such act being a misconduct falling within the purview of Section 34 of the Advocates Act. The interdict as against him from appearing in court as a counsel would continue until such time as he purges himself of the contempt. (Para 22)

Purging is a process by which an undesirable element is expelled either from one's own self or from a society. It is a cleaning process. Purge is a word which acquired implications first in theological connotations. In the case of a sin, purging of such sin is made through the expression of sincere remorse coupled with doing the penance required. In the case of a guilt, purging means to get himself cleared of the guilt. The concept of purgatory was evolved from the word "purge", which is a state of suffering after this life in which those souls, who depart this life with their deadly sins, are purified and rendered fit to enter into heaven where nothing defiled enters. (Para 24)

Words and Phrases, Permanent Edn., Vol. 35-A, p. 307, *relied on*

Black's Law Dictionary, *relied on*

It is preposterous to suggest that if the convicted person undergoes punishment or if he tenders the fine amount imposed on him the purge would be completed. (Para 24)

Obeying the orders of the court would be a mode by which one can make the purging process in a substantial manner when it is a civil contempt. Even for such a civil contempt the purging process would not be treated as completed merely by the contemnor undergoing the penalty imposed on him unless he has obeyed the order of the court or he has undone the wrong. If that is the position in regard to civil contempt the position regarding criminal contempt must be stronger. (Para 26)

The view that merely undergoing the penalty imposed on a contemnor is sufficient to complete the process of purging oneself of the contempt, particularly in a case where the contemnor is convicted of criminal contempt is not acceptable. The danger in giving accord to the said view is that if a contemnor is sentenced to a fine he can immediately pay it and continue to commit contempt in the same court, and then again pay the fine and persist with his contemptuous conduct. (Para 27)

Madan Gopal Gupta (Dr) v. *Agra University*, AIR 1974 All 39, *overruled*

Merely because the Rules did not prescribe the mode of purging oneself of the guilt it does not mean that one cannot purge the guilt at all. The first thing to be done in that direction when a contemnor is found guilty of a criminal contempt is to implant or infuse in his own mind real remorse about his conduct which the court found to have amounted to contempt of court. Next step is to seek pardon from the court concerned for what he did on the ground that he really and genuinely repented and that he has resolved not to commit any such act in future. It is not enough that he tenders an apology. The apology tendered should impress the court to be genuine and sincere. If the court, on being impressed of his genuineness, accepts the apology then it could be said that the contemnor has purged himself of the guilt. (Para 28)

M.Y. Shareef v. *Hon'ble Judges of the Nagpur High Court*, AIR 1955 SC 19 : 1955 Cri LJ 133; *M.B. Sanghi, Advocate* v. *High Court of Punjab and Haryana*, (1991) 3 SCC 600 : 1991 SCC (Cri) 897; *Mulk Raj* v. *State of Punjab*, (1972) 3 SCC 839 : 1973 SCC (Cri) 24, *relied on*

Thus, a mere statement made by a contemnor before court that he apologises is hardly enough to amount to purging himself of the contempt. The court must be satisfied of the genuineness of the apology. If the court is so satisfied and on its basis accepts the apology as genuine the court has to make an order holding that the contemnor has purged himself of the contempt. Till such an order is passed by the court the delinquent advocate would continue to be under the spell of the interdict contained in Rule 11 of the Rules. (Para 31)

In the present case, the respondent Advocate continued to appear in all the courts where he was earlier appearing even after he was convicted by the High Court for criminal contempt without objection by any court. This is obviously on account of the fact that presiding officers of the court were not informed of what happened. It is therefore directed that in future, whenever an advocate is convicted by the High Court for contempt of court, the Registrar of that High Court shall intimate the fact to all the courts within the jurisdiction of that High Court so that presiding officers of all courts would get the information that the particular advocate is under the spell of the interdict contained in Rule 11 of the Rules until he purges himself of the contempt. (Para 34)

C.N. Presannan v. *K.A. Mohammed Ali*, 1991 Cri LJ 2194 (Ker) & 1991 Cri LJ 2205 (Ker), *referred to*

It is still open to the respondent Advocate to purge himself of the contempt. But until that process is completed the respondent Advocate cannot act or plead in any court situated within the domain of the Kerala High Court, including the subordinate courts thereunder. The Registrar of the High Court of Kerala shall intimate all the courts about this interdict as against the respondent Advocate. (Para 35)

A-M/ITZ/24617/C

Advocates who appeared in this case :
Dushyant A. Dave, Senior Advocate (Amicus Curiae) [Siddhartha Dave and Haris Beeran, Advocates, with him] to Assist the Court.
M.K.S. Menon and A. Raghunath, Advocates, for the Appellant;
E.M.S. Anam, Advocate, for Respondent 1.
Ramesh Babu M.R., Advocate, for Respondent 2

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2. (1991) 3 SCC 600 : 1991 SCC (Cri) 897, *M.B. Sanghi, Advocate* v. *High Court of Punjab and Haryana* 662*c*–*d*
3. 1991 Cri LJ 2194 (Ker) & 1991 Cri LJ 2205 (Ker), *C.N. Presannan* v. *K.A. Mohammed Ali* 655*g*
4. AIR 1974 All 133, *Prayag Das* v. *Civil Judge, Bulandshahr* 659*f*
5. AIR 1974 All 39, *Madan Gopal Gupta (Dr)* v. *Agra University* 661*b*–*c*
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7. AIR 1955 SC 19 : 1955 Cri LJ 133, *M.Y. Shareef* v. *Hon'ble Judges of the Nagpur High Court* 662*b*–*c*
8. (1952) 2 All ER 567 : 1952 P 285 (CA), *Hadkinson* v. *Hadkinson* 660*b*

The Judgment of the Court was delivered by

THOMAS, J.— We thought that the question involved in this appeal would generate much interest to the legal profession and hence we issued notices to the Bar Council of India as well as the State Bar Council concerned. But the Bar Council of India did not respond to the notice. We therefore requested Mr Dushyant A. Dave, Senior Advocate, to help us as amicus curiae. The learned Senior Counsel did a commendable job to help us by projecting a wide screen focussing on the full profiles of the subject with his usual felicity. We are beholden to him.

2. When an advocate was punished for contempt of court can he appear thereafter as a counsel in the courts, unless he purges himself of such contempt? If he cannot, then what is the way he can purge himself of such contempt? That question has now come to be determined by the Supreme Court.

3. This matter concerns an advocate practising mostly in the courts situated within Ernakulam District of Kerala State. He was hauled up for contempt of court on two successive occasions. We wish to skip the facts in both the said cases which resulted in his being hauled up for such contempt as those facts have no direct bearing on the question sought to be decided now. (The detailed facts leading to the said proceedings have been narrated in the two decisions of the High Court of Kerala reported in *C.N. Presannan* v. *K.A. Mohammed Ali*[1].) Nonetheless, it is necessary to state that the High Court of Kerala found the respondent Advocate guilty of criminal contempt in both cases and convicted him under Section 12 of the Contempt of Courts Act, 1971, and sentenced him in one case to a fine of Rs 10,000 (to be credited, if realised, to the funds of Kerala Legal Aid Board). In the second case he was sentenced to pay a fine of Rs 2000. Though he challenged the

1 1991 Cri LJ 2194 (Ker) & 1991 Cri LJ 2205 (Ker)

conviction and sentence imposed on him by the High Court, he did not succeed in the Supreme Court except getting the fine of Rs 2000 in one case deleted. The apology tendered by him in this Court was not accepted, for which a two-Judge Bench made the following observation:

> "We regretfully will not be able to accept his apology at this belated juncture, but would rather admonish the appellant for his conduct under our plenary powers under the Constitution, which we do hereby."

4. The above conviction and sentence and refusal to accept the apology tendered on his behalf did not create any ripple in him, so far as his resolve to continue to appear and conduct cases in the courts was concerned. The present appellant (who represents an association "Lalan Road Residents' Association, Cochin") brought to the notice of the Bar Council of Kerala that the delinquent Advocate continued to conduct cases before the courts in Ernakulam District in spite of the conviction and sentence.

5. The Bar Council of Kerala thereupon initiated disciplinary proceedings against the respondent Advocate and finally imposed a punishment on him debarring him from "acting or pleading in any court till he gets himself purged of the contempt of court by an order of the appropriate court". The respondent Advocate challenged the order of the State Bar Council in an appeal filed before the Bar Council of India. By the impugned order the Bar Council of India set aside the interdict imposed on him.

6. This appeal, in challenge of the aforesaid order of the Bar Council of India, is preferred by the same person at whose instance the State Bar Council initiated action against the respondent Advocate.

7. While imposing the interdict on the Advocate the Disciplinary Committee of the Bar Council of the State took into account Rule 11 of the "Rules framed by the High Court of Kerala under Section 34(1) of the Advocates Act, 1961 regarding conditions of practice of advocates" (hereinafter referred to as "the Rules"). Rule 11 reads thus:

> "No advocate who has been found guilty of contempt of court shall be permitted to appear, act or plead in any court unless he has purged himself of the contempt."

8. The above Rule shows that it was not necessary for the Disciplinary Committee of the Bar Council to impose the said interdict as a punishment for misconduct. Even if the Bar Council had not passed proceedings (which the Disciplinary Committee of the Bar Council of India has since set aside as per the impugned order) the delinquent Advocate would have been under the disability contained in Rule 11 quoted above. It is a self-operating rule for which only one stipulation need be satisfied i.e. the advocate concerned should have been found guilty of contempt of court. The terminus of the period of operation of the interdict is indicated by the next stipulation i.e. the contemnor purges himself of the contempt. The inhibition will therefore start operating when the first stipulation is satisfied, and it would continue to function until the second stipulation is fulfilled. The latter condition would

remain eluded until the delinquent Advocate himself initiates steps towards that end.

9. Regarding the first condition there is no difficulty whatsoever in the present case because it is an admitted fact that the respondent Advocate has been found guilty of contempt of court by the High Court of Kerala in two cases successively. For the operation of the interdict contained in Rule 11 it is not even necessary that the Advocate should have been sentenced to any punishment after finding him guilty. The difficulty arises in respect of the second condition mentioned above.

10. The Disciplinary Committee of the Bar Council of India seems to have approached the question from a wrong angle by posing the following question:

> "The fundamental question arising for consideration in this appeal is whether Rule 11 of the Rules framed by the Hon'ble High Court of Kerala under Section 34(1) of the Advocates Act, 1961, is binding on the Disciplinary Committee of the State Bar Council and if not, whether the Disciplinary Committee was justified in ordering that on account of the disqualification under Rule 11 the appellant could not be allowed to appear, act or plead till he gets himself purged of the contempt by an order of the appropriate court."

11. There is no question of Rule 11 being binding on the Disciplinary Committee or any other organ of the Bar Council. There is nothing in the said Rule which would involve the Bar Council in any manner. But there is nothing wrong in the Bar Council informing a delinquent advocate of the existence of a bar contained in Rule 11 and remind him of his liability to abide by it. Hence the question formulated by the Disciplinary Committee of the Bar Council of India, as aforequoted, was unnecessary and fallacious.

12. In the impugned order the Disciplinary Committee rightly stated that "the exercise of the disciplinary powers over the advocates is exclusively vested with the Bar Council and this power cannot be taken away by the High Court either by a judicial order or by making a rule". This is precisely the legal position adumbrated by the Constitution Bench of this Court in *Supreme Court Bar Assn.* v. *Union of India*[2]. In fact the relevant portions of the said decision have been quoted in the impugned order in extenso. But having informed themselves of the correct legal position regarding the powers of the Bar Council the members of the Disciplinary Committee of the Bar Council of India embarked on a very erroneous concept when it observed the following:

> "But to say that an advocate who had been found guilty of contempt of court shall not be permitted to appear, act or plead in a court unless he has purged himself of the contempt would amount to usurpation of powers of Bar Council."

2 (1998) 4 SCC 409

13. After examining Rule 11 of the Rules the Disciplinary Committee of the Bar Council of India held that

> "there cannot be an automatic deprivation of the right of an advocate to appear, act or plead in a court, since such a course would be unfair and even violative of the fundamental rights guaranteed under Articles 14, 19(1)(*g*) and 21 of the Constitution of India".

In the end the Disciplinary Committee of the Bar Council of India made an unwarranted proposition on a misplaced apprehension as follows:

> "The independence and autonomy of the Bar Council cannot be surrendered to the provisions contained in Rule 11 of the Rules made by the High Court of Kerala under Section 34(1) of the Advocates Act."

14. By giving expression to such a proposition the Bar Council of India has obviously overlooked the legal position laid down by the Constitution Bench in *Supreme Court Bar Assn.* v. *Union of India*[2]. In para 57 of the decision the Bench said thus: (SCC p. 438)

> "*57.* In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing 'professional misconduct', depending upon the gravity or nature of his contumacious conduct, but the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an advocate by suspending his licence or by removal of his name from the roll of the State Bar Council for proven professional misconduct *vests exclusively* in the statutory authorities created under the Advocates Act, 1961, while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts."

15. Thereafter in para 80, the Constitution Bench said the following: (SCC pp. 445-46)

> "*80.* In a given case it may be possible, for this Court or the High Court, to prevent the contemnor advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practise as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practise as an advocate in other courts or tribunals."

16. Rule 11 of the Rules is not a provision intended for the Disciplinary Committee of the Bar Council of the State or the Bar Council of India. It is a matter entirely concerning the dignity and the orderly functioning of the courts. The right of the advocate to practise envelops a lot of acts to be performed by him in discharge of his professional duties. Apart from

appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions etc. Rule 11 has nothing to do with all the acts done by an advocate during his practice except his performance inside the court. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by the Bar Council in exercise of its disciplinary powers. The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must have the major supervisory power. Hence the court cannot be divested of the control or supervision of the court merely because it may involve the right of an advocate.

17. When the Rules stipulate that a person who committed contempt of court cannot have the unreserved right to continue to appear and plead and conduct cases in the courts without any qualm or remorse, the Bar Council cannot overrule such a regulation concerning the orderly conduct of court proceedings. Courts of law are structured in such a design as to evoke respect and reverence for the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who was found guilty of contempt of court on the previous hour, standing in the court and arguing a case or cross-examining a witness on the same day, unaffected by the contemptuous behaviour he hurled at the court, would erode the dignity of the court and even corrode the majesty of it besides impairing the confidence of the public in the efficacy of the institution of the courts. This necessitates vesting of power with the High Court to formulate rules for regulating the proceedings inside the court including the conduct of advocates during such proceedings. That power should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the High Court should be in control of the former.

18. In the above context it is useful to quote the following observations made by a Division Bench of the Allahabad High Court in *Prayag Das* v. *Civil Judge, Bulandshahr*[3]: (AIR p. 136, para 9)

> "[T]he High Court has a power to regulate the appearance of advocates in courts. The right to practise and the right to appear in courts are not synonymous. An advocate may carry on chamber practice or even practise in courts in various other ways, e.g., drafting and filing of pleadings and vakalatnama for performing those acts. For that purpose his physical appearance in courts may not at all be necessary. For the purpose of regulating his appearance in courts the High Court should be the appropriate authority to make rules and on a proper construction of Section 34(1) of the Advocates Act it must be inferred that the High Court has the power to make rules for regulating the appearance of

3 AIR 1974 All 133

advocates and proceedings inside the courts. Obviously the High Court is the only appropriate authority to be entrusted with this responsibility."

19. In our view, the legal position has been correctly delineated in the above statements made by the Allahabad High Court. The context for making those statements was that an advocate questioned the powers of the High Court in making dress regulations for the advocates while appearing in courts.

20. Lord Denning had observed as follows in *Hadkinson* v. *Hadkinson*[4]: (All ER p. 575B-C)

> "... I am of the opinion that the fact that a party to a cause has disobeyed an order of the court is not of itself a bar to his being heard, but if his disobedience is such that, so long as it continues, it impedes the course of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it may make, then the court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed."

21. The observations can apply to the courts in India without any doubt and at the same time without impeding the disciplinary powers vested in the Bar Councils under the Advocates Act.

22. We have already pointed out that Rule 11 of the Rules is a self-operating provision. When the first postulate of it is completed (that the advocate has been found guilty of contempt of court) his authority to act or plead in any court stands snapped, though perhaps for the time being. If he does such things without the express permission of the court he would again be guilty of contempt of court besides such act being a misconduct falling within the purview of Section 34 of the Advocates Act. The interdict as against him from appearing in court as a counsel would continue until such time as he purges himself of the contempt.

23. Now we have to consider the crucial question how can a contemnor purge himself of the contempt? According to the Disciplinary Committee of the Bar Council of India, purging oneself of contempt can be done by apologising to the court. The said opinion of the Bar Council of India can be seen from the following portion of the impugned order:

> "Purging oneself of contempt can be only by regretting or apologising in the case of a completed action of criminal contempt. If it is a case of civil contempt, by subsequent compliance with the orders or directions the contempt can be purged of. There is no procedural provision in law to get purged of contempt by an order of an appropriate court."

24. Purging is a process by which an undesirable element is expelled either from one's own self or from a society. It is a cleaning process. Purge is a word which acquired implications first in theological connotations. In the case of a sin, purging of such sin is made through the expression of sincere remorse coupled with doing the penance required. In the case of a guilt,

4 (1952) 2 All ER 567 : 1952 P 285 (CA)

purging means to get himself cleared of the guilt. The concept of purgatory was evolved from the word "purge", which is a state of suffering after this life in which those souls, who depart this life with their deadly sins, are purified and rendered fit to enter into heaven where nothing defiled enters (vide *Words and Phrases*, Permanent Edn., Vol. 35-A, p. 307). In *Black's Law Dictionary* the word "purge" is given the following meaning: "To cleanse; to clear. To clear or exonerate from some charge or imputation of guilt, or from a contempt." It is preposterous to suggest that if the convicted person undergoes punishment or if he tenders the fine amount imposed on him the purge would be completed.

25. We are told that a learned Single Judge of the Allahabad High Court has expressed a view that purging process would be completed when the contemnor undergoes the penalty [vide *Madan Gopal Gupta (Dr)* v. *Agra University*[5]]. This is what the learned Single Judge said about it: (AIR p. 43, para 13)

> "In my opinion a party in contempt purged its contempt by obeying the orders of the court or by undergoing the penalty imposed by the court."

26. Obeying the orders of the court would be a mode by which one can make the purging process in a substantial manner when it is a civil contempt. Even for such a civil contempt the purging process would not be treated as completed merely by the contemnor undergoing the penalty imposed on him unless he has obeyed the order of the court or he has undone the wrong. If that is the position in regard to civil contempt the position regarding criminal contempt must be stronger. Section 2 of the Contempt of Courts Act categorises contempt of court into two categories. The first category is "civil contempt" which is the wilful disobedience of the order of the court including breach of an undertaking given to the court. But "criminal contempt" includes doing any act whatsoever, which tends to scandalise or lowers the authority of any court, or tends to interfere with the due course of a judicial proceeding or interferes with, or obstructs the administration of justice in any other manner.

27. We cannot therefore approve the view that merely undergoing the penalty imposed on a contemnor is sufficient to complete the process of purging himself of the contempt, particularly in a case where the contemnor is convicted of criminal contempt. The danger in giving accord to the said view of the learned Single Judge in the aforecited decision is that if a contemnor is sentenced to a fine he can immediately pay it and continue to commit contempt in the same court, and then again pay the fine and persist with his contemptuous conduct. There must be something more to be done to get oneself purged of the contempt when it is a case of criminal contempt.

28. The Disciplinary Committee of the Bar Council of India highlighted the absence of any mode of purging oneself of the guilt in any of the Rules as a reason for not following the interdict contained in Rule 11. Merely because

5 AIR 1974 All 39

the Rules did not prescribe the mode of purging oneself of the guilt it does not mean that one cannot purge the guilt at all. The first thing to be done in that direction when a contemnor is found guilty of a criminal contempt is to implant or infuse in his own mind real remorse about his conduct which the court found to have amounted to contempt of court. Next step is to seek pardon from the court concerned for what he did on the ground that he really and genuinely repented and that he has resolved not to commit any such act in future. It is not enough that he tenders an apology. The apology tendered should impress the court to be genuine and sincere. If the court, on being impressed of his genuineness, accepts the apology then it could be said that the contemnor has purged himself of the guilt.

29. This Court has held in *M.Y. Shareef* v. *Hon'ble Judges of the Nagpur High Court*[6] that

> "an apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness". (AIR p. 23, para 10)

Ahmadi, J. (as the learned Chief Justice then was) in *M.B. Sanghi, Advocate* v. *High Court of Punjab and Haryana*[7] while considering an apology tendered by an advocate in a contempt proceeding has stated thus: (SCC p. 603, para 2)

> "And here is a member of the profession who has repeated his performance presumably because he was let off lightly on the first occasion. Soft justice is not the answer — not that the High Court has been harsh with him — what I mean is he cannot be let off on an apology which is far from sincere. His apology was hollow, there was no remorse no regret it was only a device to escape the rigour of the law. What he said in his affidavit was that he had not uttered the words attributed to him by the learned Judge; in other words the learned Judge was lying adding insult to injury and yet if the court finds him guilty (he contested the matter tooth and nail) his unqualified apology may be accepted. This is no apology, it is merely a device to escape."

30. A four-Judge Bench of this Court in *Mulk Raj* v. *State of Punjab*[8] made the following observations which would throw considerable light on the question before us: (SCC p. 840, para 9)

> "9. Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace apology is shorn of penitence. If apology is offered at a time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and it becomes an act of a cringing coward. The High Court was right in not taking any notice of the appellant's expression of apology 'without any further word'. The High Court correctly said that acceptance of apology in the

6 AIR 1955 SC 19 : 1955 Cri LJ 133
7 (1991) 3 SCC 600 : 1991 SCC (Cri) 897
8 (1972) 3 SCC 839 : 1973 SCC (Cri) 24

case would amount to allow the offender to go away with impunity after having committed gross contempt."

31. Thus a mere statement made by a contemnor before court that he apologises is hardly enough to amount to purging himself of the contempt. The court must be satisfied of the genuineness of the apology. If the court is so satisfied and on its basis accepts the apology as genuine the court has to make an order holding that the contemnor has purged himself of the contempt. Till such an order is passed by the court the delinquent advocate would continue to be under the spell of the interdict contained in Rule 11 of the Rules.

32. Shri Sadrul Anam, learned counsel for the respondent Advocate submitted first, that the respondent has in fact apologised before this Court through the counsel engaged by him, and second is that when this Court observed that "this course should set everything at rest" it should be treated as the acknowledgement made by this Court that the contemnor has purged himself of the guilt.

33. We are unable to accept either of the said contentions. The observation that "this course should set everything at rest" in the judgment of this Court cannot be treated as anything beyond the scope of the plea made by the respondent in that case. That apart, this Court was certainly disinclined to accept the apology so tendered in this Court which is clearly manifested from the outright repudiation of that apology when this Court said thus:

> "We regretfully will not be able to accept his apology at this belated juncture, but would rather admonish the appellant for his conduct under our plenary powers under the Constitution, which we do hereby."

34. The respondent Advocate continued to appear in all the courts where he was earlier appearing even after he was convicted by the High Court for criminal contempt without being objected by any court. This is obviously on account of the fact that presiding officers of the court were not informed of what happened. We, therefore, direct that in future, whenever an advocate is convicted by the High Court for contempt of court, the Registrar of that High Court shall intimate the fact to all the courts within the jurisdiction of that High Court so that presiding officers of all courts would get the information that the particular advocate is under the spell of the interdict contained in Rule 11 of the Rules until he purges himself of the contempt.

35. It is still open to the respondent Advocate to purge himself of the contempt in the manner indicated above. But until that process is completed the respondent Advocate cannot act or plead in any court situated within the domain of the Kerala High Court, including the subordinate courts thereunder. The Registrar of the High Court of Kerala shall intimate all the courts about this interdict as against the respondent Advocate.

36. This appeal is disposed of accordingly.

(2004) 6 Supreme Court Cases 311

(BEFORE V.N. KHARE, C.J. AND BRIJESH KUMAR AND S.B. SINHA, JJ.)

BAR COUNCIL OF INDIA . . Petitioner;

Versus

HIGH COURT OF KERALA . . Respondent.

Writ Petition No. 52 of 2002†, decided on April 27, 2004

A. Advocates Act, 1961 — Ss. 34(1), 35, 36, 2(j), 19 and S. 30 (not yet brought into force) — Rules framed by High Court of Kerala under S. 34(1) of Advocates Act, 1961 regarding conditions of practice of advocates — R. 11 — Provision in, barring an advocate found guilty of contempt of court from appearing, acting or pleading in any court till he got himself purged of the contempt — Validity — Held, neither violative of Arts. 14 and 19(1)(g) nor impinging upon Bar Council of India's jurisdiction under S. 35, Advocates Act nor violative of principles of natural justice — Case-law discussed — Constitution of India, Arts. 14, 19(1)(g), 129 and 215 — Criminal Procedure Code, 1973, Ss. 345 and 346

B. Administrative Law — Natural justice — Principles of — Scope and applicability — Held, cannot be stretched too far — Their applicability may be subject to statutory provisions — Hence, Rule 11 framed by the High Court under S. 34(1), Advocates Act, being legislative in character, held, not hit by Art. 14 merely because of not providing for a further opportunity for hearing (Paras 43, 44 to 47, 52 and 5)

Pravin C. Shah v. *K.A. Mohd. Ali*, (2001) 8 SCC 650; *Ex Capt. Harish Uppal* v. *Union of India*, (2003) 2 SCC 45; *Mohinder Singh Gill* v. *Chief Election Commr.*, (1978) 1 SCC 405 : AIR 1978 SC 851; *N.K. Prasada* v. *Govt. of India*, (2004) 6 SCC 299; *Mardia Chemicals Ltd.* v. *Union of India*, (2004) 4 SCC 311 : (2004) 4 Scale 338; *Canara Bank* v. *Debasis Das*, (2003) 4 SCC 557 : 2003 SCC (L&S) 507, *followed*

Supreme Court Bar Assn. v. *Union of India*, (1998) 4 SCC 409, *explained*

R.L. Kapur v. *State of Madras*, (1972) 1 SCC 651 : 1972 SCC (Cri) 380; *Kapildeo Prasad Sah* v. *State of Bihar*, (1999) 7 SCC 569 : 1999 SCC (L&S) 1357; *Parashuram Detaram Shamdasani* v. *R.*, 1945 AC 264 : 114 LJPC 95 : 173 LT 400 (PC); *D.C. Saxena (Dr.)* v. *Hon'ble the Chief Justice of India*, (1996) 5 SCC 216, *relied on*

R. v. *Davison*, (1821) 4 B & Ald 329 : 106 ER 958; *Hoyd* v. *Biggin*, 1962 VLR 593; *Watt* v. *Ligertwood*, (1874) 2 Sc & Div 361 (HL); *Vinay Chandra Mishra, Re*, (1995) 2 SCC 584; *Sohan Lal Gupta* v. *Asha Devi Gupta*, (2003) 7 SCC 492, *referred to*

Union of India v. *Tulsiram Patel*, (1985) 3 SCC 398 : 1985 SCC (L&S) 672, *distinguished*

Borrie and Lowe: *The Law of Contempt*, p. 22; *Oswald's Contempt of Court*, 3rd Edn., pp. 8-9; *Kautilya's Arthasastra*, *referred to*

C. Advocates — Advocates Act, 1961 — Ss. 30 and 34 — Expression "subject to" occurring in S. 30 — Scope — Held, includes S. 34 (Para 29)

Ashok Leyland Ltd. v. *State of T.N.*, (2004) 3 SCC 1 : (2004) 1 Scale 224, *relied on*

Homan v. *Employers Reinsurance Corpn.*, 345 Mo 650, 136 SW 2d 289, 302, *referred to*

Black's Law Dictionary, 5th Edn., p. 1278, *referred to*

† Under Article 32 of the Constitution of India

D. Contempt of Court — Generally — Contempt by advocate — Law of contempt of court and particularly in respect of advocates reviewed and discussed (Paras 9 to 19 and 32 to 43)

Writ petition dismissed 11-M/30009/C

Advocates who appeared in this case :

V.R. Reddy, Senior Advocate (Sanjeev Sachdeva and Ms Priya Mehra Puri, Advocates, with him) for the Petitioner;

T.L.V. Iyer, Senior Advocate (Vipin Nair, P.B. Suresh and Nikilesh R., Advocates, with him) for the Respondents;

Ms B. Sunita Rao, Advocate, for the Intervenor.

Chronological list of cases cited ***on page(s)***

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2. (2004) 4 SCC 311 : (2004) 4 Scale 338, *Mardia Chemicals Ltd.* v. *Union of India* 324*e*
3. (2004) 3 SCC 1 : (2004) 1 Scale 224, *Ashok Leyland Ltd.* v. *State of T.N.* 319*a*
4. (2003) 7 SCC 492, *Sohan Lal Gupta* v. *Asha Devi Gupta* 324*c*
5. (2003) 4 SCC 557 : 2003 SCC (L&S) 507, *Canara Bank* v. *Debasis Das* 324*e*
6. (2003) 2 SCC 45, *Ex-Capt. Harish Uppal* v. *Union of India* 313*c*, 313*g-h*, 320*c-d*
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9. (1998) 4 SCC 409, *Supreme Court Bar Assn.* v. *Union of India* 313*c d*, 313*f g*, 319*c*, 319*e f*, 319*f*
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11. (1995) 2 SCC 584, *Vinay Chandra Mishra, Re* 319*c d*
12. (1985) 3 SCC 398 : 1985 SCC (L&S) 672, *Union of India* v. *Tulsiram Patel* 324*e*
13. (1978) 1 SCC 405 : AIR 1978 SC 851, *Mohinder Singh Gill* v. *Chief Election Commr.* 323*f g*
14. (1972) 1 SCC 651 : 1972 SCC (Cri) 380, *R.L. Kapur* v. *State of Madras* 314*d e*
15. 1962 VLR 593, *Hoyd* v. *Biggin* 316*a*
16. 1945 AC 264 : 114 LJPC 95 : 173 LT 400 (PC), *Parasharam Detaram Shamdasani* v. *R.* 314*g*, 314*g-h*, 315*c*
17. (1874) 2 Sc & Div 361 (HL), *Watt* v. *Tigerwood* 316*d*
18. (1821) 4 B & Ald 329 : 106 ER 958, *R.* v. *Davison* 315*d*
19. 345 Mo 650, 136 SW 2d 289, 302, *Homan* v. *Employers Reinsurance Corpn.* 319*b-c*

The Judgment of the Court was delivered by

S.B. SINHA, J.—

Introduction

1. Constitutionality of Rule 11 of the Rules framed by the High Court of Kerala forbidding a lawyer from appearing, acting or pleading in any court till he got himself purged of the contempt by an order of the appropriate court is in question in this writ petition.

Background fact

2. The Bar Council of India is a statutory body constituted under the Advocates Act, 1961 ("the Act"). In terms of Section 34(1) of the Act, the High Court of Kerala framed Rules; Rule 11 whereof reads as under:

"11. No advocate who has been found guilty of contempt of court shall be permitted to appear, act or plead in any court unless he has purged himself of the contempt."

3. Contending that the said provision is violative of Articles 14 and 19(1)(*g*) of the Constitution of India as also Section 34(1) of the Advocates Act on the ground that it seriously impinges upon and usurps the powers of adjudication and punishment conferred on the Bar Councils under the Act as also the principles of natural justice as application thereof is automatic, this writ petition has been filed by the petitioner.

4. It is not in dispute that the validity of the said rule came up for consideration before a Bench of this Court in *Pravin C. Shah* v. *K.A. Mohd. Ali*[1] and therein it was upheld. The question appears to have also been deliberated upon before a Constitution Bench of this Court in *Ex-Capt. Harish Uppal* v. *Union of India*[2].

Submissions

5. Despite the said decisions Mr V.R. Reddy, learned Senior Counsel appearing on behalf of the writ petitioner would urge, relying on or on the basis of the decision of this Court in *Supreme Court Bar Assn.* v. *Union of India*[3] that as in terms of the provisions of the Advocates Act, the Bar Council of India is entitled to punish an advocate/counsel for commission of misconduct — whether professional or otherwise — in terms of Section 35 thereof; Rule 11 framed by the High Court of Kerala cannot be sustained. The learned counsel would strenuously contend that no prohibition can be imposed on a lawyer to practise following and consequent upon a decision of a court holding him guilty of commission of contempt. No time-limit for debarment of an advocate having been prescribed under Rule 11 of the Rules, Mr Reddy would submit that the same is ultra vires Article 14 of the Constitution of India. The learned counsel would argue that in applying the provisions of Rule 11, the principles of natural justice are violated as no other or further opportunity of hearing is to be given therefor and in that view of the matter too the impugned judgment (*sic* rule) cannot be sustained.

6. Mr T.L.V. Iyer, learned Senior Counsel appearing on behalf of the High Court of Kerala, on the other hand, would argue that the decision of the Constitution Bench itself in *Supreme Court Bar Assn.*[3] is sufficient to uphold the validity of Rule 11 as therein the right of the courts to regulate the conduct of advocates within the court and to prescribe the conditions subject to which they can practise before it has been preserved which is not subservient to the disciplinary jurisdiction of the Bar Council.

7. The learned counsel would submit that the dicta laid down by the Constitution Bench have been referred to with approval in *Harish Uppal*[2] and in that view of the matter too the right of the High Court to frame such a rule must be held to have been upheld.

1 (2001) 8 SCC 650
2 (2003) 2 SCC 45
3 (1998) 4 SCC 409

8. Mr Iyer would further urge that an advocate can start pleading and practising in court as soon as he purges himself of contempt in relation whereto he must demonstrate that a real and genuine remorse had been infused in him about his conduct as a first step; whereafter, he may seek pardon from the court concerned.

Contempt jurisdiction of the court

9. Law of contempt both as regards its interpretation and application had posed complex questions before the court. "No branch of law possibly has been more misconstrued or misutilised within the contempt jurisdiction", observed Lord Denning. The contempt jurisdiction originates from the Ecclesiastical Courts which goes back to the middle ages while ethics and law were treated to be at par.

10. Inherent power of the court to punish a person for committing contempt of the court is universally recognised. The law of contempt is governed by the statutes including the Contempt of Courts Act, 1971 or other statutory laws relating thereto as, for example, the Indian Penal Code and the Code of Criminal Procedure but the powers of the superior courts are engrafted in the Constitution by reason of Articles 129 and 215 thereof providing that the Supreme Court and the High Court being courts of record shall have all the powers of such a court including the power to punish for contempt of themselves. Apart from constitutional and statutory provisions, the inherent power of the courts in that behalf is recognised. (See *R.L. Kapur* v. *State of Madras*[4].)

11. The country is governed by rule of law. Disobedience of the court's order has, thus, been held to strike at the very root of the said concept having regard to the system upon which our Government is based. (See *Kapildeo Prasad Sah* v. *State of Bihar*[5].)

12. An advocate is allowed considerable freedom in conducting his case. In the interest of the client, he can even cast reflections upon the character, conduct or credit of parties or witnesses with impunity, provided such comments are relevant to the issue before the court and the same are not defamatory in character. So long the conduct of the advocate does not amount to insult to the court, he may not be held up for contempt.

13. Summary power of punishing for contempt is used sparingly and only in serious cases. Such a power a court must of necessity possess but its usefulness would depend upon the wisdom and restraint with which it is exercised. It is not used to suppress methods of advocacy. (See *Parashuram Detaram Shamdasani* v. *R.*[6], AC at p. 270.)

14. In *Shamdasani case*[6] Lord Goddard, C.J., suggested other ways in which an advocate could commit contempt. He said:

4 (1972) 1 SCC 651 : 1972 SCC (Cri) 380
5 (1999) 7 SCC 569 : 1999 SCC (L&S) 1357
6 1945 AC 264 : 114 LJPC 95 : 173 LT 400 (PC)

"If in the course of a case a person persists in a line of conduct or use of language in spite of a ruling of the presiding judge, he may very properly be adjudged guilty of contempt of court, but then the offence is the disregard of the ruling and setting the court at defiance. So, also, if a litigant or advocate threatened or attempted violence on his opponent, or conceivably if he used language so outrageous and provocative as to be likely to lead to a brawl in court, the offence could be said to have been committed."

15. In Borrie and Lowe: *The Law of Contempt*, at p. 22, it is stated:

"Any advocate is likely to be punished for contempt if he personally insults the court and, as we have seen, insulting the court includes not only insults made to the judge, but also insults made to a jury. However, as has been stated already, a distinction must be made between addressing the court and addressing opposing counsel or litigant, for, as Lord Goddard, C.J., said in *Parashuram Detaram Shamdasani* v. *R.*[6]:

> 'It must be rare indeed for words used in the course of argument, however irrelevant, to amount to a contempt when they relate to an opponent, whether counsel or litigant.'

Just as an advocate will not be justified in using abusive language neither will he be able to use blasphemous language. Thus in *R.* v. *Davison*[7] a litigant conducting his own case repeatedly used blasphemous language and for this conduct he was held guilty of contempt, even after allowances had been made for the fact that he was a layman. As Bayley, J. said: (ER p. 960)

> "The question is shortly this, whether, for the future, decency and decorum shall or shall not be preserved in courts of justice; or whether, under colour of defending himself against any particular charge, a defendant is at liberty to introduce new, mischievous, and irrelevant matter upon his trial. I agree that a defendant, in all cases, should have every facility allowed to him in his address to the jury, provided he confines himself within those rules which decency and decorum require. In every case, the subject of discussion before the jury is to be considered, and a judge is bound to see that the arguments which are adduced, are such as are consistent with decency and decorum, and not foreign to the matter on which the jury have to decide.' "

In the said treatise, it has furthermore been noticed:

"Lord Goddard, C.J.'s last suggestion of barristers using threatening or abusive behaviour, or using provocative language, has already been discussed and needs no further explanation, but as regards his first suggestion, that complete disregard of a judge's ruling can amount to contempt, two cases may be cited to illustrate this type of contempt. The

7 (1821) 4 B & Ald 329 : 106 ER 958

first is a recent Australian case, *Lloyd* v. *Biggin*[7a]. Lloyd, a barrister, wanted a Magistrate to rule whether or not certain evidence was admissible but the Magistrate refused, stating that the question was not for him to decide. Lloyd then said: 'But Your Worship must determine....' He was interrupted by the Magistrate saying: 'Carry on with your case.'

The discourse continued thus:

Lloyd: 'Your Worship, with great respect, I wish Your Worship to determine whether Your Worship proposes to rule....'

Magistrate: 'Carry on with your cross-examination.'

Lloyd: 'I cannot carry on with any cross-examination unless Your Worship informs me whether this....'

Magistrate: 'I have had enough of your impertinence. I have put up with it for two days. You're....'

Lloyd: 'Would Your Worship just hear me?'

Magistrate: 'You're fined 5 for contempt of court. If you do anything more I will commit you.'

Lloyd: 'Your Worship, if you would just hear....'

Magistrate: 'You're committed. Constable, remove that man and place him in the watchtower for three hours.'

The second case, *Watt* v. *Ligertwood*[8] shows that such defiance of a judge's ruling need not be solely confined to the use of words. In this case, contrary to the express orders of the court, and despite a warning that such conduct would amount to contempt, an advocate removed a material document from the court and proceeded to destroy it by throwing it in a fire. For this 'gross and unjustifiable contempt' the advocate was immediately imprisoned.

An advocate will be expected to conduct his case honestly, and deliberate deception of the court can amount to contempt."

16. In *Oswald's Contempt of Court*, 3rd Edn., at pp. 8-9, the law is stated in the following terms:

"It is now the undoubted right of a superior court to commit for contempt. The usual criminal process to punish contempts was found to be cumbrous and slow, and therefore the courts at an uncertain date assumed jurisdiction themselves to punish the offence summarily, *brevi manu*, so that cases might be fairly heard, and the administration of justice not interfered with. A court of justice without power to vindicate its own dignity, to enforce obedience to its mandates, to protect its officers, or to shield those who are entrusted to its care, would be an anomaly which could not be permitted to exist in any civilized community."

7a 1962 VLR 593

8 (1874) 2 Sc & Div 361 (HL)

17. When a person is punished by the superior court, the right of freedom of speech conferred upon a citizen under Article 19(1)(*a*) of the Constitution of India cannot stand as a bar as the powers of this Court under Article 129 and those of the High Court under Article 215 are independent and not subject to Article 19(1)(*a*); particularly when clause (2) thereof excludes the operation thereof. [See *D.C. Saxena (Dr.)* v. *Hon'ble the Chief Justice of India*[9].]

18. An advocate does not enjoy absolute privilege when acting in the course of his professional duties. The dignity of the court is required to be maintained in all situations. However far-reaching implications the case may have but a lawyer is not justified in making personal attack upon the complainant or witnesses on matters not borne out by the record nor in using language which is abusive or obscene or in making vulgar gestures in court. An advocate in no circumstances is expected to descend to the level of appearing to support his view in a vulgar brawl.

19. Our view is only illustrative in nature to show that the courts ordinarily exercise their power of contempt with due care and caution and not mechanically and whimsically. The power of contempt is not exercised only because it is lawful to do so but when it becomes imperative to uphold the rule of law.

Advocates Act

20. The said Act was enacted to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Council and All-India Bar. An "advocate" has been defined to mean a person entered in any roll under the provisions of the said Act. The expression "prescribed" has been defined in Section 2(*j*) to mean prescribed by the Rules made therein. Section 19 of the Act empowers the Bar Councils to make rolls to carry out the purposes of Chapter II. Section 30 of the Act reads as under:

> "30. *Right of advocates to practise.*—Subject to the provisions of this Act, every advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territories to which this Act extends,—
>
> (*i*) in all courts including the Supreme Court;
>
> (*ii*) before any tribunal or person legally authorised to take evidence; and
>
> (*iii*) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise."

21. This provision has not yet been brought into force.

22. Section 34 of the Act empowers the High Court to make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto. Section 35 provides for conduct of advocates; sub-section (1) whereof is as under:

> "35. *Punishment of advocates for misconduct.*—(1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any

9 (1996) 5 SCC 216

advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee."

23. Section 36 provides for the disciplinary powers of the Bar Council of India.

24. An appeal lies to the Bar Council of India against a decision made under Section 35 whereas an appeal lies to this Court against an order made by the Bar Council of India.

Code of Criminal Procedure

25. Section 345 of the Code of Criminal Procedure provides for when an offence as is described under Sections 175, 178, 179 and 180 or 228 of the Indian Penal Code is committed in the view or in the presence of any civil, criminal or revenue court, before rising of the court, the court may detain the offender in custody and take cognisance of the offence and after giving the offender a reasonable opportunity of showing cause why he should not be punished, with a fine of Rs 200 or imprisonment in default for one month.

26. Section 346 provides for the procedure where the court is of the opinion that the offender should be imprisoned otherwise than in default of payment of fine or that a fine exceeding two hundred rupees should be imposed on him or such court is for any reason of the opinion that the case should not be disposed of under Section 345, such court after recording the facts constituting the offence and the statement of the accused may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such person before such Magistrate or if sufficient security is not given, shall forward such person in custody to such Magistrate.

27. Section 345 of the Code of Criminal Procedure deals with five classes of contempt, namely: (*i*) intentional omission to produce a document by a person legally bound to do so; (*ii*) refusal to take oath when duly required to take one; (*iii*) refusal to answer questions by one legally bound to state the truth; (*iv*) refusal to sign a statement made to a public servant when legally required to do so; and (*v*) intentional insult or interruption to a public servant at any stage of a judicial proceeding.

28. An advocate practising in the court can also be punished under the aforementioned provisions.

Distinction between contempt of court and misconduct by an advocate

29. Punishment for commission of contempt and punishment for misconduct, professional or other misconduct, stand on different footings. A person does not have a fundamental right to practise in any court. Such a right is conferred upon him under the provisions of the Advocates Act which necessarily would mean that the conditions laid down therein would be applicable in relation thereto. Section 30 of the Act uses the expression "subject to" which would include Section 34 of the Act.

30. In *Ashok Leyland Ltd.* v. *State of T.N.*[10] this Court noticed: (SCC p. 36, para 79)

" 'Subject to' is an expression whereby limitation is expressed. The order is conclusive for all purposes."

31. This Court further noticed the dictionary meaning of "subject to" stating: (SCC p. 38, paras 92-93)

"92. Furthermore, the expression 'subject to' must be given effect to.

93. In *Black's Law Dictionary*, 5th Edn., at p. 1278, the expression 'subject to' has been defined as under:

'Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for. (*Homan* v. *Employers Reinsurance Corpn.*[11])' "

Case-law

32. A Constitution Bench of this Court in *Supreme Court Bar Assn.*[3] no doubt overruled its earlier decision in *Vinay Chandra Mishra, Re*[12] so as to hold that this Court in exercise of its jurisdiction under Article 142 of the Constitution of India is only empowered to proceed suo motu against an advocate for his misconduct and send for the records and pass appropriate orders against the advocate concerned.

33. But it is one thing to say that the court can take suo motu cognisance of professional or other misconduct and direct the Bar Council of India to proceed against the advocate but it is another thing to say that it may not allow an advocate to practise in his court unless he purges himself of contempt.

34. Although in a case of professional misconduct, this Court cannot punish an advocate in exercise of its jurisdiction under Article 129 of the Constitution of India which can be imposed on a finding of professional misconduct recorded in the manner prescribed under the Advocates Act and the Rules framed thereunder but as has been noticed in *Supreme Court Bar Assn.*[3] professional misconduct of the advocate concerned is not a matter directly in issue in the matter of contempt case.

35. In *Supreme Court Bar Assn.*[3] however, this Court held: (SCC p. 438, para 57)

"57. In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing 'professional misconduct', depending upon the gravity or nature of his contumacious conduct, but the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an advocate by suspending his licence or by removal of his name from the roll of the State Bar Council for proven professional misconduct *vests exclusively* in the statutory

10 (2004) 3 SCC 1 : (2004) 1 Scale 224
11 345 Mo 650, 136 SW 2d 289, 302
12 (1995) 2 SCC 584

authorities created under the Advocates Act, 1961, while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts." (emphasis in original)

36. The Constitution Bench, however, in no uncertain terms observed: (SCC pp. 445-46, para 80)

"*80.* In a given case, it may be possible for this Court or the High Court, to prevent the contemner advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practise as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practise as an advocate in other courts or tribunals."

37. The Constitution Bench of this Court in *Harish Uppal*[2] noticed the aforementioned observations, stating: (SCC p. 67, para 25)

"*25.* ... Thus a Constitution Bench of this Court has held that the Bar Councils are expected to rise to the occasion as they are responsible to uphold the dignity of courts and majesty of law and to prevent interference in administration of justice. In our view it is the duty of the Bar Councils to ensure that there is no unprofessional and/or unbecoming conduct."

38. Holding that the right of appearance in courts is still within the control and jurisdiction of courts, this Court noticed: (SCC pp. 72-73, para 34)

"*34.* ... Section 30 of the Advocates Act has not been brought into force and rightly so. Control of conduct in court can only be within the domain of courts. Thus Article 145 of the Constitution of India gives to the Supreme Court and Section 34 of the Advocates Act gives to the High Courts power to frame rules including rules regarding condition on which a person (including an advocate) can practise in the Supreme Court and/or in the High Court and courts subordinate thereto. Many courts have framed rules in this behalf. Such a rule would be valid and binding on all. Let the Bar take note that unless self-restraint is exercised, courts may now have to consider framing specific rules debarring advocates, guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the courts. Such a rule if framed would not have anything to do with the disciplinary jurisdiction of the Bar Councils. It would be concerning the dignity and orderly functioning of the courts. The right of the advocate to practise envelops a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his

legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for clients before an arbitrator or arbitrators, etc. Such a rule would have nothing to do with all the acts done by an advocate during his practice. He may even file *vakalat* on behalf of a client even though his appearance inside the court is not permitted. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by them in exercise of their disciplinary powers. The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must and does have major supervisory and controlling power. Hence courts cannot be and are not divested of control or supervision of conduct in court merely because it may involve the right of an advocate. A rule can stipulate that a person who has committed contempt of court or has behaved unprofessionally and in an unbecoming manner will not have the right to continue to appear and plead and conduct cases in courts. The Bar Councils cannot overrule such a regulation concerning the orderly conduct of court proceedings. On the contrary, it will be their duty to see that such a rule is strictly abided by. Courts of law are structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who is guilty of contempt of court or of unbecoming or unprofessional conduct, standing in the court would erode the dignity of the court and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the courts. The power to frame such rules should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the courts are in control of the former. This distinction is clearly brought out by the difference in language in Section 49 of the Advocates Act on the one hand and Article 145 of the Constitution of India and Section 34(1) of the Advocates Act on the other. Section 49 merely empowers the Bar Council to frame rules laying down conditions subject to which an advocate shall have a right to practise i.e. do all the other acts set out above. However, Article 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the court including inter alia rules as to persons practising before this Court. Similarly Section 34 of the Advocates Act empowers High Courts to frame rules, inter alia to lay down conditions on which an advocate shall be permitted to practise in courts. Article 145 of the Constitution of India and Section 34 of the Advocates Act clearly show that there is no absolute right to an advocate to appear in a court. An advocate appears in a court subject to such

conditions as are laid down by the court. It must be remembered that Section 30 has not been brought into force and this also shows that there is no absolute right to appear in a court. Even if Section 30 were to be brought into force control of proceedings in court will always remain with the court. Thus even then the right to appear in court will be subject to complying with conditions laid down by courts just as practice outside courts would be subject to conditions laid down by the Bar Council of India. There is thus no conflict or clash between other provisions of the Advocates Act on the one hand and Section 34 or Article 145 of the Constitution of India on the other."

39. This Court is bound by the aforementioned decisions.

40. The question came up directly for consideration in *Pravin C. Shah*[1]. Thomas, J. speaking for the Bench inter alia observed that Rule 11 does not bind the Disciplinary Committee or any other organ of the Bar Council. It is in no way involved. It, however, may have a duty to inform a delinquent advocate of the Bar under Rule 11.

41. "Rule 11 concerns dignity and the orderly functioning of the courts", the Court held and further observed: (SCC p. 659, para 16)

> "*16.* ... Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by the Bar Council in exercise of its disciplinary powers. The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must have the major supervisory power. Hence the court cannot be divested of the control or supervision of the court merely because it may involve the right of an advocate."

42. Pointing out the difference between maintenance of dignity of court and corroding the majesty of it as also impairing the confidence of the public in the efficacy of the court vis-à-vis the professional misconduct of the lawyers, the Court held that Rule 11 is a self-operating provision. Addressing the question as to how a contemner can purge himself of contempt, this Court held that obeying the orders of the court or undergoing the penalty imposed by it may not necessarily be sufficient to complete purging of the contemner of the contempt, particularly, when the contemner is convicted of criminal contempt; it was observed that there must be something more to be done to get oneself purged of the criminal contempt. As regards rendering of apology, it was opined: (SCC p. 663, para 31)

> "*31.* Thus a mere statement made by a contemner before court that he apologises is hardly enough to amount to purging himself of the contempt. The court must be satisfied of the genuineness of the apology. If the court is so satisfied and on its basis accepts the apology as genuine the court has to make an order holding that the contemner has purged himself of the contempt. Till such an order is passed by the court the

delinquent advocate would continue to be under the spell of the interdict contained in Rule 11 of the Rules."

43. The said decision governs the field. We do not see any reason to depart from the views taken therein.

Article 19(1)(g)

44. The Bar Council of India is not a citizen entitling it to raise the question of validity of the Rules on the touchstone of Article 19(1)(*a*) of the Constitution. It has no such fundamental right. No person aggrieved who is a citizen of India is before us. The contention of Mr Reddy that Rule 11 of the Rules is violative of Article 19(1)(*g*) of the Constitution of India is, thus, misplaced. We cannot permit the Bar Council to raise the said contention.

Natural justice

45. Principles of natural justice are required to be observed by a court or tribunal before a decision is rendered involving civil consequences. They may only in certain situations be read into Article 14 of the Constitution of India when an order is made in violation of the rules of natural justice. Principles of natural justice, however, cannot be stretched too far. Their application may be subject to the provisions of a statute or statutory rule.

46. Before a contemner is punished for contempt, the court is bound to give an opportunity of hearing to him. Even such an opportunity of hearing is necessary in a proceeding under Section 345 of the Code of Criminal Procedure. But if a law which is otherwise valid provides for the consequences of such a finding, the same by itself would not be violative of Article 14 of the Constitution of India inasmuch as only because another opportunity of hearing to a person, where a penalty is provided for as a logical consequence thereof, has been provided for. Even under the penal laws some offences carry minimum sentence. The gravity of such offences, thus, is recognised by the legislature. The courts do not have any role to play in such a matter.

47. Rule 11 framed by the Kerala High Court is legislative in character. As validity of the said rule has been upheld, it cannot be said that the same by itself, having not provided for a further opportunity of hearing the contemner, would attract the wrath of Article 14 of the Constitution of India.

48. In *Mohinder Singh Gill* v. *Chief Election Comm'r*,[13] this Court observed: (SCC pp. 432-33, para 43)

> "*43.* Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes it, applies when people are affected by acts of authority. It is the hope of healthy government, recognised from earliest times and not a mystic testament of judge-made law. Indeed, from the legendary days of Adam — and of *Kautilya's Arthasastra* — the rule of law has had this stamp of natural

13 (1978) 1 SCC 405 : AIR 1978 SC 851

justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case-law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system."

49. In *N.K. Prasada* v. *Govt. of India*[14] this Court observed: (SCC p. 308, paras 24-25)

"*24.* The principles of natural justice, it is well settled, cannot be put into a straitjacket formula. Its application will depend upon the facts and circumstances of each case. It is also well settled that if a party after having proper notice chose not to appear, he at a later stage cannot be permitted to say that he had not been given a fair opportunity of hearing. The question had been considered by a Bench of this Court in *Sohan Lal Gupta* v. *Asha Devi Gupta*[15] of which two of us (V.N. Khare, C.J. and Sinha, J.) are parties wherein upon noticing a large number of decisions it was held: (SCC p. 506, para 29)

'*29.* The principles of natural justice, it is trite, cannot be put in a straitjacket formula. In a given case the party should not only be required to show that he did not have a proper notice resulting in violation of principles of natural justice but also to show that he was seriously prejudiced thereby.'

25. The principles of natural justice, it is well settled, must not be stretched too far."

(See also *Mardia Chemicals Ltd.* v. *Union of India*[16] and *Canara Bank* v. *Debasis Das*[17].)

50. In *Union of India* v. *Tulsiram Patel*[18] whereupon reliance has been placed by Mr Reddy, this Court held: (SCC p. 477, para 97)

"*97.* Though the two rules of natural justice, namely, *nemo judex in causa sua* and *audi alteram partem*, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal straitjacket. They are not immutable but flexible. These rules can be adapted and modified by statutes and statutory rules and also by the constitution of the Tribunal which has to decide a particular matter and the rules by which such Tribunal is governed."

14 (2004) 6 SCC 299
15 (2003) 7 SCC 492
16 (2004) 4 SCC 311 : (2004) 4 Scale 338
17 (2003) 4 SCC 557 : 2003 SCC (L&S) 507
18 (1985) 3 SCC 398 : 1985 SCC (L&S) 672

51. The ratio of the said decisions, therefore, does not support the proposition canvassed by Mr Reddy.

52. Furthermore, the contemner could also get an opportunity of hearing while purging his conduct. Rule 11 of the Rules, therefore, is not also ultra vires Article 14 of the Constitution.

Conclusion

53. We, therefore, are of the opinion that Rule 11 of the Rules framed by the Kerala High Court is not unconstitutional. There is no merit in this writ petition which is accordingly dismissed. There shall be no order as to costs.

(2004) 6 Supreme Court Cases 325

(BEFORE V.N. KHARE, C.J. AND S.B. SINHA AND S.H. KAPADIA, JJ.)

VICE-CHAIRMAN, KENDRIYA VIDYALAYA SANGATHAN AND ANOTHER .. Appellants;

Versus

GIRDHARILAL YADAV .. Respondent.

Civil Appeal No. 2785 of 2004†, decided on April 28, 2004

A. **Natural Justice — Generally — Extent to which applicable — Act of fraud — Held, it is also a well-settled principle of law that the principles of natural justice should not be stretched too far and the same cannot be put in a straitjacket formula — Respondent committing fraud on appellant in matter of appointment of respondent as principal in appellant's institute by submitting fraudulent caste certificate — Opportunity of hearing to be afforded — After detailed enquiries by the authorities below, wherein he had been given two opportunities of hearing, the respondent had been found guilty of fraud — Therefore no further opportunity of hearing was necessary to be afforded to him — Administrative Law — Natural justice — Generally**

B. **Evidence Act, 1872 — S. 58 — Admitted facts need not be proved**

An advertisement was issued for appointment on 92 posts of Principals of Kendriya Vidyalayas out of which 25 posts were reserved for OBC candidates. Pursuant to and in furtherance of the said advertisement, the respondent applied for the post as an OBC candidate on 28-3-1995. Along with the said application, he also annexed a caste certificate showing that he belonged to the OBC category. Relying on the basis of the said certificate produced by him at the Air Force Station, Jamnagar, Gujarat, he was offered an appointment by the appellants herein. However, later on, it was found that the said caste certificate did not satisfy the requirement of law and he had furnished false and inaccurate information and upon concealing his permanent residential address in Haryana. It was not in dispute that so far as the State of Haryana is concerned, at the relevant point of time, Ahirs/Yadavs were not treated as OBC. An enquiry was conducted by the District Magistrate wherein it was found that the respondent

† Arising out of SLP (C) No. 17481 of 2003

(2009) 8 Supreme Court Cases 106

(BEFORE B.N. AGRAWAL, G.S. SINGHVI AND AFTAB ALAM, JJ.)

Criminal Appeal No. 1393 of 2008†

R.K. ANAND .. Appellant;

Versus

REGISTRAR, DELHI HIGH COURT .. Respondent.

With

Criminal Appeal No. 1451 of 2008

I.U. KHAN .. Appellant;

Versus

REGISTRAR, DELHI HIGH COURT .. Respondent.

Criminal Appeals No. 1393 of 2008 with No. 1451 of 2008, decided on July 29, 2009

A. Contempt of Court — Contempt of court by advocates — "BMW hit-and-run case" — Interference with judicial proceedings by Senior Advocates — Defence counsel colluding with Special Public Prosecutor for suborning prosecution witness in criminal trial — Punishment for — Barring advocates found guilty of contempt from practising before courts for a certain period — Punishment awarded to advocates whether commensurate with gravity of misdeeds — High Court's jurisdiction and powers to impose — Need for notice in respect of punishment(s) that may be imposed

— Proceedings under Contempt of Courts Act — Nature and standard of proof required under

— Fairness of procedure adopted in present contempt proceedings — Conviction based on electronic recordings/electronically stored information (ESI) in clandestine/sting operation — Admissibility and authenticity of — Proof in respect of

— *Nature and extent of right of media to deal with a pending trial — Sting operation and telecast thereof in sub judice matter — Permissibility — Necessity of prior permission of trial court — Whether TV channel concerned guilty of contempt

— §Professional conduct of lawyers — Declining standards — Role and responsibilities of Bar Councils

— #Subversion and derailment of criminal trials in the country — Protection from external interference — High Court's powers of superintendence over subordinate courts for monitoring the criminal justice system

† From the Judgment and Order dated 21-8-2008 of the High Court of Delhi at New Delhi in WP (Crl.) No. 796 of 2007

* **Ed.**: See also *Shortnotes K, L, M, N and Q, below*

§ **Ed.**: See also *Shortnotes C, D, H, I and O, below*

Ed.: See also *Shortnote P, below*

— Held, proceeding of contempt of court is sui generis and not strictly controlled by provisions of CrPC and Evidence Act — What applies to a proceeding of contempt of court are the principles of natural justice — Those principles apply to contempt proceeding with greater rigour than any other proceeding — Court must follow a procedure that is fair and objective, that should cause no prejudice to the person facing the charge of contempt of court and that it should allow him the fullest opportunity to defend himself — Further, the Court must apprise the lawyer facing contempt that he upon conviction could be debarred from practise for certain period[cc]

— There may be ways in which conduct and actions of a malefactor who is an advocate may pose a real and imminent threat to the purity of court proceedings cardinal to any court's functioning, apart from constituting a substantive offence and contempt of court and professional misconduct — In such a situation the court does not only have the right but also the obligation to protect itself — Hence, to that end it can bar the malefactor from appearing before the courts for an appropriate period of time

— Since the contents of the sting recordings were admitted in the present case, there was no need for the proof of integrity and correctness of the electronic materials

— Also, the sting telecast by NDTV was in larger public interest — Sting programme telecast by NDTV in no way interfered with or obstructed the due course of any judicial proceeding — Rather, it was intended to prevent the attempt to interfere with or obstruct the due course of law in "BMW hit-and-run case" trial

— In the present case, sting programme telecast made serious allegations against the two lawyers — The allegations against Appellant 1, held, stood established after strict scrutiny by High Court and Supreme Court — Conduct of Appellant 2 however, held, did not constitute criminal contempt of court — However, allegations against him established to the extent that his conduct found to be inappropriate for a Special Public Prosecutor — Contempt of Courts Act, 1971 — Ss. 2(c), 12 and 15 to 17 — Evidence Act, 1872 — Ss. 65-A and 58 — Advocates Act, 1961 — Ss. 35 and 9 — Press and Media Laws — Undercover/Sting operations — Public Accountability and Vigilance

B. Contempt of Court — Criminal contempt — Prejudice to or interference with judicial proceeding — Nature of contempt jurisdiction and requisite proof in respect of — Suo motu cognizance — Permissibility — Appellants held guilty of contempt on basis of electronic recordings and materials — Authenticity and reliability of — Standard of proof required

— In high profile hit-and-run accident case telecast of sting operation conducted by news channel where prosecution witness shown meeting Special Public Prosecutor and Senior Defence Counsel (the appellant) — Appellants negotiating for said witness's sell-out in favour of the defence for a high price — Suo motu cognizance taken by High Court on basis of the telecast alone — High Court's examination and acceptance of copies and transcripts of audio and video recording of sting operation on which telecast based and finding of appellants guilty of contempt of court based thereon — Sustainability — Held, appellants guilty of committing contempt of court — High Court had rightly punished them by prohibiting them from appearing

cc **Ed.:** See also *Shortnote I, below*

in Delhi High Court and courts subordinate to it for a period of four months and holding that they had forfeited their right to be designated as Senior Advocates and imposing fine — Contempt of Courts Act, 1971 — Ss. 2(c), (ii), (iii), 12 and 19(1) — Constitution of India, Art. 215 *a*

C. Contempt of Court — Criminal contempt by advocate — Interference with judicial proceedings — Conduct whether amounting to — High Court observing that Appellant 2, Special Public Prosecutor being fully aware that prosecution witness was on highly familiar terms with a senior defence lawyer, was obliged to inform the prosecution about it — Basing culpability thereupon — From notice of contempt to Appellant 2 not discernible whether charge of criminal contempt would be fastened on him — Opportunity to defend himself if thus denied — Held, finding that the conduct of Appellant 2 was inappropriate for a lawyer in general and a prosecutor in particular, fully endorsed — However, there is a wide gap between professional misconduct and criminal contempt of court — Hence, Appellant 2 was entitled to opportunity to defend himself — Charge of criminal contempt not satisfactorily established — Directed that Full Court of Delhi High Court may still consider whether or not to continue the honour of Senior Advocate to Appellant 2 in light of the findings — Advocates — Professional misconduct — Constitution of India — Art. 215 — Contempt of Courts Act, 1971 — Ss. 2(c), (ii), (iii) and 17 — Advocates Act, 1961 — S. 35 *b c*

D. Contempt of Court — Punishment — Criminal contempt — Quantum of — Enhancement — Conduct of contemnor (a Senior Advocate) — Contemnor taking defiant stand and adopting intimidatory and obstructive measures before High Court — Filing petition requesting recusal of the Presiding Judge and then filing a review/clarification petition against the order passed thereon — Grounds taken in SLP challenging High Court's orders on recusal and review applications — Non-withdrawal of — Whether punishment given by High Court lenient in view of seriousness of actions — Notice issued to Appellant 1 for enhancement of punishment — Contempt of Courts Act, 1971, Ss. 12, 17 and 2(c)(ii) & (iii) *d e*

E. Contempt of Court — Criminal contempt — Prejudice to or interference with judicial proceeding — Suo motu cognizance by High Court based on sting operation telecast on television — Propriety — Contempt of Courts Act, 1971 — S. 15

F. Contempt of Court — Practice and procedure — Natural justice — Need for opportunity to alleged contemnor to lead evidence in respect of stand taken in his defence — Mandatory nature of — Defence plea taken by alleged contemnor not formally traversed — High Court rejecting said defence plea without requiring or affording opportunity to Appellant 2 to lead evidence thereon — Impermissibility — Civil Procedure Code, 1908 — Or. 8 Rr. 3 and 5 — Criminal Trial — Natural justice *f g*

G. Contempt of Court — Punishment for contempt — Sentencing — Notice — Need for notice in respect of specific punishment(s) that might be imposed (barring of advocates from practice for certain period in this case) — Contempt of Courts Act, 1971 — Ss. 12 and 17 — Punishment — Notice

H. Practice and Procedure — Recusal by Judge — Application for recusal — Grounds on which permissible — Motivated application — Proper mode of disposal of — Need for vigilance on part of Bench/Judge to ensure that recusal application was not seeking to intimidate the court, *h*

obfuscate issues or obstruct and delay the proceedings — Punishment to be imposed in case of motivated recusal application — Grave concern and sharp deprecation expressed in respect of such tendencies and practices on part of members of the Bar — Held, a motivated application for recusal needs to be dealt with sternly and ordinarily should be viewed as interference in due course of justice leading to penal consequences — Contempt of Courts Act, 1971 — Ss. 2(c)(ii), (iii) and 12 — Advocates Act, 1961 — S. 35 — Advocates — Professional misconduct

I. **Advocates — Professional standards and ethics — Persons that an advocate seized of a matter to maintain distance from — Witnesses — Familiarity cultivated by Appellant 2, Special Public Prosecutor with one of the prosecution witnesses, deprecated and finding of professional misconduct recorded therefor — Advocates Act, 1961 — S. 35 — Criminal Trial — Prosecutor — Criminal Procedure Code, 1973 — S. 24**

This matter arose from a criminal trial arising from a hit-and-run accident in which a car allegedly travelling at reckless speed crashed through a police checkpost and crushed to death six people, including three policemen. The main accused *S* was driving a black BMW car, in an inebriated state, at very high speed. The trial was meandering endlessly even after eight years of the accident and in the year 2007, a well-known English language news channel called New Delhi Television (NDTV) telecast a programme on 30-5-2007 in which one *K*, a witness for the prosecution, was shown meeting with *IU*, the Special Public Prosecutor (Appellant 2) and *R* (Appellant 1) the Senior Defence Counsel, and two others, and negotiating for his sell-out in favour of the defence for a very high price.

For the mission, *P*, a reporter of the channel had "wired" *K*, equipping him with a concealed camera and a small electronic device that comprised a tiny black button-shaped lens attached to his shirt front connected through a wire to a small recorder with a hidden microchip. *K* had at one time been considered the most valuable witness for the prosecution but afterwards, at an early stage in the trial, he had been dropped by the prosecution as one of its witnesses. Nearly eight years later, the trial court had summoned him to appear and give his testimony as a court witness. The telecast came a few weeks after the court order and even as his evidence in the trial was going on. According to NDTV, the programme was based on a clandestine operation carried out by means of a concealed camera with *K* acting as the mole.

Shocked by the programme, the Delhi High Court suo motu initiated a proceeding. It called for all the materials from the news channel on which the telecast was based and after examining those materials issued show-cause notices to *R*, *IU* and *B*, an associate advocate with *R*, why they should not be convicted and punished for committing criminal contempt of court as defined under Section 2(*c*) of the Contempt of Courts Act, 1971. The High Court expressed its displeasure over the role of *B* but acquitted him of the charge of contempt of court. As regards *R* and *IU* the High Court held them guilty of committing contempt of court and in exercise of power under Article 215 of the Constitution prohibited them from appearing in the Delhi High Court and the courts subordinate to it for a period of four months from the date of the judgment. The High Court also held that *R* and *IU* had forfeited their right to be designated as Senior Advocates and recommended to the Full Court to divest them of the

honour. Additionally, they were also sentenced to a fine of rupees two thousand each. The appellants had thus filed the present appeals.

The issues that arose before the Supreme Court were:

1. Whether the conviction of the two appellants for committing criminal contempt of court was justified and sustainable?

2. Whether the procedure adopted by the High Court in the contempt proceedings was fair and reasonable, causing no prejudice to the two appellants?

3. Whether it was open to the High Court to prohibit the appellants from appearing before the High Court and the courts subordinate to it for a specified period as one of the punishments for criminal contempt of court?

4. Whether in the facts and circumstances of the case the punishments awarded to the appellants could be said to be adequate and commensurate to their misdeeds?

5. The role of NDTV in carrying out sting operations and telecasting the programme based on the sting materials in regard to a criminal trial that was going on before the court;

6. The declining professional standards among lawyers; and

7. The root cause behind the whole affair; the way the BMW trial was allowed to go directionless.

Dismissing the appeal of Appellant 1 and partly allowing the appeal of Appellant 2, in terms below, the Supreme Court

Held :

The present matter deals with a proceeding under the Contempt of Courts Act. It is one thing to say that the standard of proof in a contempt proceeding is no less rigorous than a criminal trial but it is something entirely different to insist that the manner of proof for the two proceedings must also be the same. It is now well settled that the proceeding of contempt of court is sui generis. It is not strictly controlled by the provisions of the Criminal Procedure Code and the Evidence Act. What, however, applies to a proceeding of contempt of court are the principles of natural justice and those principles apply to contempt proceeding with greater rigour than any other proceeding. This means that the court must follow a procedure that is fair and objective; that should cause no prejudice to the person facing the charge of contempt of court and that should allow him/her the fullest opportunity to defend himself/herself.

(Paras 140 and 141)

On a careful consideration of the materials on record there is not the slightest doubt that the authenticity and integrity of the sting recordings was never disputed or doubted by *R* (Appellant 1). He kept on changing his stand in regard to the sting recordings. In the facts and circumstances of the case, therefore, there was no requirement of any formal proof of the sting recordings.

(Paras 160, 142 to 151 and 155 to 157)

Further, so far as *R* (Appellant 1) is concerned there was no violation of the principles of natural justice inasmuch as he was given copies of all the sting recordings along with their transcripts. He was fully made aware of the charge against him. He was given fullest opportunity to defend himself and to explain his conduct as appearing from the sting recordings. The High Court viewed the microchips used in the spy camera and the programme telecast by TV channel in

his presence and gave him further opportunity of hearing thereafter. The sting recordings were rightly made the basis of conviction and the irresistible conclusion is that the conviction of *R* for contempt of court is proper, legal and valid calling for no interference. (Para 161)

As far as Special Public Prosecutor *IU* (Appellant 2) is concerned, there is not the slightest doubt that the exchange between *K* (the prosecution witness concerned) and *IU* captured in the sting operation and placed on record, far crosses the limits of proper professional conduct of a prosecutor (especially engaged to conduct a sensational trial) and a designated Senior Advocate of long standing. The only common factor between them was the BMW case in which one was the prosecutor and the other was a prosecution witness, later dropped from the list of witnesses. A lawyer, howsoever affable and sociable by disposition, if he has the slightest respect for professional ethics, would not allow himself such a degree of familiarity with the witness of a criminal trial that he might be prosecuting and would not indulge with him in the kind of exchange as admittedly took place between *IU* and *K*. The video of the sting recordings leaves no room for doubt that *IU* was freely discussing the proceeding of BMW case with *K* and was not at all averse to another meeting with him; rather he was looking forward to it. The High Court's finding that the conduct of *IU* was inappropriate for a lawyer in general and a prosecutor in particular is fully endorsed. However, there is a wide gap between professional misconduct and criminal contempt of court. (Paras 191 to 197)

The proceeding before the High Court was not in the nature of a suit or a criminal trial. In response to the notice issued by the Court, Appellant 2 had made a positive statement in his defence in his reply-affidavit. The statement was not formally traversed by anyone. There was, therefore, no reason for Appellant 2, *IU* to assume that he would be required to produce evidence in support of the statement. In case the High Court felt the need for some evidence in support of the averment it should have at least made it known to the appellant. But the High Court without giving any inkling to the appellant rejected the plea in the final judgment. The appellant was thus clearly denied a proper opportunity to defend himself. The proceeding before the High Court was under the Contempt of Courts Act and the High Court was not following any well-known and well-established format. In that situation it was only fair to give notice to the proceedees to substantiate the pleas taken in the reply-affidavit by leading proper evidence. It must, therefore, be held that the High Court rejected a material plea raised on behalf of *IU* without giving him any opportunity to substantiate it.
(Paras 207 and 208)

As noticed above, the High Court, for arriving at the finding that there was a high degree of familiarity among *IU*, *K* and *R* has repeatedly used the transcripts of the meetings between *K* and *R*. It is indeed true that in the exchanges between *K* and *R* there are many references to *IU*. That may give rise to a strong suspicion, of a common connection between the three. But having regard to the charge of criminal contempt any suspicion howsoever strong cannot take the place of proof and it is not wholly prudent to rely upon the exchanges between *K* and *R* to record a finding against *IU*.
(Paras 209, 199, 201, 204, 205 and 176 to 178)

Further, according to the High Court, the essence of culpability of *IU* was his omission to inform the prosecution and the Court "that one of its witnesses

was more than an acquaintance of the defence lawyer". It was submitted that the High Court convicted the appellant for something in regard to which he was never given an opportunity to defend himself. From the notice issued by the High Court it was impossible to discern that the charge of criminal contempt would be eventually fastened on him for his failure to inform the Court and the prosecution about the way *K* was being manipulated by the defence. (Para 210)

On the basis of materials on record the charge of criminal contempt cannot be held to be satisfactorily established against *IU*. He is entitled to the benefit of doubt. (Para 213)

Suborning a witness in a criminal trial is an act striking at the root of the judicial proceeding and it surely deserves the treatment meted out to the appellants. But the appellants were not given any notice by the High Court that if found guilty they might be prohibited from appearing in the High Court and the courts subordinate to it, for a certain period. To that extent the direction given by the High Court was not in conformity with the principles of natural justice. (Para 244)

Having regard to the misdeeds of which *R* has been found guilty, the punishment given to him by the High Court can only be regarded as nominal. The leniency shown by the High Court in meting out the punishment was quite misplaced. And the view is greatly reinforced if one looks at the contemnor's conduct before the High Court. Before the High Court the contemnor took a defiant stand and constantly tried to obstruct the proceedings. Even as contempt notices were issued by the High Court, or even before it, some diversionary and even intimidatory tactics were employed to stonewall the proceeding initiated by it. (Paras 245 and 246)

Of all the obstructive measures adopted before the High Court the most unfortunate and undesirable came from *R* in the form of a petition "requesting" Manmohan Sarin, J., the Presiding Judge on the Bench dealing with the matter, to recuse himself from the proceeding. This petition, an ill-concealed attempt at intimidation, was, as a matter of fact, *R*'s first response to the notice issued to him by the High Court. He stated in this petition that he had the feeling that he was not likely to get justice at the hands of Manmohan Sarin, J. He further stated, alluding to some past events, that he had tried his best to forget the past and bury the hatchet but the way and the manner in which the matter was being dealt with had caused the greatest damage to his reputation. He made the prayer that the recusal application should be heard in camera and the main matter be transferred to another Bench of which Sarin, J. was not a member. (Para 255)

In one glance, the grounds on which recusal was asked for appear fit to be rejected out of hands. But the High Court gave the matter far greater importance than it merited, apparently because it saw a personal angle in it. The petition was heard for three days before it was rejected by the order dated 4-10-2007. It is a long order running into twenty-seven pages authored by Sarin, J. The order dealt with all the grounds advanced in support of the recusal petition and effectively showed that there was no truth or substance in any of those grounds. (Para 259)

The High Court's judgment correctly sums up what should be the court's response in the face of a request for recusal made with the intent to intimidate the court or to get the better of an "inconvenient" Judge or to obfuscate the issues or to cause obstruction and delay the proceedings or in any other way frustrate or obstruct the course of justice. Grave concern is expressed over the fact that lately

such tendencies and practices are on the increase. Such conduct is bound to cause deep hurt to the Judge concerned, but what is of far greater importance is that it defies the very fundamentals of administration of justice. A motivated application for recusal, therefore, needs to be dealt with sternly and should be viewed ordinarily as interference in the due course of justice leading to penal consequences. (Para 264)

The applicant unhesitatingly filed an application for clarification/review of the order dated 4-10-2007 dismissing his recusal petition. Review was sought primarily on the ground that the order of Sarin, J. was not the order by the Bench since the other Judge had declined to concur with him. After the other Judge opted out of the Bench, the Chief Justice put Lokur, J. in his place. The clarification/review application was rejected by a long order. Henceforth all substantive orders in the proceeding were written, not by the Presiding Judge, but by Lokur, J. and the significance of it is not lost on the Supreme Court. The application for recusal though rejected was not completely unsuccessful. It left a lasting shadow on the proceeding. Apart from filing an application for its clarification/review before the High Court, the order rejecting the recusal application was also sought to be challenged before the Supreme Court by filing SLP. The SLP was, however, withdrawn. Nevertheless, the challenge to the High Court order rejecting the recusal application is still not given up and Paras 11 and 1 of the grounds in the present memo of appeal expressly seek to assail that order. (Paras 266 to 268)

The action of Appellant 1 *R* in trying to suborn the court witness in a criminal trial was reprehensible enough but his conduct before the High Court aggravates the matter manifold. He does not show any remorse for his gross misdemeanour and instead tries to take on the High Court by defying its authority. Punishment given to him by the High Court is wholly inadequate and incommensurate to the seriousness of his actions and conduct. Therefore, notice is issued to him for enhancement of punishment. By his actions and conduct Appellant 1 has established himself as a person who needs to be kept away from the portals of the court for a longer time. The notice would therefore require him to show cause why the punishment awarded to him should not be enhanced as provided under Section 12 of the Contempt of Courts Act. He would additionally show cause why he should not be debarred from appearing in courts for a longer period. The second part of the notice would also cure the defect in the High Court order in debarring Appellant 1 from appearing in courts without giving any specific notice in that regard, as held in the earlier part of the judgment. The appeal of *R* is dismissed subject to the notice of enhancement of punishment issued to him. Appeal of *R* to be put up after the show cause is filed. (Paras 272, 273, 344.2 and 344.4)

The appeal filed by *IU* is allowed and his conviction for criminal contempt is set aside. The period of four months' prohibition from appearing in the Delhi High Court and the courts subordinate to it is already over. The punishment of fine given to him by the High Court is set aside. The Full Court of the Delhi High Court may still consider whether or not to continue the honour of Senior Advocate conferred on him in light of the findings recorded in this judgment. (Para 344.1)

Vinay Chandra Mishra, In Re, (1995) 2 SCC 584; *Daroga Singh* v. *B.K. Pandey*, (2004) 5 SCC 26 : 2004 SCC (Cri) 1521, *relied on*

Mrityunjoy Das v. *Sayed Hasibur Rahaman*, (2001) 3 SCC 739 : (2006) 1 SCC (Cri) 296; *Chhotu Ram* v. *Urvashi Gulati*, (2001) 7 SCC 530 : 2001 SCC (L&S) 1196; *Bramblevale*

Ltd., Re, 1970 Ch 128 : (1969) 3 WLR 699 : (1969) 3 All ER 1062 (CA); *Anil Ratan Sarkar* v. *Hirak Ghosh*, (2002) 4 SCC 21; *Bijay Kumar Mahanty* v. *Jadu*, (2003) 1 SCC 644 : 2003 SCC (Cri) 407; *J.R. Parashar* v. *Prasant Bhushan*, (2001) 6 SCC 735 : 2001 SCC (Cri) 1242; *S. Abdul Karim* v. *M.K. Prakash*, (1976) 1 SCC 975; *N. Sri Rama Reddy* v. *V.V. Giri*, (1970) 2 SCC 340; *R.M. Malkani* v. *State of Maharashtra*, (1973) 1 SCC 471 : 1973 SCC (Cri) 399; *Mahabir Prasad Verma* v. *Dr. Surinder Kaur*, (1982) 2 SCC 258; *Ram Singh* v. *Col. Ram Singh*, 1985 Supp SCC 611; *R.* v. *Stevenson*, (1971) 1 WLR 1 : (1971) 1 All ER 678; *People of State of New York* v. *Frances Bell*, Case No. 11968 decided on 11-4-2004; *State of North Carolina* v. *Michael Odell Sibley*, No. COA99-1206 decided on 18-9-2000 (CA); *State* v. *Cannon*, 92 NC App 246 (CA); *Jack R. Lorraine* v. *Markel American Insurance Co.*, Civil Action No. PWG-06-1893 decided on 4-5-2007, *referred to*

S.A. Khan v. *Ch. Bhajan Lal*, (1993) 3 SCC 151; *Quamarul Islam* v. *S.K. Kanta*, 1994 Supp (3) SCC 5, *distinguished*

J. **Constitution of India — Art. 215 — Contempt by Senior Advocates — Punishment that may be imposed — Barring advocates from practising before High Court and subordinate courts for a period of time in absence of specific rules framed by High Court under S. 34, Advocates Act — Whether High Court could resort to punishment only under S. 12, Contempt of Courts Act — When should such debarring be imposed — Need for specific notice in regard to — Held, ideally every High Court should have rules framed under S. 34 of Advocates Act — However, even in absence of rules High Court cannot be held to be helpless against such threats and can exercise the power under S. 34 — Direction of this kind by the Court cannot be equated with punishment for professional misconduct — Recourse to the extreme step of debarring an advocate from appearing in court should arise very rarely and only as a measure of last resort — Warning of being debarred from practice to be given in initial notice of contempt — Directions given to High Courts not having so far framed rules under S. 34 of Advocates Act to frame rules within four months of this judgment — Advocates Act, 1961 — Ss. 34 and 35 — Contempt of Courts Act, 1971, Ss. 12 and 17**

Held :

A direction prohibiting an advocate from appearing in court for a specified period can be considered as a punishment for professional misconduct or it can be seen not as punishment for professional misconduct but as a measure necessary to regulate the court's proceedings and to maintain the dignity and orderly functioning of the courts. Further, in a given case a direction disallowing an advocate who is convicted of criminal contempt from appearing in court may become necessary for the self-protection of the court and for preservation of the purity of court proceedings. For example, where an advocate is shown to have accepted money in the name of a judge or on the pretext of influencing him; or where an advocate is found tampering with the court's record; or where an advocate is found actively taking part in faking court orders (fake bail orders are not unknown in several High Courts!); or where an advocate has made it into a practice to browbeat and abuse judges and on that basis has earned the reputation to get a case transferred from an "inconvenient" court; or where an advocate is found to be in the habit of sending unfounded and unsubstantiated allegation petitions against judicial officers and judges to the superior courts. Unfortunately these examples are not from imagination. These things are happening more frequently than we care to acknowledge. (Para 238)

These illustrations are not exhaustive but there may be other ways in which a malefactor's conduct and actions may pose a real and imminent threat to the purity of court proceedings, cardinal to any court's functioning, apart from constituting a substantive offence and contempt of court and professional misconduct. In such a situation the court does not only have the right but it also has the obligation cast upon it to protect itself and save the purity of its proceedings from being polluted in any way and to that end bar the malefactor from appearing before the courts for an appropriate period of time. (Para 239)

It is already explained in *Ex. Capt. Harish Uppal case*, (2003) 2 SCC 45 that a direction prohibiting an advocate from appearing in court for a specified period by the Court cannot be equated with punishment for professional misconduct. Further, the prohibition against appearance in courts does not affect the right of the lawyer concerned to carry on his legal practice in other ways as indicated in the decision. The decision in *Ex. Capt. Harish Uppal case* places the issue in correct perspective and must be followed to answer the question at issue. (Para 240)

It needs to be made clear that the occasion to take recourse to the extreme step of debarring an advocate from appearing in court should arise very rarely and only as a measure of last resort in cases where the wrongdoer advocate does not at all appear to be genuinely contrite and remorseful for his act/conduct, but on the contrary shows a tendency to repeat or perpetuate the wrong act(s). (Para 241)

Ideally every High Court should have rules framed under Section 34 of the Advocates Act, 1961 in order to meet with such eventualities but even in the absence of the rules the High Court cannot be held to be helpless against such threats. In a matter as fundamental and grave as preserving the purity of judicial proceedings, the High Court would be free to exercise the powers vested in it under Section 34 of the Advocates Act notwithstanding the fact that rules prescribing the manner of exercise of power have not been framed. But in the absence of statutory rules providing for such a course an advocate facing the charge of contempt would normally think of only the punishments specified under Section 12 of the Contempt of Courts Act. He may not even imagine that at the end of the proceeding he might end up being debarred from appearing before the court. The rules of natural justice, therefore, demand that before passing an order debarring an advocate from appearing in courts he must be clearly told that his alleged conduct or actions are such that if found guilty he might be debarred from appearing in courts for a specific period. The warning may be given in the initial notice of contempt issued under Section 14 or Section 17 (as the case may be) of the Contempt of Courts Act. Or such a notice may be given after the proceedee is held guilty of criminal contempt before dealing with the question of punishment. (Para 242)

In order to avoid any such controversies in future all the High Courts that have so far not framed rules under Section 34 of the Advocates Act are directed to frame the rules without any further delay. It is earnestly hoped that all the High Courts shall frame the rules within four months from today. The High Courts may also consider framing rules for having Advocates-on-Record on the pattern of the Supreme Court of India. (Paras 243 and 344.3)

Ex. Capt. Harish Uppal v. *Union of India*, (2003) 2 SCC 45, *followed*

Bar Council of India v. *High Court of Kerala*, (2004) 6 SCC 311; *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409, *relied on*

Pravin C. Shah v. *K.A. Mohammed Ali*, (2001) 8 SCC 650, *referred to*

K. #§**Constitution of India — Art. 19(1)(a) — Broadcasting — Freedom of — Sub judice matter — Sting operation concerning a pending trial — Scope and legality — Whether constituting "trial by media" — Determination of — Necessity of prior permission of trial court by media channel — Duty whether to place materials before court before telecast — Held, it cannot be said that the sting programme telecast by NDTV in the present case was a media trial — Insistence that report or a sting operation concerning a pending trial be published or telecast subject to the prior consent and permission of the court would tantamount to pre-censorship — It would plainly be an infraction of the media's right to freedom of speech and expression guaranteed under the Constitution — Basic legitimacy of the stings and the sting programmes telecast by NDTV, upheld — Press and Media Laws — Undercover/Sting operations — Sub judice matters — Public Accountability and Vigilance — Contempt of Court — Nature and scope — Freedom of speech/expression and contempt of court**

Held :

The submission that the TV channel i.e. NDTV should have carried out the stings only after obtaining the permission of the trial court or the Chief Justice of the Delhi High Court and should have submitted the sting materials to the court before its telecast, is not correct. Such a course would not be an exercise in journalism but in that case the media would be acting as some sort of special vigilance agency for the court. On little consideration the idea appears to be quite repugnant both from the points of view of the court and the media. (Para 289)

It would be a sad day for the court to employ the media for setting its own house in order; and the media too would certainly not relish the role of being the snoopers for the court. Moreover, to insist that a report concerning a pending trial may be published or a sting operation concerning a trial may be done only subject to the prior consent and permission of the court would tantamount to pre-censorship of reporting of court proceedings. And this would be plainly an infraction of the media's right of freedom of speech and expression guaranteed under Article 19(1)(*a*) of the Constitution. (Para 290)

This is, however, not to say that media is free to publish any kind of report concerning a sub judice matter or to do a sting on some matter concerning a pending trial in any manner they please. The legal parameters within which a report or comment on a sub judice matter can be made is well defined and any action in breach of the legal bounds would invite consequences. Compared to normal reporting, a sting operation is an incalculably more risky and dangerous thing to do. A sting is based on deception and, therefore, it would attract the legal restrictions with far greater stringency and any infraction would invite more severe punishment. (Para 291)

The expression "trial by media" is defined to mean:

> "The impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. During high publicity court cases, the media are

#§ **Ed.**: See also *Shortnote A, above* and *Shortnotes M, N, O and Q, below*

often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that, regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny." (Para 293)

It can hardly be said that the sting programme telecast by NDTV in the present case was a media trial. Leaving aside some stray remarks or comments by the anchors or the interviewees, there was nothing in the programme to suggest that the accused in the BMW case were guilty or innocent. The programme was not about the accused but it was mainly about two lawyers representing the two sides and one of the witnesses in the case. It indeed made serious allegations against the two lawyers. The allegations, insofar as Appellant 1 *R* is concerned, stand established after strict scrutiny by the High Court and the Supreme Court. Insofar as Appellant 2 *IU* is concerned, though his conduct did not constitute criminal contempt of court, nonetheless allegations against him too are established to the extent that his conduct has been found to be inappropriate for a Special Public Prosecutor. (Paras 294 and 295)

[**Ed.**: *See also* Arts. 19(1)(*a*) & (2), '(*c*)(2)(*i*) Broadcasting, Freedom of — Scope and reasonable restrictions', pp. 49 *et seq.*, '(*c*)(2)(*iv*) Press, Freedom of — Scope and reasonable restrictions', pp. 69 *et seq.* in **Vol. 6.** and Contempt of Court '3.(*c*) Freedom of speech/expression and contempt of court', pp. 308 *et seq.* in **Vol. 12**, *Complete Digest of Supreme Court Cases*, 2nd Edn.]

L. §§**Contempt of Courts Act, 1971 — S. 3(3) r/w proviso (ii) Expln. B — Applicability — Telecast of sting operation exposing collusion between defence counsel and prosecutor in respect of suborning of prosecution witness concerning proceedings pending in court — If amounts to obstruction of course of justice — Held, sub-section (3) nor its proviso or Explanation attracted in present case — Programme certainly did not interfere with or obstruct the due course of the trial — Programme telecast showed a conspiracy was afoot to undermine the "BMW hit-and-run case" trial — What was shown was proved to be substantially true and accurate — Programme was clearly intended to prevent the attempt to interfere with or obstruct the due course of the said BMW trial — It was in larger public interest and served an important public cause — Public Accountability and Vigilance — Undercover/Sting operations — Press and Media Laws**

Held :

Section 3(3) of the Contempt of Courts Act is not applicable to the facts of this case. In this case there is no distribution of any publication made under sub-section (1). Hence, neither sub-section (3) nor its proviso or Explanation is attracted. NDTV did the sting, prepared a programme on the basis of the sting materials and telecast it at a time when it fully knew that the BMW trial was going on. Hence, if the programme is held to be a matter which interfered or tended to interfere with, or obstructed or tended to obstruct the due course of BMW case then the immunity under sub-section (1) will not be available to it and the telecast would clearly constitute criminal contempt within the meaning of Sections 2(*c*)(*ii*) and (*iii*) of the Act. (Para 302)

The programme may have any other faults or weaknesses but it certainly did not interfere with or obstruct the due course of the BMW trial. The programme

§§ **Ed.**: See also *Shortnotes A, K, above* and *Shortnotes M, N and Q, below*

telecast by NDTV showed to the people (the courts not excluded) that a conspiracy was afoot to undermine the BMW trial. What was shown was proved to be substantially true and accurate. The programme was thus clearly intended to prevent the attempt to interfere with or obstruct the due course of the BMW trial. (Para 303)

The sting telecast by NDTV was indeed in larger public interest and it served an important public cause. In view of the above findings the larger question that even if the programme marginally tended to influence the proceedings in the BMW trial the larger public interest served by it was so important that the little risk should not be allowed to stand in its way, need not be gone into. (Paras 304 and 305)

Saibal Kumar Gupta v. *B.K. Sen*, AIR 1961 SC 633 : (1961) 3 SCR 460; *P.C. Sen, In Re*, AIR 1970 SC 1821 : (1969) 2 SCR 649; *Reliance Petrochemicals Ltd.* v. *Indian Express Newspapers, Bombay (P) Ltd.*, (1988) 4 SCC 592; *M.P. Lohia* v. *State of W.B.*, (2005) 2 SCC 686 : 2005 SCC (Cri) 556; *Lonrho plc, Re*, (1990) 2 AC 154 : (1989) 3 WLR 535 : (1989) 2 All ER 1100 (HL); *Pritam Pal* v. *High Court of M.P.*, 1993 Supp (1) SCC 529 : 1993 SCC (Cri) 356; *Sanjiv Datta, In Re*, (1995) 3 SCC 619, *cited*

M. ##**Constitution of India — Art. 19(1)(a) — Broadcasting — Freedom of — Telecast of sting operation — Deficiencies — Misleading and incorrect statements and sweeping remarks made in and during the broadcast — Such statements not contained in transcripts filed in court — Lapses and omissions committed by the channel (NDTV) in proceedings in court — Effect — Observations on acts of omission and commission by NDTV before the High Court and in the telecast of the sting programme made in the hope that it would help other TV channels in their future operations and programmes — Not intended to lay down any reformist agenda for the media — Need for full disclosure by media emphasized — Professional initiative and courage shown by the young reporter in present case appreciated and painstaking investigation undertaken by NDTV found impressive — Press and Media Laws — Undercover/Sting operations — Permissibility and desirability — Parameters and norms to be observed — Public Accountability and Vigilance**

N. **Contempt of Court — Practice and procedure — Material to be placed before Court — Suo motu contempt case based on sting operation — Partial transcripts submitted to Court — Full recording/transcript of Special Public Prosecutor's interview by TV channel (NDTV) not placed on record and confusion regarding submission of sting recordings in High Court — Effect — Held, noticeable lapses committed by NDTV in proceedings overlooked by High Court — However, there was no effect on either of the appellants' cases — NDTV's withholding of full transcript of sting recording, deprecated — Press and Media Laws — Undercover/Sting operations — Need for full disclosure before Court — Contempt of Courts Act, 1971, S. 17**

Held :

The basic legitimacy of the stings and the sting programmes telecast by NDTV has been upheld but at the same time the deficiencies (or rather the excesses) in the telecast must be pointed out. (Para 306)

Ed.: See also *Shortnotes A, K, L, above* and *Shortnotes N and Q, below*

It is surprising that the High Court did not notice the big omission in the transcript of the first sting and disapproval of NDTV in withholding the full transcript of the sting recording, is recorded. (Paras 162 and 165 to 171)

There were noticeable lapses committed by NDTV in the proceedings that were overlooked by the High Court. It needs to be made absolutely clear that the irregularities pointed out above were in regard to the first sting concerning Appellant 2 *IU*. These in no way affect Appellant 1 *R* or alter his position. The discussions and findings recorded above in respect of *R* thus remain completely unaffected by the mistakes pointed out here. Further, having regard to the defence taken by *IU* the aforementioned lapses do not have any material effect on his case either. (Paras 173 and 174)

The opening remarks were designed to catch the viewer and to hold his/her attention, but truth, for the moment at least was relegated to the sidelines. It is indeed true that later on in the programme facts concerning witness *K* were stated correctly and he was presented in a more balanced way. But the impact and value of the opening remarks in a TV programme is quite different from what comes later on. The later corrections were for the sake of the record while the introductory remarks had their own value. (Para 314)

Further, on the basis of the sting recordings NDTV might have justifiably said that *IU*, the Special Public Prosecutor appeared to be colluding with the defence but there was no material before NDTV to make such an allegation against the prosecution as a whole and thus to run down the other agencies and people connected with the prosecution. There are other instances also of wrong and inappropriate choice of words and expressions but there is no need to go any further in the matter. (Para 315)

Another sad feature is the stridency of the telecast. It is understandable that the programme should have started on a highly sensational note because what was about to be shown was really quite shocking. But the programme never regained poise and it became more and more shrill. All the interviewees, highly eminent people, expressed their shock and dismay over the state of the legal system in the country and the way the BMW trial was proceeding. But as the interview progressed, they somewhat tended to lose their self-restraint and did not pause to ponder that they were speaking about a sub judice matter and a trial in which the testimony of a court witness was not even over. Some of the speakers allowed their passions, roused by witnessing the shocking scenes on the TV screen, to get the better of their judgment and made certain very general and broad remarks about the country's legal system that they might not have made if speaking in a more dispassionate and objective circumstances. Unfortunately, not a single constructive suggestion came from anyone as to how to revamp the administration of criminal justice. The programme began on a negative note and remained so till the very end. (Para 316)

The affidavits filed on behalf of NDTV are completely silent on a number of other glaring lapses in presenting the facts. These omissions (and some similar others) on the part of NDTV leave one with the feeling that it was not sharing all the facts within its knowledge with the Court. The disclosures before the Court do not appear to be completely open, full and frank. It would tell the Court only so much as was necessary to secure the conviction of the proceedee wrongdoers. There were some things that it would rather hold back from the Court. The TV channel should have made a fuller disclosure before the High Court of all the facts within its knowledge. (Paras 318 to 325)

However, for all its faults the stings and the telecast of the sting programme by NDTV rendered valuable service to the important public cause to protect and salvage the purity of the course of justice. The professional initiative and courage shown by the young reporter *P* is appreciated and the painstaking investigation undertaken by NDTV to uncover the Shimla connection between witness *K* and Appellant 1, *R* is impressive. (Para 326)

The acts of omission and commission by NDTV before the High Court and in the telecast of the sting programme have been recounted in the hope that the observations will help NDTV and other TV channels in their future operations and programmes. (Para 327)

Like almost every other sphere of human activity in the country the electronic news media has a very broad spectrum ranging from very good to unspeakably bad. The better news channels in the country are second to none in the world in matters of coverage of news, impartiality and objectivity in reporting, reach to the audience and capacity to influence public opinion and are actually better than many foreign TV channels. But that is not to say that they are totally free from biases and prejudices or they do not commit mistakes or gaffes or they sometimes do not tend to trivialise highly serious issues or that there is nothing wanting in their social content and orientation or that they maintain the same standards in all their programmes. In the quest of excellence they have still a long way to go. (Para 328)

A private TV channel which is also a vast business venture has the inherent dilemma to reconcile its business interests with the higher standards of professionalism/demands of profession. The two may not always converge and then the TV channel would find its professional options getting limited as a result of conflict of priorities. The media trips mostly on TRPs (television rating points), when commercial considerations assume dominance over higher standards of professionalism. (Para 329)

It is not intended here to lay down any reformist agenda for the media. Any attempt to control and regulate the media from outside is likely to cause more harm than good. The norms to regulate the media and to raise its professional standards must come from inside. (Para 330)

O. ††**Advocates — Professional standards and ethics — Role of, in the administration of justice — Falling professional norms — Grave concern and dismay expressed on decline of ethical and professional standards amongst lawyers — Bar Council of India and the Bar Councils of the different States cannot escape their responsibility — Hope expressed that Bar Council will pay proper attention to the restoration of the high professional standards among lawyers, worthy of their position in the judicial system and society — Advocates Act, 1961 — Ss. 35, 9 and 24 — Judiciary — Bench and Bar — Role of Bar in ensuring proper functioning of judicial system in a democracy**

Observed :

The other important issue thrown up by this case and that causes both grave concern and dismay is the decline of ethical and professional standards among lawyers. The conduct of the two appellants both of them lawyers of long standing, and designated Senior Advocates, should not be seen in isolation. The bitter truth is that the facts of the case are manifestation of the general erosion of

†† **Ed.**: See also *Shortnotes A, B, C, D, H and I, above*

the professional values among lawyers at all levels. Concern is expressed on the falling professional norms among the lawyers with considerable pain because it is strongly felt that unless the trend is immediately arrested and reversed, it will have very deleterious consequences for the administration of justice in the country. No judicial system in a democratic society can work satisfactorily unless it is supported by a Bar that enjoys the unqualified trust and confidence of the people, that shares the aspirations, hopes and the ideals of the people and whose members are monetarily accessible and affordable to the people.

(Paras 331 to 333)

The Bar Council of India and the Bar Councils of the different States cannot escape their responsibility in this regard. On the issue of maintaining high professional standards and enforcing discipline among lawyers its performance hardly matches its achievements in other areas. It has not shown much concern even to see that lawyers should observe the statutory norms prescribed by the Council itself. It is hoped that the Council will at least now sit up and pay proper attention to the restoration of the high professional standards among lawyers worthy of their position in the judicial system and in the society. (Para 335)

P. **Constitution of India — Arts. 227 and 235 — High Court's powers of superintendence over subordinate judiciary — Criminal justice system — Insulation of, from external influences aimed to subvert trials — Positive intervention called for — General guidelines issued for assuming a more proactive role — Held, authority of High Court of superintendence over subordinate courts has great dynamism — It is time to add to it another dimension for monitoring and protection of criminal trials — Superintendence should not be confined only to posting, transfer and promotion of the officers of the subordinate judiciary — Power of control should also be exercised to protect them from external interference that may sometimes appear overpowering to them and to support them to discharge their duties fearlessly — High Courts — Superintendence of subordinate judiciary — Role of High Court — Scope and extent — Criminal Procedure Code, 1973 — Ss. 397, 398 and 401**

Held :

At the root of this odious affair is the way the BMW trial was allowed to be constantly interfered with till it almost became directionless. All this and several other similar developments calculated to derail the trial would not have escaped the notice of the Chief Justice or the Judges of the Delhi High Court. But there is nothing to show that the High Court, as an institution, as a body took any step to thwart the nefarious activities aimed at undermining the trial and to ensure that it proceeded on the proper course. As a result, everyone seemed to feel free to try to subvert the trial in any way they pleased. This indifferent and passive attitude is not confined to the BMW trial or to the Delhi High Court alone. It is shared in greater or lesser degrees by many other High Courts. (Paras 337 to 339)

Every failed trial is also, in a manner of speaking, a negative comment on the State's High Court that is entrusted with the responsibility of superintendence, supervision and control of the lower courts. It is, therefore, high time for the High Courts to assume a more proactive role in such matters. A step in time by the High Court can save a criminal case from going astray. An enquiry from the High Court Registry to the quarters concerned would send the message that the High Court is watching; it means business and it will not tolerate any nonsense. Even this much would help a great deal in insulating a criminal case from

outside interferences. In very few cases where more positive intervention is called for, if the matter is at the stage of investigation the High Court may call for status report and progress reports from police headquarters or the Superintendent of Police concerned. That alone would provide sufficient stimulation and pressure for a fair investigation of the case. (Para 341)

In rare cases if the High Court is not satisfied by the status/progress reports it may even consider taking up the matter on the judicial side. Once the case reaches the stage of trial the High Court obviously has far wider powers. It can assign the trial to some judicial officer who has made a reputation for independence and integrity. It may fix the venue of the trial at a proper place where the scope for any external interference may be eliminated or minimised. It can give effective directions for protection of witnesses and victims and their families. It can ensure a speedy conclusion of the trial by directing the trial court to take up the matter on a day-to-day basis. (Para 342)

The High Court has got ample powers for all this both on the judicial and administrative sides. Article 227 of the Constitution of India that gives the High Court the authority of superintendence over the subordinate courts has great dynamism and now is the time to add to it another dimension for monitoring and protection of criminal trials. Similarly, Article 235 of the Constitution that vests the High Court with the power of control over subordinate courts should also include a positive element. It should not be confined only to posting, transfer and promotion of the officers of the subordinate judiciary. The power of control should also be exercised to protect them from external interference that may sometimes appear overpowering to them and to support them to discharge their duties fearlessly. (Para 343)

Q. *****Contempt of Court — Practice and procedure — Specific matters — Parties to be arrayed — Materials to be placed before Court — Suo motu contempt case based on sting operation — High Court asking only for copies of original sting recordings, allowing original microchips and magnetic tapes to be retained with news channel conducting the sting — Not arraying TV channel (NDTV) as contemnor — Lapses, whether fatal and serious — Held on facts, there was no lapse in leaving the microchips in the safe custody of the TV channel — Once High Court obtained their copies there was no possibility of any tampering from that stage — However, what is completely inexplicable is why, NDTV not put along with two appellants in the array of contemnors — It would have put the proceeding on a more even keel and given it a more balanced appearance — Contempt of Courts Act, 1971 — Ss. 17 and 2(c)(ii) & (iii) — Contempt of Court — Nature and scope — Freedom of speech/expression and contempt of court — Sub judice matter — Sting operation in respect of (Paras 214 to 218)**

B-D/43104/CR

Advocates who appeared in this case :

Gopal Subramanium (Amicus Curiae), Additional Solicitor General, L. Nageswara Rao (Amicus Curiae), Altaf Ahmed, P.P. Rao, S.K. Agarwal, Harish N. Salve and Sanjay Jain, Senior Advocates (Balaji Subramanian, Anand Varma, Siddhartha Dave, Deeptakirti Verma, Uday Gupta, Dharmendra Kr. Sinha, D.S. Chadha, Huzefa Ahmedi, S.A. Hashmi, Vikas Arora, Aman Khan, H.R. Khan Suhel, Arun K. Sinha, Rakesh Singh, Sumit Sinha, Vijay K. Sondhi, Varun Pareek, Kapil Arora, Wasim Beg and Subramonium Prasad, Advocates) for the appearing parties.

*** **Ed.:** See also *Shortnotes A, K, L, M and N, above.*

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2. (2005) 2 SCC 686 : 2005 SCC (Cri) 556, *M.P. Lohia* v. *State of W.B.* 196*d-e*
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30. AIR 1961 SC 633 : (1961) 3 SCR 460, *Saibal Kumar Gupta* v. *B.K. Sen* 196*d*
31. 92 NC App 246 (CA), *State* v. *Cannon* 154*f*

The Judgment of the Court was delivered by

AFTAB ALAM, J. The present is a fallout from a criminal trial arising from a hit-and-run accident on a cold winter morning in Delhi in which a car travelling at reckless speed crashed through a police checkpost and crushed to death six people, including three policemen. Facing the trial, as the main accused, was a young person called Sanjeev Nanda coming from a very wealthy business family.

2. According to the prosecution, the accident was caused by Sanjeev Nanda who, in an inebriated state, was driving a black BMW car at a very high speed. The trial, commonly called as BMW case, was meandering endlessly even after eight years of the accident and in the year 2007, it was not proceeding very satisfactorily at all from the point of view of the prosecution. The status of the main accused coupled with the flip-flop of the prosecution witnesses evoked considerable media attention and public interest. To the people who watch TV and read newspapers it was yet another case that was destined to end up in a fiasco.

3. It was in this background that a well-known English language news channel called New Delhi Television (NDTV) telecast a programme on 30-5-2007 in which one Sunil Kulkarni was shown meeting with I.U. Khan, the Special Public Prosecutor and R.K. Anand, the Senior Defence Counsel (and two others) and negotiating for his sell-out in favour of the defence for a very high price. Kulkarni was at one time considered the most valuable witness for the prosecution but afterwards, at an early stage in the trial, he was dropped by the prosecution as one of its witnesses. Nearly eight years later, the trial court had summoned him to appear and give his testimony as a court witness. The telecast came a few weeks after the court order and even as his evidence in the trial was going on.

4. According to NDTV, the programme was based on a clandestine operation carried out by means of a concealed camera with Kulkarni acting as the mole. What appeared in the telecast was outrageous and tended to confirm the cynical but widely held belief that in this country the rich and the mighty enjoyed some kind of corrupt and extra-constitutional immunity that put them beyond the reach of the criminal justice system.

5. Shocked by the programme the Delhi High Court suo motu initiated a proceeding [Writ Petition (Criminal) No. 796 of 2007]. It called for from the news channel all the materials on which the telecast was based and after examining those materials issued show-cause notices to R.K. Anand, I.U. Khan and Bhagwan Sharma, an Associate Advocate with R.K. Anand why they should not be convicted and punished for committing criminal contempt of court as defined under Section 2(*c*) of the Contempt of Courts Act. (In the sting operations there was another person called Lovely who was apparently sent to meet Kulkarni as an emissary of R.K. Anand. But he died in a freak accident even before the stage of issuance of notice in the proceeding before the High Court.)

6. On considering their show cause and after hearing the parties the High Court expressed its displeasure over the role of Bhagwan Sharma but acquitted him of the charge of contempt of court. As regards R.K. Anand and I.U. Khan, however, the High Court found and held that their acts squarely fell within the definition of contempt under clauses (*ii*) and (*iii*) of Section 2(*c*) of the Contempt of Courts Act. It, accordingly, held them guilty of committing contempt of court vide judgment and order dated 21-8-2008 and in exercise of power under Article 215 of the Constitution of India prohibited them, by way of punishment, from appearing in the Delhi High Court and the courts subordinate to it for a period of four months from the date of the judgment. It, however, left them free to carry on their other professional work e.g. "consultations, advices, conferences, opinion, etc.".

7. The High Court also held that R.K. Anand and I.U. Khan had forfeited their right to be designated as Senior Advocates and recommended to the Full Court to divest them of the honour. In addition to this the High Court also sentenced them to fine of rupees two thousand each.

8. These two appeals by R.K. Anand and I.U. Khan respectively are filed under Section 19(1) of the Contempt of Courts Act against the judgment and order passed by the Delhi High Court.

The context

9. Before proceeding to examine the different issues arising in the case, it is necessary to first know the context in which the whole sordid episode took place. It will be, therefore, useful to put together the basic facts and circumstances of the case at one place. The occurrence in which six people lost their lives was reconstructed by the prosecution on the basis of police investigation as follows.

The crime, the police investigation and proceedings before the trial court

10. On 10-1-1999 at about half past four in the morning a speeding vehicle crashed through a police checkpost on one of the Delhi roads and drove away leaving behind six people dead or dying. As the speeding car hit the group of persons standing on the road some were thrown away but two or three persons landed on the car's bonnet and rolled down to the ground under it. The car, however, did not stop. It moved on dragging along the persons who were caught in its underside. It halted only after the driver lost control and going down a distance of 200-300 ft hit the road divider.

11. At this point the occupants came down from the car to inspect the scene. They looked at the front and the rear of the car and would not have failed to notice the persons caught under the car who were still crying for help and who perhaps might have been saved if they were taken out even at that stage. But the anxiety of the car's occupants to leave the accident site without delay seemed to override all other considerations. They got back into the car, reversed it and drove on. The car went on dragging the unfortunate victims trapped under it to certain and ghastly death and left behind at the accident site dismembered limbs and dead bodies of men.

12. The police investigation brought to light that the accident was caused by a black BMW car which was being driven by Sanjeev Nanda. He was returning from a late night party, under the influence of liquor, along with some friend(s).

13. Five days after the accident, on 15-1-1999 one Sunil Kulkarni contacted the Joint Commissioner of Police, Delhi, and claimed to be an eyewitness to the occurrence. According to his story, at the time of the accident he was passing through the spot, on foot, on his way to Nizamuddin Railway Station for catching a train for Bhopal. He described the accident in considerable detail and stated that at the sight of so many people being mowed down by the car he got completely unnerved. He proceeded for the railway station and on reaching there tried to ring up the police or the emergency number 100 but was unable to get through. He finally went to Bhopal and on coming back to Delhi, being bitten by conscience, he contacted the police.

14. What was of significance in Kulkarni's statement is that the accident was caused by a *car* and when it stopped after hitting the people a man alighted from the driving seat and examined the front and rear of the car. Then, another person got down from the passenger seat, called the other "Sanjeev", and urged that they should go. On the same day his statement was recorded by the police under Section 161 of the Code of Criminal Procedure (CrPC). The following day he was shown Nanda's BMW car at Lodhi Colony Police Station and he identified it as the one that had caused the accident.

15. On 21-1-1999 Kulkarni's statement was recorded before a Magistrate under Section 164 CrPC. Before the Magistrate, in regard to the accident, he substantially reiterated the statement made before the police, lacing it up with details about his stay in Delhi from January 7 and his movements on the evening before the accident. In the statement before the Magistrate the manner of identification of Sanjeev Nanda was also the same with the addition that after the accident when the car moved again the person on the driving seat was trying to look for the way by craning out his head out of the broken glass window and thus he was able to see him from a distance of no more than three-and-a-half feet when the car passed by his side.

16. The police wanted to settle the question of the driver's identification by having Kulkarni identify Sanjeev Nanda in a test identification parade but Sanjeev Nanda refused to take part in any identification parade. Then, on 31-3-1999 when Sanjeev Nanda was produced in court, Kulkarni also happened to be there. He identified him to the investigating officer as the driver of the car causing accident.

17. Kulkarni's arrival on the scene as an eyewitness of the tragic accident got wide publicity and he was generally acclaimed as a champion of the public cause. He must have appeared to the police too as godsend but soon there were reasons for the police to look at him completely differently. He had given as his address a place in Mumbai. A summons issued by the trial court on the Mumbai address given by him returned unserved. The report

dated 30-8-1999 on the summons disclosed that he had given a wrong address and his actual address was not known to anyone. It also stated that he was a petty fraudster who had defrauded several people in different ways. The report concluded by saying that he seemed to be a person of shady character.

18. At the same time Kulkarni also turned around. On 31-8-1999 a habeas corpus petition [Writ Petition (Crl.) No. 846 of 1999] was filed in the Delhi High Court making the allegation that he was being held by Delhi Police in wrongful confinement. On the following day (1-9-1999) when the writ petition was taken up, the allegations were denied on behalf of the police. Moreover, Kulkarni was personally present in Court. The Court, therefore, dismissed the writ petition without any directions.

19. Next, Kulkarni filed a petition (through a lawyer) before the trial court on 13-9-1999. In this petition, he stated that on the date of occurrence, that is, 10-1-1999 itself he had told the police that the accident was caused by a truck. But the police was adamant not to change the version of the FIR that was already registered and on the basis of which five persons were arrested. The police forced him to support its story, and his earlier statements were made under police coercion.

20. On 23-9-1999 a clash took place between some policemen and some members of the Bar in the Patiala House Court premises for the "custody" of Kulkarni. A complaint about the alleged high-handed actions of the police was formally lodged before the court and a notice was issued to the Joint Commissioner. In response to the notice the Joint Commissioner submitted a long and detailed report to the court on 27-9-1999.

21. In the report, apart from defending the action of the policemen the Joint Commissioner had a lot of things to say about Kulkarni's conduct since he became a witness for the prosecution in BMW case. He noted that he would never give his address or any contact number to any police official. His lifestyle had completely changed. He lived in expensive hotels and moved around in big cars.

22. The Joint Commissioner enclosed with his report a copy of the printout of the cell phone of Kulkarni (the number of which he had given to one of the police officers) that showed that as early as on 17-7-1999 he was in touch with the counsel for the defence, R.K. Anand (one of the appellants) and his junior Mr Jai Bhagwan, Advocate and even with Suresh Nanda, father of Sanjeev Nanda. He cited several other instances to show Kulkarni's duplicity.

23. The long and short of the report of the Joint Commissioner was that Kulkarni was bought off by the defence. He was in collusion with the defence and was receiving fat sums of money from the family of the accused. He was trying to play the two ends against the middle and he was completely unreliable.

24. On September 30, the date fixed for his examination, Kulkarni was duly present in court. He was, however, represented by his own lawyer and not by the prosecuting counsel. He was quite eager to depose. But the

prosecution no longer wanted to examine him. I.U. Khan, the Special Public Prosecutor filed a petition stating that on the instructions of the State he gave up Kulkarni as one of the prosecution witness on the ground that he was won over by the accused. He also submitted before the court the report of the Joint Commissioner dated September 27. The allegation that he was won over was of course, denied both by Kulkarni and the accused. The court, however, discharged him leaving the question open as to what inference would it draw as a result of his non-examination by the prosecution.

25. Earlier to Kulkarni's exit from the case, the prosecution had lost two other key witnesses. To begin with there were three crucial witnesses for the prosecution. One was Hari Shankar Yadav, an attendant on a petrol pump near the site of the tragedy; the other was one Manoj Malik who was the lone survivor among the victims of the accident and the third of course was Kulkarni.

26. Hari Shankar Yadav was examined before the court on 18-8-1999 and he resiled from his earlier statement made before the police. Manoj Malik was scheduled to be examined on 30-8-1999 but he seemed to have disappeared and the police was unable to trace him out either in Delhi or at his home address in Orissa. On the date fixed in the case, however, he appeared in court, not with the prosecution team but with two other lawyers. He was examined as a witness notwithstanding the strong protest by the prosecution who asked for an adjournment. Not surprisingly, he too turned hostile. Lastly, Kulkarni too had to be dropped as one of the prosecution witness in the circumstances as noted above.

27. The trial proceeded in this manner and over a period of the next four years the prosecution examined around sixty witnesses on the forensic and other circumstantial aspects of the case. The prosecution finally closed its evidence on 22-8-2003. Thereafter, the accused were examined under Section 313 CrPC and a list of defence witnesses was furnished on their behalf.

28. While the case was fixed for defence evidence two applications came to be filed before the trial court, one was at the instance of the prosecution seeking a direction to the accused Sanjeev Nanda to give his blood sample for analysis and comparison with the bloodstains found in the car and on his clothes, and the other by the defence under Section 311 CrPC for recalling nine prosecution witnesses for their further cross-examination.

29. By order dated 19-3-2007 the trial court rejected both the applications. It severely criticised the police for trying to seek its direction for something for which the law gave it ample power and authority. It also rejected the petition by the defence for recall of witnesses observing that the power under Section 311 CrPC was available to the court and not to the accused. At the end of the order the court observed that the only witness in the case whose statement was recorded under Section 164 CrPC was Kulkarni and even though he was given up by the prosecution, the court felt his examination essential for the case. It, accordingly, summoned Kulkarni to appear before the court on 14-5-2007. Kulkarni thus bounced back on the stage with greater vigour than before.

Media intervention

30. In the trial court the matter was in this state when another chapter was opened up by a TV channel with which we are primarily concerned in this case. On 19-4-2007 one Vikas Arora, Advocate, an assistant of I.U. Khan sent a complaint in writing to the Chief Editor, NDTV with copies to the Commissioner of Police and some other authorities. In the complaint it was alleged that one Ms Poonam Agarwal, a reporter of the TV channel was demanding copies of statements of witnesses and the police case diary of BMW case and was also seeking an interview with I.U. Khan or the complainant, his junior. On their refusal to meet the demands she had threatened to expose them through some unknown person and to let the people know that the police and the Public Prosecutor had been influenced and bribed by the accused party. He requested the authorities to take appropriate action against Poonam Agarwal.

31. On 20-4-2007 NDTV telecast a half hour special programme on how BMW case was floundering endlessly even after more than seven years of the occurrence. Apparently, the telecast on 20-4-2007 brought Poonam Agarwal and Kulkarni together. According to Poonam Agarwal, on 22-4-2007 she received a phone call from Kulkarni who said that he was deeply impressed by the programme telecast by her channel and requested for a meeting with her. (The version of Kulkarni is of course quite different.) She met him on April 22 and 23. He told her that in BMW case the prosecution was hand in glove with the defence; he wanted to expose the nexus between the prosecution and the defence and needed her help in that regard. Poonam Agarwal obtained the approval of her superiors and the idea to carry out the sting operation using Kulkarni as the decoy was thus conceived.

32. Even while the planning for the sting operation was going on, NDTV on April 26 gave reply to the notice by Vikas Arora. In their reply it was admitted that Poonam Agarwal had sought an interview with Arora's senior which was denied for reasons best known to him. All other allegations in Arora's notice were totally denied and it was loftily added that the people at NDTV were conscious of their responsibilities and obligations and would make continuous efforts to unravel the truth as a responsible news channel.

33. On 28-4-2007 Kulkarni along with one Deepak Verma of NDTV went to meet I.U. Khan in the Patiala House Court premises. For the mission Poonam Agarwal "wired" Kulkarni, that is to say, she equipped him with a concealed camera and a small electronic device that comprised of a tiny black button-shaped lens attached to his shirt front connected through a wire to a small recorder with a microchip hidden at his back side. Before sending off Kulkarni she switched on the camera and waited outside the court premises in a vehicle. Deepak Verma from the TV channel was sent along to ensure that everything went according to the plan. He was carrying another concealed camera and the recording device in his handbag.

34. Kulkarni and Deepak Verma were able to meet I.U. Khan while he was sitting in the chamber of another lawyer. Kulkarni entered into a conversation with I.U. Khan inside the crowded chamber (the details of the conversation we will examine later on at its proper place in the judgment). The conversation between the two that took place inside the chamber was recorded on the microchips of both the devices, one worn by Kulkarni and the other carried by Deepak Verma in his bag. After a while, on Kulkarni's request, both I.U. Khan and Kulkarni came out of the chamber and some conversation between the two took place outside the chamber.

35. The recording on the microchip of Kulkarni's camera was copied onto magnetic tapes and from there to compact discs (CDs). The microchip in Kulkarni's camera used on 28-4-2007 was later reformatted for other uses. Thus, admittedly that part of the conversation between Kulkarni and I.U. Khan that took place on 28-4-2007 outside the chamber is available only on a CD and the microchip on which the original recording was made is no longer available.

36. The second operation was carried out on 6-5-2007 when Kulkarni met R.K. Anand in the VIP lounge at the Domestic Terminal of IGI Airport. The recording of the meeting was made on the microchip of the concealed camera carried by Kulkarni.

37. On 8-5-2007 the third sting operation was carried out when Kulkarni got into the back seat of R.K. Anand's car that was standing outside the Delhi High Court premises. R.K. Anand was sitting on the back seat of the car from before. The recording shows Kulkarni and R.K. Anand in conversation as they travelled together in the car from the Delhi High Court to South Extension.

38. In the evening of the same day the fourth and final sting operation was carried out in South Extension Part II market where Kulkarni met one Bhagwan Sharma, Advocate and another person called Lovely. Bhagwan Sharma is one of the juniors working with R.K. Anand and Lovely appears to be his handyman who was sent to negotiate with Kulkarni on behalf of R.K. Anand.

39. According to Poonam Agarwal, in all these operations she was only at a little distance from the scene and was keeping Kulkarni, as far as possible, within her sight.

40. According to NDTV, in all these operations a total of five microchips were used. Four out of those five chips are available with them in completely untouched and unaltered condition. One microchip that was used in the camera of Kulkarni on 28-4-2007, as noted above, was reformatted after its contents were transferred onto a CD.

41. On 13-5-2007 NDTV recorded an interview by Kulkarni in its studio in which Kulkarni is shown saying that after watching the NDTV programme (on BMW case) he got in touch with the people from the channel and told them that the prosecution and the defence in the case were in league and he

knew how witnesses in the case were bought over by the accused and their lawyers. He also told NDTV that he could expose them through a sting operation. He further said that he carried out the sting operation with the help of NDTV. He first met I.U. Khan who *referred* him to R.K. Anand. He then met some people sent by R.K. Anand, including someone whose name was "Lovely or something like that".

42. As to his objective Kulkarni said quite righteously that he did the sting operation "in the interest of the judiciary". In answer to one of the questions by the interviewer he replied rather grandly that he would ask the court to provide him security by NSG and he would try to go and depose as soon as security was provided to him. In the second part of the interview the interviewer asked him about the accident and in that regard he said briefly and in substance what he had earlier stated before the police and the Magistrate.

Back to the court

43. It is noted above that by order dated 19-3-2007 the trial court had summoned Kulkarni to appear before it as a court witness on 14-5-2007. The defence took the matter to the Delhi High Court (in Crl. MC No. 1035 of 2007 with Crl. M. No. 3562 of 2007) assailing the trial court order rejecting their prayer to recall some prosecution witnesses for further cross-examination and suo motu summoning Kulkarni under Section 311 CrPC, to be examined as a court witness. The matter was heard in the High Court on several dates. In the meanwhile Kulkarni was to appear before the trial court on 14-5-2007. Hence, the High Court gave interim directions allowing Kulkarni to be examined by the court but not to put him to any cross-examinations till the disposal of the petition being argued before it. The petition was finally disposed of by a detailed order dated 29-5-2007.

44. The High Court set aside the trial court order rejecting the defence petition for recall of certain prosecution witnesses and asked the trial court to reconsider the matter. It also held that the trial court's criticism of the police was unwarranted and accordingly, expunged those passages from its order. However, insofar as summoning of Kulkarni was concerned the High Court held that there was no infirmity in the trial court order and left it undisturbed.

45. On 14-5-2007 Kulkarni appeared before the trial court but on that date, despite much persuasion, the court was not able to get any statement from him. From the beginning he asked for an adjournment on the plea that he was not well. In the end the court adjourned the proceedings to May 17 with the direction to provide him police protection.

46. On May 17, the examination of Kulkarni commenced and he described the accident more or less in the same way as in his statements before the police and the Magistrate. He said that the accident was caused by a black car (and not by a truck) but added that the car was coming from his front and its light was so strong that he could not see much. He said about his identification of the car at Lodhi Colony Police Station. But on the question

of identification of the driver there was a significant shift from his earlier statements. He told the court that what he had heard was one of the occupants urging the other to go calling him "Sanch or Sanz". He had also heard another name "Sidh" being mentioned among the car's occupants.

47. In reply to the court's question Kulkarni said that in his statement before the Magistrate under Section 164 CrPC he had stated the name "Sanjeev", and not the nicknames that he actually heard, under pressure from some police officials. He said that he was also put under pressure not to take the name of Sidharth Gupta and some police official told him that he was not in the car at the time of the accident. He said that apart from the name that he heard being uttered by the occupant(s) of the car and the number of persons he saw getting down from the car the rest of his statement under Section 164 was correct.

48. Kulkarni said that actually three, and not two, persons had got down from the car. The court then asked him to identify the persons who came out of the offending car. Kulkarni identified Sanjeev Nanda who was present in court. He further said that the third occupant of the car was a hefty boy whom he did not see in the court. At this point I.U. Khan explained that he might be referring to Sidharth Gupta who was discharged by the order of the High Court.

49. Kulkarni added that he was unable to identify the second occupant of the car and went on to declare, even without being asked, he could not say who came out of the driver's side. He was shown Manik Kapoor, another accused in the case, as one the occupants of the car but he said that after a lapse of nine years he was not in a position to identify him.

50. On May 29 Kulkarni was cross-examined on behalf of the prosecution by I.U. Khan. The prosecutor confronted him with his earlier statements recorded under Sections 161 and 164 CrPC and he took it as an opportunity to move more and more away from the prosecution case. He admitted that Sanjeev Nanda was one of the occupants of the car but positively denied that he came out from the driving seat of the offending car. He elaborated that the one to come out from the driving seat of the car was a fat, hefty boy who was not present on that date. (It does not take much imagination to see that he was trying to put Sidharth Gupta on the driving seat of the car who had been discharged from the case by the order of the Delhi High Court and was thus in no imminent danger from his deposition!). He denied that he disowned or changed some portions from his earlier statements under the influence of the accused persons.

51. On May 29 Kulkarni's cross-examination by I.U. Khan was incomplete and it was deferred to May 31. But before that NDTV telecast the sting programme that badly jolted not only everyone connected with the BMW trial but the judicial system as well.

The telecast

52. Based on the sting operations NDTV telecast a programme called *India 60 Minutes (BMW Special)* on 30-5-2007 at 8.00 p.m. It was followed at 9.00 p.m., normally reserved for news, as "BMW Special". From a purely journalistic point of view it was a brilliant programme designed to have the greatest impact on the viewers. The programmes commenced with the anchors (Ms Sonia Singh in the first and Ms Barkha Dutt in the second telecast) making some crisp and hard-hitting introductory remarks on the way BMW case was proceeding which, according to the two anchors, was typical of the country's legal system. The introductory remarks were followed by some clips from the sting recordings and comments by the anchors, interspersed with comments on what was shown in the programme by a host of well-known legal experts.

53. It is highly significant for our purpose that both the telecasts also showed live interviews with R.K. Anand. According to the channel's reporter, who was posted at R.K. Anand's residence with a mobile unit, he initially declined to come on the camera or to make any comments on the programme saying that he would speak only the following day in the court at the hearing of the case. According to the reporter, in the course of the telecast Sanjeev Nanda also arrived at the residence of R.K. Anand and joined him in his office. He too refused to make any comments on the ongoing telecast. But later on R.K. Anand came twice on the TV and spoke with the two anchors giving his comments on what was being shown in the telecasts.

54. We shall presently examine whether the programmes aired to the viewers were truly and faithfully based on the sting operations or whether in the process of editing for preparing the programmes any slant was given, prejudicial to the two appellants. This is of course subject to the premise that the Court has no reason to suspect the original materials on which the programme was based and it is fully satisfied in regard to the integrity and authenticity of the recordings made in the sting operations. That is to say, the recordings of the sting operations were true and pure and those were not fake, fabricated, doctored or morphed.

55. In regard to the telecast it needs to be noted that though the sting operations were complete on 8-5-2007 and all the materials on which the telecast would be based were available with the TV channel, the programme came on air much later on May 30. The reason for withholding the telecast was touched upon by the anchors who said in their introductory remarks that after the sting operations were complete and just before his testimony began in court, Kulkarni withdrew his consent for telecasting the programmes. Nevertheless, after taking legal opinion on the matter NDTV was going ahead with the airing of the programme in larger public interest.

56. Towards the end of the 9 o'clock programme the anchor had a live discussion with Poonam Agarwal in which she elaborated upon the reason for withholding the telecast for about three weeks. Concerning Kulkarni, Poonam Agarwal said that he was the main person behind the stings and the

sting operation was planned at his initiative. He had approached her and said to her that he wished to bring out into the open the nexus between the prosecution and the defence in BMW case. He had also said to her that in connection with the case he was under tremendous pressure from both sides. But after the stings were complete he changed his stand and would not agree to the telecast of the programme based on the stings.

57. In the discussion between the anchor and Poonam Agarwal it also came to light that initially NDTV had seen Kulkarni as one of the victims of the system but later on he appeared in a highly dubious light. The anchor said that they had no means to know if he had received any money from any side. Poonam Agarwal, who had the occasion to closely see him in course of the sting operations gave instances to say that he appeared to her duplicitous, shifty and completely unreliable.

58. NDTV took the interview of R.K. Anand even as the first telecasts were on and thus what he had to say on what was being shown on the TV was fully integrated in the 8 o'clock and 9 o'clock programmes on May 30. I.U. Khan was interviewed on the following morning when a reporter from the TV channel met him at his residence with a mobile transmission unit. The interview was live telecast from around eight to twenty-three past eight on the morning of May 31. But that was the only time his interview was telecast in full. In the programmes telecast later on, one or two sentences from his interview were used by the anchor to make her comments.

59. In his interview I.U. Khan basically maintained that from the clandestine recording of his conversation with Kulkarni, pieces were used out of context and selectively for making the programme and what he spoke to Kulkarni was deliberately misinterpreted to derive completely wrong inferences. He further maintained that in his meeting with Kulkarni he had said nothing wrong much less anything to interfere with the court's proceeding in the pending BMW case.

Impact of the telecast

60. On the same day I.U. Khan withdrew from BMW case as Special Public Prosecutor. Before his withdrawal, however, he produced before the trial court a letter that finds mention in the trial court order passed on that date, written in the hand of Kulkarni stating that he collected the summons issued to him by the court from the SHO, Lodhi Colony Police Station on the advice of I.U. Khan.

61. The trial court viewed the telecast by NDTV very seriously and issued notice to its Managing Director directing to produce "the entire unedited original record of the sting operation as well as the names of the employees/reporters of NDTV who were part of the said sting operation" by the following day. The further cross-examination of Kulkarni was deferred to another date on the request of the counsel replacing I.U. Khan as Special Public Prosecutor.

62. On 1-6-2007, R.K. Anand had a legal notice sent to NDTV, its Chairman, Directors and a host of other staff asking them to stop any further telecasts of their BMW programme and to tender an unconditional apology to him failing which he would take legal action against them inter alia for damages amounting to rupees fifty crores. NDTV gave its reply to the legal notice on 20-7-2007. No further action was taken by R.K. Anand in pursuance of the notice.

The High Court takes notice

63. On the same day (31-5-2007), a Bench of the Delhi High Court presided over by the Chief Justice took cognizance of the programme telecast by NDTV the previous evening and felt compelled to examine all the facts. The Court, accordingly, directed the Registrar General "to collect all materials that may be available in respect of the telecast including copies of CDs/video and transcript and submit the same for consideration within 10 days". The Court further *directed NDTV "to preserve the original material* including the CDs/video pertaining to the aforesaid sting operation".

64. In response to the notice issued by the trial court, NDTV produced before it on 1-6-2007 *two* microchips and a recorder with the *third* chip inside it. The chips were said to contain the original recordings. In addition to the chips and the recorder NDTV also produced 5 CDs that were copies of the original, unedited recordings on the *three* chips. It was brought to the notice of the trial court that the High Court had also issued notice to NDTV in the same matter. The trial court, accordingly, stopped its inquiry and returned everything back to NDTV for production before the High Court.

65. On 2-6-2007 Ms Poonam Agarwal of NDTV submitted before the High Court six CDs; one of the CDs (marked "1") was stated to be edited and the remaining five (marked "2"-"6") unedited. In a written statement given on the same day she declared that *NDTV News Channel did not have any other material in connection with the sting operation*. She also stated that in accordance with the direction of the Court, NDTV was preserving the original CDs/videos relating to the sting operation.

66. On 6-6-2007 Poonam Agarwal submitted true transcripts of the CDs duly signed by her on each page. She also gave a written statement on that date stating that the CDs submitted by her earlier were duplicated from a tape recording prepared from *four* spy camera chips which were recorded on different occasions. (As we shall see later on, the total number of microchips used in all the four stings was actually five and not four.) She also gave the undertaking on behalf of NDTV that those original chips would be duly preserved.

67. On June 11 (during summer vacation) the Court recorded the statement of the counsel appearing for NDTV that its order dated May 31 had been fully complied with. On July 9, after hearing counsel for NDTV and on going through the earlier orders passed in the matter the Court felt the need for a further affidavit regarding the telecast based on the sting operation. It,

accordingly, directed NDTV to file an affidavit "concerning the sting operation from the stage it was conceived and the attendant circumstances, details of the recording done i.e. the time and place, etc. and other relevant circumstances". In compliance with the Court's direction, Poonam Agarwal filed an affidavit on 23-7-2007.

Poonam Agarwal's affidavit

68. In her affidavit Poonam Agarwal stated that she was a reporter working with NDTV. She had joined the TV channel two years ago. She stated that NDTV was covering the BMW trial and had telecast a special programme on the case on 20-4-2007. Two days later Kulkarni contacted her on telephone and requested for a meeting saying that he had something important to tell her about the case. She met him on April 22 and 23.

69. In the second meeting Kulkarni was accompanied by his wife. He told Poonam Agarwal that there was a strong nexus between the prosecution and the defence in that case and that he had suffered a lot due to his involvement in the case. He was determined to expose the nexus. He said that he needed the help of NDTV to do a sting operation in order to bring out the complicity between the prosecution and the defence into open.

70. Poonam Agarwal discussed the plan mooted by Kulkarni with her superiors in the organisation and got their permission to carry out the sting operation. In this regard she stated in the affidavit that the people at NDTV were greatly concerned over the manner in which a number of trials had ended up in acquittal on account of witnesses turning hostile, especially in cases in which the accused were influential people. NDTV as a news channel, was trying to uncover the causes behind this malaise and it was in this spirit that the channel decided to help Kulkarni. She duly told Kulkarni that NDTV was willing to help him in doing the sting operation.

71. Kulkarni informed Poonam Agarwal that he was going to meet I.U. Khan in his chamber to seek his direction in connection with the court summons issued to him and that would be good a opportunity for doing the sting. Accordingly, she along with one Deepak Verma (a camera person from the TV channel) met Kulkarni outside the Patiala House Court premises. She fitted Kulkarni with a button camera and a recording device and also gave him a cell phone to communicate with her in any emergency. Then Kulkarni and Deepak Verma went to meet I.U. Khan. Deepak Verma carried another concealed camera and a recording device in his bag. Deepak Verma was sent along with Kulkarni to ensure that he did not in any manner tamper with the hidden camera. Before sending them off she switched on Kulkarni's camera. After meeting with I.U. Khan both came back and she then switched off Kulkarni's camera.

72. Poonam Agarwal stated in the affidavit that after copying its contents onto a compact disc the microchip used in Kulkarni's camera was formatted for other projects but the microchip in the camera in Deepak Verma's bag was available undisturbed.

73. Kulkarni next called to tell Poonam Agarwal that he was meeting R.K. Anand at the IGI Airport (Domestic Terminal) and suggested to do a sting there. She, accordingly, took her (*sic* him) to the airport on 6-5-2007. There she fitted him with a hidden camera and the recording device, switched the camera on and sent him off to meet R.K. Anand. She herself waited for him in her car. After meeting with R.K. Anand, Kulkarni came out of the airport building and contacted her on the cell phone to find out where her car was parked. He then came back to the car. She switched off the camera and brought him back to her office.

74. Kulkarni again contacted Poonam Agarwal to say that he was meeting R.K. Anand on May 8. This time she met him near the Delhi High Court and in her vehicle equipped him with hidden camera and switched it on. She waited in her vehicle while Kulkarni got into the back seat of a black car outside the Delhi High Court in which R.K. Anand was sitting from before. The car with Kulkarni and R.K. Anand drove off and she followed them in her vehicle. They went to South Extension, New Delhi where Kulkarni was dropped. He came back to her vehicle and joined her. She then switched off the camera.

75. Poonam Agarwal stated in the affidavit that all along the way from outside the Delhi High Court to South Extension the car in which Kulkarni and R.K. Anand were travelling did not stop anywhere except at the red lights on the crossings. She also averred that all along the way she followed the car in her own vehicle and it always remained in her sight.

76. On the same day Kulkarni told Poonam Agarwal that he was scheduled to meet R.K. Anand in his office at South Extension Part II. They together went to South Extension and from there Kulkarni telephoned R.K. Anand. He told her that he was asked to wait there at a particular spot where someone would come to meet him. After a short while Bhagwan Sharma arrived there whom she knew from before as an advocate associated with R.K. Anand. At that time they were in her vehicle. She "wired" Kulkarni, like the earlier occasions, and he went to meet Bhagwan Sharma at the fixed spot. For a little while she lost them from her sight. She then contacted Kulkarni on his cell phone and he, feigning to be talking to his wife, indicated to her the exact spot where he was at that moment. She approached that spot and found that Bhagwan Sharma had gone away and Kulkarni was talking with a Sikh person whom he later identified as "Lovely". They moved around and talked for a pretty long time. In the end Lovely got into his car and drove away. Kulkarni then called her on the cell phone to find out where her vehicle was parked. He came back to her. She switched off the camera. He narrated to her what transpired in the meetings with Bhagwan Sharma and Lovely.

77. Poonam Agarwal stated in the affidavit that the entire episode lasted for over an hour and a half. All through she had Kulkarni in her sight except for the short period as indicated above. She also stated that as the episode went on for a long time the batteries of the hidden camera got exhausted and, therefore, the recording of the meeting ended abruptly. Once all the material

collected in course of the sting operations came in possession of NDTV it was carefully examined and evaluated and the editorial team at NDTV came to the view that in the larger public interest it was their duty to put the whole matter in the public domain. The decision was thus taken to telecast a special programme under the caption "BMW expose". The recordings made in the sting operations were then very carefully edited for making a programme that could be telecast. The process of editing took three days. The chips were copied onto CDs in her presence and under her supervision. She, at all times, retained the custody of the original chips. At all successive stages she was personally present to ensure the factual accuracy of the edited version incorporated in the programme. But once the programme was made Kulkarni completely changed his position and strongly opposed the telecast of the programme. He asked her not to telecast the programme saying that he and his wife were facing threat to their lives. He would not clearly spell out the nature of the threat or its source but simply opposed the telecast. In view of his plea that he and his wife faced threat to their lives it was decided to defer the telecast till his examination-in-chief in the court was over.

78. Poonam Agarwal then stated about Kulkarni's interview (without stating the date on which it was recorded) on camera in the NDTV Studio in which he spoke about why and how he carried out the stings. Coming back to the telecast she said that she met Kulkarni on the dates of his appearance in the trial court on May 14, 17 and 29 but was not able to persuade him to agree to the telecast. He was not willing to give his consent even on May 29 but then the people at NDTV felt that his stand was quite contradictory to the objective avowed by him for carrying out the stings with the help of NDTV; by that date his examination-in-chief was over and he was also provided with police protection. Taking all those facts and circumstances into account it was decided to go ahead with the telecast regardless of Kulkarni's objections. The programme was, accordingly, telecast on 30-5-2007. In course of the telecast the anchor of the show engaged with R.K. Anand and presented his version too before the viewers. I.U. Khan was similarly tried to be contacted but he was indisposed.

79. In the end the affidavit gave a list of all the materials submitted in the court along with it.

80. In Poonam Agarwal's affidavit NDTV took the stand that the stings were conceived and executed by Kulkarni. Its own role was only that of the facilitator. Kulkarni would choose the date and time and venue of the meetings where he would like to do the sting. He would fix up the meetings not in consultation with Poonam Agarwal but on his own. He would simply tell her about the meetings and she would provide him with the wherewithal to do the sting. She would not ask him when and how and for what purpose the meeting was fixed even though it may take place at such strange places as the VIP lounge of the airport or a car travelling from outside the Delhi High Court to South Extension. She would not ask him even about any future meetings or his further plans.

Proceeding resumes

81. On 25-7-2007 when the matter next came up before the Court the affidavit of Poonam Agarwal was already submitted before it. On that date the counsel for NDTV took the Court through the transcripts of the sting recordings and submitted that the three advocates and the other person Lovely, the subjects of the sting, had prima facie interfered with the due administration of criminal justice. The Court, however, deferred any further action in the matter till it viewed for itself the original sting recordings. On that date it appointed Mr Arvind K. Nigam, Advocate as amicus curiae to assist the Court in the matter.

82. On 31-7-2007, one Mr Vinay Bhasin, Senior Advocate, tried to intervene stating that the action of NDTV in telecasting a programme based on sting operations in connection with a pending criminal trial itself amounted to interference with the administration of criminal justice. On the same day both R.K. Anand and I.U. Khan also tried to intervene in the court proceedings and sought to put forward their point of view. The Court, however, declined to hear them, pointing out that there was no occasion for it at that stage since no notice was issued to them.

83. On 7-8-2007, the Court on a consideration of all the materials coming before it came to the view that prima facie the actions of R.K. Anand, I.U. Khan, Bhagwan Sharma and Lovely (who was dead by then) were aimed at influencing the testimony of a witness in a manner so as to interfere with the due legal process. Their actions thus clearly amounted to criminal contempt of court as defined under clauses (*ii*) and (*iii*) of Section 2(*c*) of the Contempt of Courts Act. The Court accordingly passed the following order:

> "[*1*] From your aforesaid acts and conduct as discerned from the CDs and their transcripts, the affidavit dated 23-7-2007 of Ms Poonam Agarwal along with its annexures, we are, prima facie, satisfied that you Mr R.K. Anand, Senior Advocate, Mr I.U. Khan, Senior Advocate, Mr Sri Bhagwan, Advocate and Mr Lovely have wilfully and deliberately tried to interfere with the due course of judicial proceedings and administration of justice by the courts. Prima facie your acts and conduct as aforesaid was intended to subvert the administration of justice in the pending trial and in particular influence the outcome of the pending judicial proceedings.
>
> [*2*] Accordingly, in exercise of the powers under Article 215 of the Constitution of India, we do hereby direct initiation of proceedings for contempt and issuance of notice to you, Mr R.K. Anand, Senior Advocate, Mr I.U. Khan, Senior Advocate, Mr Sri Bhagwan, Advocate and Mr Lovely to show cause as to why you should not be proceeded and punished for contempt of court as defined under Section 2(*c*) of the Contempt of Courts Act and under Article 215 of the Constitution of India. You are, therefore, required to file your reply showing cause, if any, against the action as proposed within four weeks.

[3] Noticees and contemnors shall be present in the Court on the next date of hearing i.e. 24-9-2007. Registry is directed to supply undermentioned material to the noticees:

'(*i*) Copy of the order dated 7-8-2007;

(*ii*) Affidavit of Ms Poonam Agarwal dated 23-7-2007 together with annexures, including the four copies of CDs filed along with the affidavit;

(*iii*) Copies of the corrected transcripts filed on 6-8-2007 in terms of the order dated 31-7-2007;

(*iv*) Copies of 6 CDs, including one edited and five unedited containing the original footage which were produced on 6-6-2007.'

NDTV shall make available to the Registry sufficient number of copies of the CDs and transcripts, which the Registry has to supply to the noticees as above."

84. In response to the notice R.K. Anand, instead of filing a show cause, first filed a petition (on 5-9-2007) asking one of the Judges on the Bench, namely, Manmohan Sarin, J. to recuse himself from the hearing of the matter. The recusal petition and the review petition arising from it were rejected by the High Court by orders dated 4-10-2007 and 29-11-2007. We will be required to consider the unpleasant business of the recusal petition in greater detail at its proper place later in the judgment.

85. While the matter of recusal was still pending a grievance was made before the Court (on September 24) that along with the notice the proceedees were given only five CDs, though the number of CDs submitted by NDTV before the Court was six. Counsel for NDTV explained that the contents of two of the CDs were copied onto a single CD and hence, the number of CDs furnished to the noticees had come down to five. Counsel for the TV channel, however, undertook to provide fresh sets of six CDs to each of the noticees.

86. On 28-9-2007 counsel for I.U. Khan was granted permission for viewing the six CDs submitted by NDTV on the Court's record. On October 1, I.U. Khan filed his affidavit-in-reply to the notice issued by the High Court and R.K. Anand and Bhagwan Sharma filed their affidavits on 3-10-2007.

Yet another telecast

87. In the evening of 3-12-2007 NDTV telecast yet another programme from which it appeared that R.K. Anand and Kulkarni were by no means strangers to each other and the association between the two went back several years in the past. Kulkarni, under the assumed name of Nishikant, had stayed in R.K. Anand's villa in Shimla for some time. There he also had a brush with law and was arrested by the police in Una (H.P.). He had spent about forty-five days in jail. From the H.P. Police record it appeared that after coming on the scene in BMW case he spent some time in hotels in Rajasthan and Gurgaon with the Nandas paying the bills.

88. This time R.K. Anand did not give any legal notice to NDTV seeking apology or claiming damages, etc. but on the following day (December 4) he

made a complaint about the telecast before the Court. The Court directed NDTV to produce all the original materials concerning the telecast and its transcript. The Court further directed NDTV to file an affidavit giving details in regard to the collection of the materials and the making of the programme.

89. In response to the High Court's direction one Deepak Bajpai, Principal Correspondent with NDTV filed an affidavit on its behalf on 11-12-2007. In the affidavit it was stated that following a reference to Himachal Pradesh in the conversation between R.K. Anand and Kulkarni in the second sting that took place in the car, he went to Shimla and other places in Himachal Pradesh and made extensive investigations there. Kulkarni was easily identified by the people there through his photograph. On making enquiries he came to learn that in the year 2000 Kulkarni lived in R.K. Anand's villa called "Schiltborn" in Shimla for about a year under the assumed name of Nishikant. While staying there he corresponded with an insurance company on behalf of R.K. Anand, using his letterhead, in connection with some insurance claim. Interestingly, there he also obtained a driving licence describing himself as Nishikant Anand, son of R.K. Anand. In Shimla and in other places in Himachal he also duped a number of traders and businessmen. In Una he was arrested by police on suspicion and he had to spend about forty-five days in jail.

90. In reply to the affidavit filed by Deepak Bajpai, R.K. Anand filed an affidavit on 10-1-2008 in which he mostly tried to point out the discrepancies in the sting recordings and contended that those were inadmissible in evidence.

Proceedings before the High Court

91. After putting the recusal petition and the review application out of its way, the Court took up the hearing of the main matter that was held on many dates spread over a period of four months from 4-12-2007 to 2-5-2008. R.K. Anand appeared in person while I.U. Khan was represented through lawyers. Neither R.K. Anand nor I.U. Khan (nor for that matter Bhagwan Sharma) tendered apology or expressed regret or contrition for their acts.

92. I.U. Khan simply denied the charge of trying to interfere with the due course of judicial proceedings and administration of justice by the courts. He took the stand that the expressions and words he is shown to have uttered in his meeting with Kulkarni were misinterpreted and a completely different meaning was given to them to suit the story fabricated by the TV channel for its programme.

93. R.K. Anand on his part took a posture of defiant denial and tried to present himself as one who was more sinned against than a sinner. Before coming to his own defence he raised a number of issues concerning the role of the mass media in general and, in particular, in reporting about BMW case. He contended that it was NDTV that was guilty of committing contempt of court as the programmes telecast by it on 30-5-2007 (and on subsequent dates) clearly violated the sub judice rule. On this issue, however, he was strangely ambivalent; he would not file an application before the

Court for initiating contempt proceedings against the TV channel but "invite" the Court to suo motu take appropriate action against it.

94. R.K. Anand next submitted that the Court should rein in and control the mass media in reporting court matters, especially live cases pending adjudication before the court, arguing that media reports mould public opinion and thereby tend to goad the court to take a certain view of the matter that may not necessarily be the correct view. He also urged the Court to lay down the law and guidelines in respect of stings or undercover operations by media.

95. After an elaborate discussion the High Court rejected all the contentions of the contemnors based on these issues. Before us these issues were not raised on behalf of the appellants. But we must observe we fail to see how those issues could be raised before the High Court as pleas in defence of a charge of criminal contempt for suborning a witness in a criminal trial. In the overall facts and circumstances of the case it was perfectly open to the High Court to deal with those issues as well. But it certainly did not lie with anyone facing the charge of criminal contempt to plead any alleged wrongdoing by the TV channel as defence against the charge.

96. If the telecast of the programme concerning a pending trial could be viewed as contempt of court, or if the stings preceding it, in any way, violated the rights of the subjects of the stings, those would be separate issues to be dealt with separately. In case of the former the matter was between the court and the TV channel and in the latter case it was open to the aggrieved person(s) to seek his remedies under the civil and/or criminal law. As a matter of fact R.K. Anand had given a legal notice to NDTV that he did not pursue. But neither the stings nor the telecast would absolve the contemnors of the grave charge of suborning a witness in a criminal trial. We have, therefore, not the slightest doubt that the High Court was quite right in rejecting the contemnors' contentions based on those so-called preliminary issues.

97. The contemnors then raised the issues of the nature of contempt jurisdiction and the onus and the standard of proof in a proceeding for criminal contempt. They further questioned the admissibility of the sting recordings and contended that those recordings were even otherwise unreliable.

98. In the course of hearing R.K. Anand tried to assail the integrity of the CDs furnished to him that were the reproductions from the originals of the sting recordings. According to him, there were several anomalies and discrepancies in those recordings and (on 29-1-2008) he submitted before the Court that from the CDs furnished to him he had got another CD of eight minutes' duration prepared in order to highlight the tampering in the original recording. He sought the Court's permission to play his eight minute CD before it.

99. On R.K. Anand's request the Court viewed the eight minute CD submitted by him on 5-2-2008. On 27-2-2008 the Court directed NDTV to file an affidavit giving its response to the CD prepared by R.K. Anand. As directed, NDTV filed the affidavit, sworn by one Dinesh Singh, on 7-3-2008. The affidavit explained all the objections raised by R.K. Anand in his eight minute CD.

100. R.K. Anand then filed a petition (Crl. M. No. 4012 of 2008) on 31-3-2008 for sending the original CDs for examination by the Central Forensic Science Laboratory. Besides this, R.K. Anand filed a number of interlocutory applications in course of the proceedings. Only three of those are relevant for us having regard to the points raised in the hearing of the appeal. Those are:

(*I*) Crl. M. No. 13782 of 2007 filed on 3-12-2007 for summoning Poonam Agarwal for cross-examination;

(*II*) Crl. M. No. 4010 of 2008 filed on 31-3-2008 for initiating proceeding of perjury against NDTV and Poonam Agarwal for deliberately making false statements on affidavits and fabricating evidence; and

(*III*) Crl. M. No. 4150 of 2008 filed on 2-4-2008 asking the Court to direct NDTV to place all the original microchips before it and to furnish him copies directly reproduced from those chips.

Apart from the above, R.K. Anand also filed before the High Court on 31-3-2008 an application in the nature of written arguments.

101. On conclusion of oral submissions, on 5-4-2008 the Court, in presence of the three contemnors and their counsel, viewed all the original materials of the sting operations submitted before it by NDTV. In the order passed on that date it recorded the proceeding of the day as under:

"The undermentioned recordings were played in Court today in the presence of noticees, their counsel and the amicus curiae:

(*i*) Bag camera chip of conversation with Shri I.U. Khan on 28-4-2007;

(*ii*) Button camera DVD of conversation with Shri I.U. Khan on 28-4-2007;

(*iii*) Button camera chip of conversation with Shri R.K. Anand on 6-5-2007;

(*iv*) Button camera chip of conversation with Shri R.K. Anand on 8-5-2007;

(*v*) Button camera chip of conversation with Sri Bhagwan Sharma and Shri Lovely; and

(*vi*) Telecast of second expose of 3-12-2007 at (*sic* of the) Himachal Pradesh stay of Sunil Kulkarni.

Mr Huzefa Ahmedi for noticee Mr I.U. Khan and Mr R.K. Anand for himself and Sri Bhagwan offered their comments on the inferences to be drawn from the video recordings and the conversations therein.

Renotify on 10-4-2008 at 2.30 p.m. for conclusion of submissions on behalf of the noticees."

102. On the next date 10-4-2008, R.K. Anand concluded his submission and the counsel for I.U. Khan filed reply to the written submission of amicus curiae.

103. The matter came up once more before the Court on 2-5-2008 when the Court after giving some direction to NDTV and the amicus curiae, reserved the judgment in the case which was finally pronounced on 21-8-2008. The Court held that the contempt jurisdiction of a court is sui generis. The provisions of CrPC and the Evidence Act are not applicable to a proceeding of contempt. In dealing with contempt, the Court was entitled to devise its own procedure but it must firmly adhere to the principles of natural justice. The Court also found and held that the recordings of the stings on the microchips and their reproduction on the CDs were completely genuine and unimpeachable and hence, those materials could not only be taken in evidence but fully relied on in support of the charge.

104. The High Court rejected all the interlocutory applications filed by R.K. Anand. As to the request to call Poonam Agarwal for cross-examination the Court observed that what transpired between R.K. Anand and Kulkarni in the sting meetings was there on the microchips and the CDs, copied from those chips, for anyone to see and no statement by Poonam Agarwal in her cross-examination would alter that even slightly. The Court further recorded its finding that the microchips were not subjected to any tampering, etc. and hence, rejected the petition for proceeding against NDTV for perjury. In regard to the other petitions the Court observed that those were moved in desperation and for exerting pressure on NDTV and Poonam Agarwal.

105. The Court further observed that the original chips were in the safe custody of NDTV and there was no need for those chips to be deposited in Court. The contents of the microchips were viewed by the proceedees and the CDs onto which the microchips were copied were handed over to them. The proceedees, therefore, had no cause for grievance and the submission to send the microchips for forensic examination or for directing NDTV to submit the original microchips before the High Court had no substance or merit.

106. In the end the Court held that the circumstances and the manner in which the meetings took place between the proceedees and Kulkarni and the exchanges that took place in those meetings as evidenced from the sting recordings fully established that both I.U. Khan and R.K. Anand were guilty of the charges framed against them. It accordingly convicted them for criminal contempt of court and sentenced them as noticed above.

Some of the issues arising in the case

107. These are broadly all the facts of the case. We have set out the relevant facts in considerable detail since we do not see this case as simply a matter of culpability, or otherwise, of two individuals. Inherent in the facts of the case are a number of issues, some of which go to the very root of the

administration of justice in the country and need to be addressed by this Court.

108. The two appeals give rise to the following questions:

1. Whether the conviction of the two appellants for committing criminal contempt of court is justified and sustainable?

2. Whether the procedure adopted by the High Court in the contempt proceedings was fair and reasonable, causing no prejudice to the two appellants?

3. Whether it was open to the High Court to prohibit the appellants from appearing before the High Court and the courts subordinate to it for a specified period as one of the punishments for criminal contempt of court?

4. Whether in the facts and circumstances of the case the punishments awarded to the appellants can be said to be adequate and commensurate to their misdeeds?

Apart from the above, some other important issues arise from the facts of the case that need to be addressed by us. These are:

5. The role of NDTV in carrying out sting operations and telecasting the programme based on the sting materials in regard to a criminal trial that was going on before the court;

6. The declining professional standards among lawyers; and

7. The root cause behind the whole affair; the way the BMW trial was allowed to go directionless.

109. On these above issues we were addressed at length by Mr Altaf Ahmed, learned Senior Advocate appearing for R.K. Anand and Mr P.P. Rao, learned Senior Advocate appearing on behalf of I.U. Khan. We also heard Mr Harish Salve, learned Senior Advocate representing NDTV, which though not a party in the appeals was, nevertheless issued notice by us. We also received valuable assistance from Mr Gopal Subramanium, Senior Advocate and Mr Nageswara Rao, Senior Advocate, the amici appointed by us having regard to the important issues involved in the case. We spent a full day viewing all the sting recordings, the recording of the programmes telecast by NDTV on 30-5-2007 and the eight minute CD prepared by R.K. Anand. Present at the viewing were all the counsel and one of the appellants, namely, R.K. Anand.

R.K. Anand's appeal

110. Before adverting to anything else we must deal with the appeals proper. In order to judge the charge of criminal contempt against the appellants it needs to be seen what actually transpired between Kulkarni and the two appellants in the stings to which they were subjected. And for that we shall have to examine the raw sting recordings.

111. Taking the case of R.K. Anand first we go to the sting done on him on 6-5-2007 when Kulkarni met him in the VIP lounge at the Domestic Terminal of IGI Airport, Delhi. Here, it needs to be recalled that as Kulkarni was behind the camera (which was fixed to his shirt front) he is not seen in

the picture. What one sees and hears are the pictures of whomsoever he is engaged with and their voices. The video begins with Kulkarni approaching the guard at the entrance of the airport building and asking him about the public address system from where he could contact R.K. Anand who was inside the airport building in the VIP lounge. The following are the extracts from the transcript of the sting recording of the meeting that would give an idea how the meeting between the two took place and what was said in the meeting.

The exchange between Kulkarni and R.K. Anand

112. *Kulkarni*: Excuse me, apka announcement kaha hai?

Someone: Kis liye?

Kulkarni: Mr R.K. Anand, yaha hai, ex-Member of Parliament, mujhe unse milna hai, urgent … I think woh udhar hi hai.

Kulkarni on the public telephone at the airport

Kulkarni: Hello haanji boss, bahar hi hoo … Gate No. 1 Gate No. 2 ke beech mein, Ha, VIP gate ok … I'll be there. Ya, ya, ya, ya, ok.

Kulkarni hangs up and proceeds towards the VIP gate

Kulkarni: Poonam, keep your mobile on! Ok! and keep it with your recorder! Ok! Ok! I'm leaving for the VIP gate … he is waiting there … ok … ok.

Anand: Kya badmashi karte rehte ho?

Kulkarni: Main aapko wohi time bata raha tha ke mujhe sab kuch pata tha ye … isi liye hamne … but lekin nobody believed me … (Anand laughing).

Anand: Acha tu mere saath badmashi karni band kar de … tu banda ban ja.

Kulkarni: Aap banaoge to banoonga.

Anand: Agar nahi banega to main maroonga. (*Kulkarni*: cuts in)

* * *

Kulkarni: *Ab kya strategy banani hai batao.*

Kulkarni: Maine message bheja tha Khan saab ke pass … aapko shayad mila hoga.

Anand: Haan … mil gaya tha.

* * *

Anand: Main kya bola? (Laughs)

Anand: *Acha let me come back tomorrow, meri flight ayegi koi saare nau (9.30) baje … tum ghar mein….*

Kulkarni: Han that will be better because I don't want….

* * *

Anand: Haan ab … ab mujhe batao….

Anand: Ab batao mereko….

Kulkarni: *Mujhe bola dhai crore doonga … aap batao mereko.*

Anand: Hain?

Kulkarni: Dhai crore….

Anand: *Tu paanch crore maang le….*

Kulkarni: Main paanch crore maang leta hoo….

Anand: Tere ko cross-examine maine zaroor karna hai!

Kulkarni: Aur doosri baat … cross-examine aap karoge mereko? (Anand laughs)

* * *

Kulkarni: Jab bhi mereko zaroorat padegi main ghar pe aa jaunga, mujhe pata hai.

Anand: *Chalo let me come back tomorrow evening, you come and meet me in the night … in the farm … don't meet me outside.*

* * *

Kulkarni: Nahi aaj jaroori tha isliye main mila … nahi to main … I avoid it….

Anand: Nahi farm pe milna.

Kulkarni: Aur doosri baat … yeh inhe bhi jante ho … yeh dekho its commando … ok.

Anand: *Ya, tomorrow evening, bye*! (emphasis supplied)

113. The second sting took place on 8-5-2007 in the car. Extracts from the transcript of that meeting are as follows:

Kulkarni: Kyon office mein bhi aur ghar pe bhi mat milo … yeh sare log mere peeche….

Anand: Yahan kyon milte ho phir?

Kulkarni: Yahan koi nahi dekhta … acha abhi kya karna hai batao.

* * *

Anand: *Ab dekho tum … tum … paise….*

Kulkarni: Main … yeh sab main kaise boloonga … ab yeh sab drama yeh kar rahe hai na … drama kar rahe hai poora hi … ab dekho jo hua so hua….

Anand: *Baat to tumhare samne karonga, peeche to karongaa nahi….*

Kulkarni: Vo to main bhi janta hoo.

Anand: *Samne baat hogi tumhare.*

Kulkarni: *Kal kya mere ko nikaal rahe ho kya … 311 se*?

Anand: *Nikal doo*?

Kulkarni: *Nahi … nahi mat nikalna….*

Anand: *Nahi nikalta.*

Kulkarni: *Nahi nahi mat nikalna … withdraw karva lo na aap … jab main aapke saath hoo, jo marzi karne ke liye tyaar hoo, to yeh kaye ke liye High Court main laga diya aapne … aur mere upar aapko itna bhi bharosa nahi hai* kya … theek hai gussa ho jata hoo main….

Anand: Nahi nahi.

Kulkarni: *Lekin aana hai … depose karna hai.*

Anand: *Ab usse kya baat karni hai … batao, reasonable baat karo.*

Kulkarni: *Aap decide karo.*

Anand: *Tum decide karo.*

Anand: *Woh to you decide.*

Kulkarni: 30,000 crores … CBI ne 2300 crores … big investment … 84 crores.

Anand: Vo choddo.

Kulkarni: Kyon … kyon chodo … kyon chodo? Aap … main aapka beta hoo. Bolo.

Anand: Tumhara bheja kharaab ho gaya hai … (laughs).

Kulkarni: Kharaab ho gaya hai na abhi….

Anand: Haa bheja kharaab ho raha hai.

* * *

Anand: *So you have not taken the summon*?

Kulkarni: *Na … not at all. Jab tak aap nahin bataoge, Khan sahib nahi bataenge tab main summon kaise lu.*

Anand: How did Ramesh Gupta inform him that you have taken the summons?

* * *

Kulkarni: *Ab maine kya karna hai … maine summon liya nahi hai … aap mere upar to bharosa kar sakte ho na?*

Anand: *Poora, mujhe to poora….*

Kulkarni: Poora vishwas hai na? To maine summon nahi liya hai….

* * *

Anand: I'm out of touch … I'm not in trial, I'm in the High Court so I don't know … *anyhow … what statement you are supposed to make … we will decide about it …. First of all, meet the bugger and talk to him. And be reasonable. Don't be unreasonable like what you told me that day. Don't be silly*!

Kulkarni: *Kitna mangoo*?

Anand: *Chodo na … bat samjha kar yaar … aadmi ko zindagi main aur bhi bade kaam aate hai … aise nahi karte … that fellow is sick you know … that man … jo kya naam hai uska….*

Kulkarni: Hmm.

* * *

Anand: *Talk to me around seven forty-five.*

Kulkarni: Ok.

Anand: Ok.

Kulkarni: Sir.

Anand: Then we'll decide about it.

* * *

Kulkarni: *Hmm. Paune aath (8) baje I'll get back to you … agar paune aath (8) baje aap bulate ho to main aaju-baaju ke area main hi rehta hoo.* Kanth ko bula lena bas … meri ek dil ki bhadaas niklane do bas … do minute.

Anand: *Aaju baju mein hi rehna, main tumhe bula lunga.*

Kulkarni: *Isme bachana hai na usko Sanjeev ko?*

Anand: *… Kabhi kisika bura mat kiya karo. Panga lene ka kaya faydaa*!

Kulkarni: Theek hai.

Kulkarni: *Nahi … lekin kaise kya karna hai vo aapne aur Khan sahab ne decide karna hai … after all it was merely an accident….*

Anand: *And he remained in jail for 8-9 months … yaar.*

Kulkarni: To main … to mere ko bhool jayoge aap … pentalis (45) din.

Anand: Kaise.

* * *

Anand: You were enjoying….

Kulkarni: Kya,….

Anand: You were enjoying. Not that you were in a problem … *Uski to dikkat hai bechare ki….*

Kulkarni: Nahi nahi…. I'm also not interested. Aisi baat nahi hai….

Anand: *Kabhi kisi ka bura nahi kara karo … aise bhala karne se hi aadmi to acha rehta hai … kisi ko jhoota nahi phasana chahiye … nikal dena chahiye….*

Kulkarni: Chalo theek hai. Aap ke kehne par main kuch bhi karne ke liye tayaar hoo … aur inki saari galat information hai.

Anand: Aage jake bhi bhagwan ko jawaab dena hota hai yaar … aage bhi jawaab … kya fayda karne….

Anand: Chhuraane se phir bhi ache rehta hai … phasane se to (abuses) bura hi kaam hota hai … main to kisi main interested hi nahi hoo … kisiko phasane main….

Kulkarni: Nahi vo to mujhe bhi pata hai….

Anand: In logo ne Narsimha Rao ko phasaya … acha thodi hua tha vo … vaapis chhuraya tha humne … kya fayda hua….

Kulkarni: *Main aajo-baaju main paune aath baje … aap mere ko bula lena.*

Anand: *Give me a call at seven forty-five.*

Kulkarni: Ji.

Anand: *On my office number.*

* * *

Kulkarni: *Phir mere khayaal se 311 udega nahi na, blood sample ka udega*?

Anand: Hain?

Anand: *Kyon udaye … jab tumhare pass paise bante hai to main kyon udaoo*?

Kulkarni: *Jab main aapke saath hoo….*

Anand: *Ha … to phir kya hai….*

* * *

Kulkarni: Koi neta log tha … *acha … seven forty-five.*

Anand: *Pakki gal.* (emphasis supplied)

114. It is quite possible that Kulkarni had somehow found out R.K. Anand's programme and R.K. Anand did not know that he was coming to meet him at the airport but there can be no doubt that he allowed him to come to him and the meeting took place with his consent. From his opening remark and the general tenor of the conversation it is evident that they were quite free and familiar with each other. (We may recall here their seven years old Shimla connection!) Now, when Kulkarni asks him what strategy was to be made it could mean only one thing. He did not give any direct reply to that question but he did not ask Kulkarni to shut up either. When Kulkarni said that he was offered two-and-half crores he indeed mockingly suggested that he should ask for five crores but here also what was sought to be ridiculed was the sum quoted and not the prospects for negotiation. As a matter of fact for further negotiation door was kept wide open with the express invitation for further meeting albeit at a discreet place and time.

115. The meeting at the airport might or might not have been scheduled but there can be no doubt that the meeting in the car was fixed from before. Otherwise, it was impossible for Kulkarni to enter the car having equipped himself with a hidden camera and the recording device from before in anticipation that he would get the chance to get into the car outside the Delhi High Court. The purpose of the meeting is manifest by the conversation between the two.

116. It is also evident that before parting another meeting was fixed in the evening for which Kulkarni was to call up R.K. Anand at his office. As arranged, Kulkarni did telephone at R.K. Anand's office but the meeting did not take place there or with R.K. Anand. The meeting took place at the South Extension Market where first Bhagwan Sharma and then Lovely came to meet Kulkarni. Both claimed that they were sent to meet him by R.K. Anand.

117. There is a very long transcript of the sting on the third meeting, first between Kulkarni and Bhagwan Sharma (who stayed with Kulkarni till Lovely came there) and then between Kulkarni and Lovely. The recording of the third sting further makes it evident that Kulkarni was trying (at least for the purpose of the sting) to sell himself off in favour of the accused Sanjeev Nanda for a price that he left to be fixed by R.K. Anand. However, we see no reason to advert to the third sting, first because R.K. Anand was not

personally present in the meeting and secondly, and more importantly, because the charge is fully established against him on the basis of the two stings done on him personally. This is of course, provided the recordings of the two stings truly and faithfully represent what actually transpired in those two meetings.

Submissions on behalf of R.K. Anand

118. Mr Altaf Ahmed, learned Senior Counsel appearing for R.K. Anand, submitted that the High Court founded the appellant's conviction under the Contempt of Courts Act on facts that were electronically recorded, even without having the authenticity of the recording properly proved. The High Court simply assumed the sting recordings to be correct and proceeded to pronounce the appellant guilty of criminal contempt on that basis. Hence, the genuineness and accuracy of what appeared in the sting recordings always remained questionable.

119. Mr Ahmed submitted that the judgment and order coming under appeal was quite untenable for the simple reason that the integrity of its factual foundation was never free from doubt. Learned counsel further submitted that the procedure followed by the High Court was not fair and the appellant was denied a fair trial. He also submitted that the High Court arrived at its conclusions without taking into consideration the appellant's defence and that was yet another reason for setting aside the impugned judgment and order.

Nature of contempt proceeding

120. Mr Ahmed submitted that under the Contempt of Courts Act the High Court exercised extraordinary jurisdiction. A proceeding under the Act was quasi-criminal in nature and it demanded the same standard of proof as required in a criminal trial to hold a person guilty of criminal contempt.

121. In support of the proposition Mr Ahmed cited two decisions of this Court, one in *Mrityunjoy Das* v. *Sayed Hasibur Rahaman*[1] and the other in *Chhotu Ram* v. *Urvashi Gulati*[2]. In both the decisions the Court observed that the common English phrase, "he who asserts must prove" was equally applicable to contempt proceedings. In both the decisions the Court cited a passage from a decision by Lord Denning in *Bramblevale Ltd., Re*[3] on the nature and standard of evidence required in a proceeding of contempt: (Ch p. 137 A-E)

> "A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some

1 (2001) 3 SCC 739 : (2006) 1 SCC (Cri) 296
2 (2001) 7 SCC 530 : 2001 SCC (L&S) 1196
3 1970 Ch 128 : (1969) 3 WLR 699 : (1969) 3 All ER 1062 (CA)

evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence. …

… Where there are two equally consistent possibilities open to the court, it is not right to hold that the offence is proved beyond reasonable doubt."

122. Seeking to buttress the point learned counsel also referred to some more decisions of this Court in:

(*i*) *Anil Ratan Sarkar* v. *Hirak Ghosh*[4];

(*ii*) *Bijay Kumar Mahanty* v. *Jadu*[5];

(*iii*) *J.R. Parashar* v. *Prasant Bhushan*[6]; and

(*iv*) *S. Abdul Karim* v. *M.K. Prakash*[7].

123. There cannot be any disagreement with the proposition advanced by Mr Ahmed but as noted above *if* the sting recordings are true and correct no more evidence is required to see that R.K. Anand was trying to suborn a witness, that is, a particularly vile way of interfering with due course of a judicial proceeding especially if indulged in by a lawyer of long standing.

Admissibility of electronically recorded and stored materials in evidence

124. This leads us to consider the main thrust of Mr Ahmed's submissions in regard to the integrity, authenticity, and reliability of the electronic materials on the basis of which the appellants were held guilty of committing contempt of court.

125. Learned counsel submitted that the way the High Court proceeded in the matter it was impossible to say with any certainty that the microchips that finally came before it for viewing were the same microchips that were used in the spy cameras for the stings or those were not in any way manipulated or interfered with before production in Court. He further submitted that the admissibility in evidence of electronic recordings or electronically stored information (ESI) was subject to stringent conditions but the High Court completely disregarded those conditions and freely used the sting recordings as the basis for the appellants' conviction.

126. In support of the submissions Mr Ahmed submitted a voluminous compilation of decisions (of this Court and of some foreign courts) and some technical literature and articles on ESI. We propose to take note of only those decisions/articles that Mr Ahmed specifically referred to us and that have some relevance to the case in hand.

127. Two of the decisions of this Court referred by Mr Ahmed, one in *S.A. Khan* v. *Ch. Bhajan Lal*[8] and the other in *Quamarul Islam* v. *S.K. Kanta*[9]

4 (2002) 4 SCC 21
5 (2003) 1 SCC 644 : 2003 SCC (Cri) 407
6 (2001) 6 SCC 735 : 2001 SCC (Cri) 1242
7 (1976) 1 SCC 975
8 (1993) 3 SCC 151
9 1994 Supp (3) SCC 5

relate to newspaper reports. In these two decisions it was held that newspaper report is a hearsay secondary evidence which cannot be relied on unless proved by evidence *aliunde*. Even absence of denial of statement appearing in a newspaper by its maker would not absolve the obligation of the applicant of proving the statement. These two decisions have evidently no relevance to the case before us.

128. In regard to the admissibility in evidence of tape-recorded statements, Mr Ahmed cited a number of decisions of this Court in (*i*) *N. Sri Rama Reddy* v. *V.V. Giri*[10], (*ii*) *R.M. Malkani* v. *State of Maharashtra*[11], (*iii*) *Mahabir Prasad Verma* v. *Dr. Surinder Kaur*[12], and (*iv*) *Ram Singh* v. *Col. Ram Singh*[13]. He also referred to two foreign decisions on the point, one in (*i*) *R.* v. *Stevenson*[14] and the other of the Supreme Court, Appellate Division of the State of New York in *People of State of New York* v. *Frances Bell*[15]. We need here to refer to the last among the decisions of this Court and the English decisions in *R.* v. *Stevenson*[14].

129. In *Ram Singh*[13], a case arising from an election trial the Court examined the question of admissibility of tape-recorded conversations under the relevant provisions of the Evidence Act. The Court laid down that a tape-recorded statement would be admissible in evidence subject to the following conditions: (*Ram Singh case*[13], SCC p. 623, para 32)

> "32. Thus, so far as this Court is concerned the conditions for admissibility of a tape-recorded statement may be stated as follows:
>
> (*1*) The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.
>
> (*2*) The accuracy of the tape-recorded statement has to be proved by the maker of the record by satisfactory evidence direct or circumstantial.
>
> (*3*) Every possibility of tampering with or erasure of a part of a tape-recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.
>
> (*4*) The statement must be relevant according to the rules of the Evidence Act.

10 (1970) 2 SCC 340
11 (1973) 1 SCC 471 : 1973 SCC (Cri) 399
12 (1982) 2 SCC 258
13 1985 Supp SCC 611
14 (1971) 1 WLR 1 : (1971) 1 All ER 678
15 Case No. 11968 decided on 11-4-2004

(5) The recorded cassette must be carefully sealed and kept in a safe or official custody.

(6) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances."

130. In *R.* v. *Stevenson*[14] too the Court was dealing with a tape-recorded conversation in a criminal case. In regard to the admissibility of the tape-recorded conversation the Court observed as follows: (All ER p. 680*d-f*)

"... Just as in the case of photographs in a criminal trial the original unretouched negatives have to be retained in strict custody so in my view should original tape recordings. However one looks at it, whether, as counsel for the Crown argues, all the prosecution have to do on this issue is to establish a prima facie case, or whether, as counsel for the defendant Stevenson in particular, and counsel for the defendant Hulse joining with him, argues for the defence, the burden of establishing an original document is a criminal burden of proof beyond reasonable doubt, in the circumstances of this case it seems to me that the prosecution have failed to establish this particular type of evidence. *Once the original is impugned and sufficient details as to certain peculiarities in the proffered evidence have been examined in court, and once the situation is reached that it is likely that the proffered evidence is not the original is not the primary and best evidence that seems to me to create a situation in which, whether on reasonable doubt or whether on a prima facie basis, the judge is left with no alternative but to reject the evidence.* In this case on the facts as I have heard them such doubt does arise. That means that no one can hear this evidence and it is inadmissible."

(emphasis added)

131. Mr Ahmed also referred to another decision by a US Court on the admissibility of videotapes. This is by the Court of Appeal of the State of North Carolina in *State of North Carolina* v. *Michael Odell Sibley*[16]. In this decision there is a reference to an earlier decision of the same court in *State* v. *Cannon*[17] in which the conditions for admissibility of videotape in evidence were laid down as under:

"The prerequisite that the offer to lay a proper foundation for the videotape can be met by:

(*1*) testimony that the motion picture or videotape fairly and accurately illustrates the events filmed (illustrative purpose);

(*2*) 'proper testimony concerning the checking and operation of the video camera and the chain of evidence concerning the videotape...';

14 (1971) 1 WLR 1 : (1971) 1 All ER 678

16 No. COA99-1206 decided on 18-9-2000 (CA)

17 92 NC App 246 (CA)

(*3*) testimony that 'the photographs introduced at trial were the same as those (the witness) had inspected immediately after processing,' (substantive purposes); or

(*4*) 'testimony that the videotape had not been edited, and that the picture fairly and accurately recorded the actual appearance of the area photographed'."

132. On the different issues germane to the admissibility of ESI Mr Ahmed also referred to a decision of the District Court of Maryland, United States in *Jack R. Lorraine* v. *Markel American Insurance Co.*[18]

133. Mr Ahmed also cited before us an article captioned "The Sedona Conference® Commentary on ESI Evidence & Admissibility": A Project of the Sedona Conference Working Group on Electronic Document Retention and Production (WG1)®, published in Sedona Conference Journal, Fall 2008. The article deals extensively with the different questions relating to admissibility in evidence of ESI and one of its basic premises is that the mere fact that the information was created and stored within a computer system would not make that information reliable and authentic.

134. Mr Ahmed also invited our attention to an article appearing in The Indian Police Journal, July-September 2004 issue under the caption "Detection Technique of Videotape Alteration on the Basis of Sound Track Analysis". From this article Mr Ahmed read out the following passages:

"The acceptance of recorded evidence in the court of law depends solely on the establishment of its integrity. In other words, the recorded evidence should be free from intentional alteration. Generally, examination of recorded evidence for establishing the integrity/ authenticity is performed to find out whether it is a one-time recording or an edited version or copy of the original."

And further:

"Alteration on an audio recording can be of addition, deletion, obscuration, transformation and synthesis. In video recordings the alteration may be with the intention to change either on the audio track or on the video track. In both the ways there is always disturbance on both the tracks. Alterations in a video track are usually made by adding or removing some frames, by rearranging few frames, by distorting certain frames and lastly by introducing artificially generated frames. Alteration on a video recording (*sic*)."

135. In the light of the decisions and articles cited above Mr Ahmed contended that the High Court freely used the copies of the sting recordings and the transcripts of those recordings made and supplied by NDTV without caring to first establish the authenticity of the sting recordings. Learned counsel submitted that the use of the CDs of the sting recordings and their

18 Civil Action No. PWG 06 1893 decided on 4 5 2007

transcripts by the High Court was in complete violation of the conditions laid down by this Court in *Ram Singh*[13].

136. Learned counsel pointed out that at the threshold of the proceeding, started suo motu, the High Court, instead of taking the microchips used for the sting operations in its custody directed NDTV "to preserve the original material including the CDs/video" pertaining to the sting operations and to submit to the Court copies and transcripts made from those chips. Thus the microchips remained all along with NDTV, allowing it all the time and opportunity to make any alterations and changes in the sting recordings (even assuming there were such recordings in the first place!) to suit its purpose. The petition filed by R.K. Anand for directing NDTV to submit the original microchips before the Court and to give him copies made in the Court directly from those chips remained lying on the record unattended till it was rejected by the final judgment and order passed in the case. Another petition requesting to send the microchips for forensic examination also met with the same fate.

137. Mr Ahmed further submitted that the procedure followed by the High Court was so flawed that even the number of chips used for the different sting operations remained indeterminate. The trial court order dated 1-6-2007 referred to three chips produced on behalf of NDTV. The written statement of Poonam Agarwal made before the High Court on 6-6-2007 mentioned four chips and finally their number became five in her affidavit dated 1-10-2007.

138. Mr Ahmed further submitted that the audio and the video recording on the basis of which the NDTV telecast was based and that was produced before the High Court was done by Kulkarni and it was he who was the maker of those materials. The Court never got Kulkarni brought before it either for the formal proof of the electronic materials or for cross-examination by the contemnors. The finding of the High Court was thus based on materials of which neither the authenticity was proved nor the veracity of which was tested by cross-examination.

139. Mr Ahmed further submitted that the affidavit of the NDTV reporter (Poonam Agarwal) does not cure this basic flaw in the proceedings. The recordings were not done by the TV channel's reporter; her participation in the process was only to the extent that she "wired" Kulkarni and received from him the recorded materials. What she received from Kulkarni was also not identified, much less formally proved before the High Court. According to Mr Ahmed, therefore, the finding of the High Court was wholly untenable and fit to be set aside.

Submissions considered

140. The legal principles advanced by Mr Ahmed are unexceptionable but the way he tried to apply those principles to the present case appear to us to be completely misplaced. Here, we must make it clear that we are dealing

13 *Ram Singh* v. *Col. Ram Singh*, 1985 Supp SCC 611

with a proceeding under the Contempt of Courts Act. Now, it is one thing to say that the *standard* of proof in a contempt proceeding is no less rigorous than a criminal trial but it is something entirely different to insist that the *manner* of proof for the two proceedings must also be the same.

141. It is now well settled and so also the High Court has held that the proceeding of contempt of court is sui generis. In other words, it is not strictly controlled by the provisions of CrPC and the Evidence Act. What, however, applies to a proceeding of contempt of court are the principles of natural justice and those principles apply to the contempt proceeding with greater rigour than any other proceeding. This means that the court must follow a procedure that is fair and objective; that should cause no prejudice to the person facing the charge of contempt of court and that should allow him/her the fullest opportunity to defend himself/herself. (See *Vinay Chandra Mishra, In Re*[19] and *Daroga Singh* v. *B.K. Pandey*[20].)

Correctness of sting recordings never disputed or doubted

142. Keeping this in mind when we turn to the facts of this case we find that the correctness of the sting recordings was never in doubt or dispute. R.K. Anand never said that on the given dates and time he never met Kulkarni *at* the airport lounge or in the car and what was shown in the sting recordings was fabricated and false. He did not say that though he met Kulkarni on the two occasions, they were talking about the weather or the stock market or the latest film hits and the utterances put in their mouth were fabricated and doctored. Where then is the question of proof of authenticity and integrity of the recordings?

143. It may be recalled that both in the 8 o'clock and 9 o'clock programmes, R.K. Anand was interviewed by the programme anchors and the live exchange was integrated into the programmes. Let us see what his first response to the telecast was when the anchor of the 8 o'clock programme brought him on the show. (Following are the extracts from the exchange between the anchor and R.K. Anand.)

Live exchange between the TV anchor and R.K. Anand

"India 60 Minutes (BMW Special) 8 p.m."

Segment 2

Sonia: We have R.K. Anand, on line with us. Mr R.K. Anand, you have watched that report, what's your defence?

R.K. Anand: *My defence, what can be the defence you tell me. See, he just came to me and he was making a joke that should I make a demand for Rs 2.5 crores and I said what the hell are you talking, you would want any amount, you want ten. I meant this jokingly I'd not serious manner. I thought what the hell you want and I never invited him I was going out he must have come there to meet me and I don't know what kind of story if (sic is) being made my NDTV on this channel.*

19 (1995) 2 SCC 584

20 (2004) 5 SCC 26 : 2004 SCC (Cri) 1521

* * *

Sonia: But Mr Anand if you have a witness who has come up, you have a witness of the prosecution who has come up to you he has claimed that he wants this much money and you may've laughed it off but you then met him again, you've again discussed details of the case, surely that is not appropriate behaviour for a defence lawyer with a prosecution witness.

R.K. Anand: *See, did I ask him to sit in the car? Did I ask him to come to my office? Did I ever give him a call to come to me? We never called.* I think it's a trap being laid by the NDTV people and sending the Kulkarni to me. It's nothing that we have done anything.

* * *

Sonia: But Mr Anand, let me come back to the central point once again, why should a defence lawyer and a prosecution witness be meeting and discussing the case even if it's at the behest of the witness, surely as a Senior Defence Lawyer you should've thrown him out and not entertained this conversation?

R.K. Anand: *Just listen to me now; somebody comes up and talks to you, what do you do, you throw him out?*

* * *

Sonia: But you met him again in your car?

R.K. Anand: *HE was saying 2.5 and I said make a demand for 5. I was making a joke of him. Could you not understand the language in which I said it? I was laughing at that time.* Listen to me, he is a blackmailer, he is trying to blackmail at your instance.

* * *

Sonia: Mr Anand, if you were joking the questions that we are raising as we've said many times, we have no evidence that money changed hands or didn't change hands, what we are showing you is what was caught on camera. Money being discussed whether it was jokingly or not jokingly has to be investigated and two meetings between you and the key prosecution witness, that seems to be what is currently on camera, what actually happened has to be investigated. But how do you justify these two meetings?

R.K. Anand: *You are trying again to ask questions after questions. I am saying that you know when he said about 2.5 crores, I laughed at him and said bloody you are joking. I was smiling at him; he was making a fool of himself.*

* * *

(emphasis supplied)

144. Next is his response in the course of the second telecast immediately following the first one. (Following are the extracts from the exchange between the anchor and R.K. Anand.)

"30th May – 9 p.m. BMW Special"

Barkha Dutt: Mr R.K. Anand if you can hear me, by now you have watched over two times on NDTV. The camera doesn't lie sir, u were meeting the prosecution witness not once but twice, sir, how was this appropriate, how can you defend this sir?

Anand: Barkha, we should talk in the right perspective. One must understand that this witness is a blackmailer, we have been fighting in the High Court even today that this witness should not be examined because he has been blackmailing us for the last so many years *and when I was going out of Delhi, he appeared suddenly at the airport, and starts talking to me and say should I make it 2.5 crores. I laughed at him and what the hell are you talking, u demand 5 crores, I'll cross-examine you. This is my first reaction to that one.*

Barkha: But Mr Anand if he's a blackmailer, why did you meet him a second time in your own car, a second time outside the Delhi High Court, if he's a blackmailer?

Anand: *I have not met him in my car I'm telling you, this is not correct.*

Barkha: Did u meet him a second time?

Anand: *No I did not meet him.*

Barkha: Sir our investigation reveals that you met him at Delhi Airport and then again a second time conversation between you and him takes place inside a car, it may not have been your car. There are two separate meetings for sure sir.

Anand: *There is no second meeting, I've never met him. I only met him once and that he came. I was going out of Delhi, and somebody comes and talks to me and asks for 2.5 crores and I laughed at him that what the hell are u talking. U want 2.5 crores and just see what I've said. I'll cross-examine you. He said will you cross-examine me, I said yes I'll cross-examine you. And then we go to the High Court and tell the High Court that he is a blackmailer and we will not examine him.*

* * *

Barkha: Anand, when Sunil Kulkarni met u at the airport, how correct is it for the defence lawyer to be toughing (sic laughing) when Sunil Kulkarni raises the question of Rs 2.5 crores. In response u laugh and say for that money I will cross-examine you. Even as a joke is it appropriate?

Anand: *It is not a joke I'm saying. If somebody comes before your vision suddenly when u are going out of Delhi, and say I will demand 2.5 crores, I say what 2.5 crores, make a demand of 5 crores I will cross-examine you in the court of law.*

* * *

Barkha: U we (sic have) flatly denied meeting Sunil Kulkarni, is that correct?

Anand: I've not met him a second time.

* * *

Barkha: *U think its appropriate for you to asking the prosecution witness to come and meet you at your house sir?*

Anand: *Why what is the difficulty in meeting anyone, I don't understand?*

Barkha: So according to u R.K. Anand....

Anand: ... so long u do not influence them....

* * *

(emphasis supplied)

145. As may be seen from the above, the first response of R.K. Anand is to try to explain away (quite unconvincingly to anyone who might have viewed the recorded programme!) what he said when Kulkarni mentioned the amount of Rs 2.5 crores. He admitted that Kulkarni met him at the airport lounge. He did not deny any part of the conversation between them as shown in the programme based on the sting recordings. To the anchor of the first programme, he impliedly admitted meeting Kulkarni for the second time in the car simply stating that he did not ask Kulkarni to sit in the car and he did not ask him to come to the office. But about half an hour later, to the anchor of the second programme, though admitting meeting Kulkarni at the airport lounge, R.K. Anand completely denied meeting him in the car or anywhere else for the second time. However, as we shall see presently the denial was quite false.

146. We have gone through the transcripts of the exchange between the two anchors and R.K. Anand a number of times and we have also viewed the programme recorded on CDs. To us, R.K. Anand, in his interactions with the programme anchors, appeared to be quite stunned at being caught on the camera in the wrong act, rather than outraged at any false accusations.

147*. It is noted above that immediately after the telecast R.K. Anand sent a legal notice to NDTV threatening legal actions against them and demanding a huge sum as compensation. NDTV gave its reply to the legal notice and thereafter R.K. Anand did not pursue the matter any further.

Meeting with Kulkarni in car admitted

148. R.K. Anand filed his reply-affidavit in response to the notice issued by the Court on 3-10-2007. In Para B of the affidavit he denied, "each and every part of the alleged tape conversation and CDs produced before the Court in response to the order passed by this Court in relation to telecast of BMW exposing thereby denying each part of the conversation". He further stated that the whole tape was fabricated, distorted, edited in such a manner as to tarnish his image and to suit and project the TV channel's story in a particular manner. In Para O of the affidavit, however, he stated as follows:

"O. That the deponent was awfully busy in Court on 8-5-2007. He finished his arguments in a bride burning case at 5.45 p.m. While he was sitting in his car, Sunil Kulkarni made entry in the car. The deponent was

* **Ed.**: Para 147 corrected vide Official Corrigendum No. 1(3)/Ed.B.J./147/2009 dated 30-9-2009.

unwilling to talk and to allow him to sit in the car. The opening lines would make it clear that the deponent never wanted to talk to Sunil Kulkarni.

'*Kulkarni*: Kyon office mein, ghar pe bhi mat milo....

Anand: Yahan kyon milte ho phir.'

After reaching office, the deponent had meeting with clients i.e. Sanjeev Nanda and his father. Lovely had come to meet Mr Suresh Nanda. All the colleagues of the deponent and Nanda's were apprised of development in the car about Sunil Kulkarni. After some time, the deponent left the office. The deponent was informed that Lovely offered to record the conversation of Kulkarni so as to trap him. The deponent was informed later that not only Lovely was successful in recording the demand of Sunil Kulkarni but Sri Bhagwan also recorded another conversation subsequent to that of Lovely. The said conversation is reproduced below."

This is followed by a transcript of some alleged conversation between Sri Bhagwan and Kulkarni.

149. In the abovequoted paragraph there is a plain and clear admission in regard to the second meeting taking place in the car between R.K. Anand and Kulkarni on the evening of 8-5-2007. The statement made on oath before the High Court thus completely falsifies his denial in the live interview with the anchor of the TV programme about the second meeting with Kulkarni in the car.

150. As to the latter part of the paragraph regarding the alleged sting on Sunil Kulkarni by Sri Bhagwan, we do not have the slightest doubt that it was an afterthought and concoction. Had there been such a sting recording R.K. Anand was duty-bound to inform the High Court about it when the criminal revision against the trial court order summoning Kulkarni as court witness was heard on several dates in May 2007 before the telecast of the programme by NDTV. He was equally duty-bound to inform the trial court about Kulkarni's approaches and the sting done on him by Sri Bhagwan when Kulkarni was examined before it on May 14, 17 and 29.

Referring to sting recordings to show innocence

151. Further, interestingly, though calling the sting recordings fabricated, manufactured, and distorted, R.K. Anand also relies on the very same sting recordings to make out some point or the other in his defence. For example, in Para S of the affidavit it is stated as follows:

"S. That in fact, this alleged witness Sunil Kulkarni had earlier attempted to meet the respondent in his office. It is a matter of chance that Shri Amod Kanth, the then Director General of Police, Arunachal Pradesh was present with the respondent in his office. Sunil Kulkarni was rebuffed, rebuked and was asked to leave the respondent's office in the presence of Shri Kanth. Thereafter, Sunil Kulkarni was physically thrown out from the office of the respondent. Shri Amodh Kanth also rebuked

him for his conduct. This fact *stands corroborated by the transcript* in which it has been stated by Sunil Kulkarni as under:

'*Kulkarni*: Mujhe koi to message nahi mil raha tha. Phir panga yeh ho raha ki when u told me I don't want to discuss.

(Mujhe koi message nahi mil raha tha phir panga yeh ho raha ki when u told me I don't want to discuss.)

Kulkarni: Beech main aap par gussa ho gaya tha.

(Beech me aap par gussa ho gaya tha, aap ka koi neta log hain, ek aaddmi jisne mere ko aisa kheencha tha).

Kulkarni: Vo aapka ek neta log hain ek neta isne mereko aisa kheecha tha.

(Ek neta tha usne mere kko aisa kheencha tha, aisa kheencha tha, bola sahib ne milne ko manakar diya, bigar gaya, kaha bhag jao, bhag jao, aisa bola).'

From the above transcript, it is clear that the respondent had no intention at any time to meet the said witness. He was thrown out physically from the office of the respondent. He was told not to meet the respondent as they are not interested in anyone."

152. Similarly in Para Z10 it is stated as follows:

"Z10. ... The deponent has never tried or intended to influence this witness so as to interfere in the course of justice. On the other hand, the deponent has rebuked and rebuffed him and told him not to ask for any money. *Rather the witness was advised to speak the truth* and not to falsely implicate the Nanda. Respondent has gone to the extent of telling him to have fear from God since everyone is answerable for his acts to God...."

153. And again in Para 17 it is stated as follows:

"17. ... The deponent had no intention to discuss the subject-matter of the case with Sunil Kulkarni. The discussion was started by Sunil Kulkarni by alleging that:

Kulkarni: Kal kya mereko nikaal rahe ho kya ... 311 se.

Anand: Karoon ...

Kulkarni: Nahi.

Kulkarni: No, nahi nikalna.

Kulkarni: Nahi, nahi, mat nikalna ... withdraw karva lo na aap. Jab main aapke saath ho jo marzi karne ke liya tyaar ho to yeh kay ke liye High Court main lagwa diya aapne...mere upar aapko itna bhi bharosa nahin hain kya ... theek hain gussa ho jata hoon main....

Kulkarni: Lekin aana hain depose karna hain.

The aforesaid transcript of Sunil Kulkarni would clearly indicate that he himself was suggesting that he is prepared to make any kind of statement. It is not that the deponent wanted him to make a statement in a particular manner. It is not that the deponent was trying to influence the

witness. The witness had already taken a decision to make a statement in a particular manner not at the instance of the deponent."

154. Further in Para 23:

"23. … The below noted conversation would substantiate the stand of the deponent:

Kulkarni: Kitna mangoo.

Anand: Chodo … baat samjha kar … aadmi ki zindagi main aur bhi bade kaam aate hain. Aisa nahi karte."

The whole conversation about reasonableness was in the form of an admonishment and advice so that no money is demanded. If the deponent wanted to deal with the witness or influence the witness or negotiate the terms of settlement, at that point of time, the deponent could have discussed since the demand of 2.5 crores was already allegedly made by the witness but categorically telling the witness not to talk about the money and reminding of the relations, would negate the discussion about the money part in the whole transcript. The reference to the utterances by Sunil Kulkarni are:

Kulkarni: Isme bachana hain usko Sanjeev ko….

Anand: Kabhi kisika bura mat kiya karo.

Anand: Kabhi kisi ka bura nahin kara karo … aisa bhala karne se hi aadmi ko acha … *kisii ko jhoota nahi phasana chahiya* … nikal dena chahiye….

Anand: Aage jake bhi bhagwan ko jawaab dena hota hain yaar … aage bhi jawaab … kya fayda karne….

Anand: Bachane se phir bhi ache rehta hain … phasane me to bura kaam hota hain … main to kisi main interested hi nahin hoon.

First of all…."

Further in Para 24:

"24. That during the course of conversation and in view of the past acquaintance Sunil Kulkarni had with the deponent, number of irrelevant statements were made by the witness. One such part was in relation to Amodh Kanth. The important conversation which came to light during the course of the talks was:

'Uska koi taluk nahin … phir bhi yeh Amod Kanth ke peeche kyon pada hua K.K. Paul.' "

155. R.K. Anand thus accepts the entire recordings in both the stings. For, it is absurd even to suggest that the sting recordings are true and correct if those are seen as supporting his explanations (which, in any event, are quite unstatable!) but are otherwise false and fabricated.

156. In a rearguard action Mr Altaf Ahmed took us one by one through all the paragraphs in different affidavits filed by R.K. Anand in which the sting recordings were described as false, fabricated, doctored, morphed and manipulated. But those allegations are simply not compatible with the other

statements in his affidavits as noted above and his responses in regard to the sting operations at different times. The denials in the affidavits are nothing more than ornamental pleas.

157. We also see no substance in the anomalies and alleged inter correlation in the sting recordings as pointed out on behalf of R.K. Anand on the basis of the eight minute CD which he got prepared from the materials supplied to him by the Court. Along with the other materials we also viewed the eight minute CD produced by R.K. Anand. In the CD an attempt is made to show that the frames in the sting recordings sometimes jumped out of the sequence number and such other technical flaws.

158*. The objections raised by R.K. Anand were fully explained by the affidavit filed by Dinesh Singh on behalf of NDTV. In the affidavit it was explained:

> "80. ... the alleged discrepancies in the CDs produced before the Court and supplied to the appellants occurred primarily due to conversion of the recorded material from chips into CDs via the intermediary medium of tapes. Shri Singh further explains the gap occurring at certain points of the recording as due to displacement of the ear-plus (*sic* earpiece) connector i.e. the device used to attach the button lens and the microphone with the recording device."

159. Mr Altaf Ahmed also made the grievance that the High Court failed to consider his defence. According to him NDTV had conceived the sting operation as a pre-empted measure against Shri Anand, who was consulted in his professional capacity in connection with a matter in which NDTV in collusion with one Mrs Sumana Sen, an IRS Officer was indulging in massive tax evasion. The materials in support of the allegations and in particular R.K. Anand's connection with the matter are so vague and tenuous that we do not consider it worthwhile to go into that question.

160. On a careful consideration of the materials on record we do not have the slightest doubt that the authenticity and integrity of the sting recordings was never disputed or doubted by R.K. Anand. As noted above he kept on changing his stand in regard to the sting recordings. In the facts and circumstances of the case, therefore, there was no requirement of any formal proof of the sting recordings.

161. Further, so far as R.K. Anand is concerned there was no violation of the principles of natural justice inasmuch as he was given copies of all the sting recordings along with their transcripts. He was fully made aware of the charge against him. He was given fullest opportunity to defend himself and to explain his conduct as appearing from the sting recordings. The High Court viewed the microchips used in the spy camera and the programme telecast by TV channel in his presence and gave him further opportunity of hearing thereafter. The sting recordings were rightly made the basis of conviction and the irresistible conclusion is that the conviction of R.K. Anand for contempt of court is proper, legal and valid calling for no interference.

* **Ed.:** Para 158 corrected vide Official Corrigendum No. E.3/Ed.B.J./147/2009 dated 30-9-2009.

I.U. Khan's appeal

162. The sting on I.U. Khan was done on 28-4-2007 in one of the lawyers' chambers at the Patiala House Court premises. The video CD begins by showing Poonam Agarwal fixing the recording device and the button camera on Kulkarni's person sitting inside the car. Then Kulkarni and Deepak Verma together enter Patiala House. They move around in the court premises for a long time till just before the lunch recess they are able to find I.U. Khan sitting in someone else's chamber. The chamber seems to be quite crowded with people all the time coming and going away.

163. The first exchange of greetings between I.U. Khan and Kulkarni as he, accompanied with Deepak Verma, enters into the chamber is not audible. But then I.U. Khan is heard describing Kulkarni, in a general sort of introduction to those present there, as "the prime witness in BMW case", "star witness", "a very public spirited and devoted man", etc. Kulkarni starts chatting with him about the summons issued to him by the court in BMW case. In the meanwhile someone else comes into the chamber. I.U. Khan greets him loudly and starts talking to him. After a while, on Kulkarni's request, both I.U. Khan and Kulkarni come out of the chamber and some conversation between the two takes place outside the chamber.

164. After the meeting is over Kulkarni and Deepak Verma together return back. As the recording devices carried by them are still on the conversation that takes place between the two is naturally recorded. Kulkarni does not allow Deepak Verma to go directly to the TV Channel's vehicle parked outside the Court premises where Poonam Agarwal would be waiting for their return, saying that they are bound to be followed. Instead, they take an autorickshaw and go to Pragati Maidan at a short distance from the court. From there they contact Poonam Agarwal on mobile phone, who goes there and joins them and dewires Kulkarni.

Only partial transcript of the sting recording submitted to the Court

165. The recording of this sting operation is more than an hour long. But the transcript of this sting recording submitted to the Court by NDTV is confined only to the exchange between I.U. Khan and Kulkarni. In the absence of the full transcript it becomes difficult and cumbersome to see what transpired between Kulkarni and Deepak Verma immediately before and after the meeting with their subject. In our view that part of the sting recording was also highly relevant and important for judging the true import of the exchange that took place between Kulkarni and I.U. Khan. We are surprised that the High Court did not notice this big omission in the transcript of the first sting and we record our disapproval of NDTV in withholding the full transcript of the sting recording.

Full transcript/recording of I.U. Khan's interview by the TV channel on 31-5-2007 not on record

166. Further, it is noted above that in the morning of 31-5-2007 one Anusuya Roy, a reporter from NDTV had interviewed I.U. Khan at his

residence for his response to the programme telecast the previous evening. The interview was telecast live from around 8 to 8.23 in the morning. But that was the only time the full interview was shown and later only one statement made by I.U. Khan in course of the interview was incorporated in the programmes telecast in the evening of May 31.

167. What is more significant, however, is that NDTV did not present before the High Court either the full recording of the interview or its transcript and what we find on the High Court record is only the statement that was used in the programmes telecast on 31-5-2007 and that runs as follows:

> "*I.U. Khan*: I am not denying anything at all, I am not denying it but the interpretation, meaning and inferences which were drawn are totally wrong, unfounded and totally inconsonance (sic) with the actual record that I am producing before you. Kulkarni also has used the word 'Bade Saheb' means the big officer, high officer of the police headquarter. In his deposition in the court also he had used the word Bade Saheb twice and when the explanation was sought, he explained that by Bade Saheb I mean senior officer of the police headquarter, it was unconnected to Mr R.K. Anand as it has been wrongly, mischievously and calculatedly projected by you people."

Confusion in submitting copies of sting recording to the High Court

168. Yet again, there is a serious confusion about the production of the recording of the first sting on the microchip of the spy camera carried by Kulkarni before the High Court. It is noted above that on 1-6-2007 *three chips and five CDs* were produced before the trial court. Those were returned back because in the meanwhile the proceeding was initiated by the High Court. On 2-6-2007 six CDs were submitted before the High Court. On that date Poonam Agarwal stated before the Registrar that one of the CDs (marked "1") was edited and the other five CDs (marked "2" to "6") were unedited. She also said that NDTV news channel did not have any other material in connection with the sting operation in question.

169. On 6-6-2007 Poonam Agarwal submitted the transcripts of the recordings. In the statement made on that date she said that she had earlier submitted six CDs. Those CDs were duplicated from *four* spy camera chips which were recorded on different occasions. After copies of the CDs were given to the proceedees as directed in the order dated 7-8-2007 issuing show-cause notices to them, a grievance was made before the Court that they were supplied only five CDs, though the number of CDs submitted before the High Court was six. It was then explained on behalf of NDTV that the contents of two CDs were copied onto a single one and thus the number of CDs was reduced from six to five. It was of course stated that a fresh set of six CDs each would again be supplied to all the three proceedees.

170. The High Court apparently accepted the explanation given by NDTV (the High Court order dated 24-9-2007). But the lapse was far more serious as would appear from the affidavit dated 1-10-2007 filed by Poonam

Agarwal to explain the position. In her affidavit she stated that in the first sting (on I.U. Khan) two spy cameras were used, one carried by Kulkarni and the other by Deepak Verma. The recording of the first sting was thus on two microchips, one in Kulkarni's camera and the other in the bag camera of Deepak Verma. In the other three stings there was a single spy camera carried by Kulkarni, on each occasion having a fresh microchip. Thus for all the four stings a total number of five chips were used. The contents of the microchip in Kulkarni's spy camera used for the first sting (on I.U. Khan) were copied onto a magnetic tape and then to a CD. That microchip was then reformatted for other uses. The other four microchips were available in their original and undisturbed condition. For preparation of the programme telecast on May 30 the contents of all the five chips, including the one that was reformatted, were used. However, the five unedited CDs (marked "2" to "6") that were submitted before the High Court on 2-6-2007 were copies from the four microchips that had remained in their original and undisturbed condition. The sixth CD (marked as "1") was the copy of the programme that was telecast. *The recording on the microchip in Kulkarni's camera used for the first sting operation, though available on magnetic tape and CD was not submitted to the High Court because the microchip itself was reformatted.*

171. Poonam Agarwal further stated that while supplying CDs to the noticees in pursuance of the direction of the Court, a mistake occurred in that one of the CDs given to the noticees (sic) was not taken from the "four chips but the CD which is a copy of the formatted chip containing the recording done by Mr Kulkarni". She further stated that a CD made from the mother tape of the formatted chip was being filed along with the affidavit before the High Court.

172. What follows from the affidavit may be summarised as follows:

(*I*) The conduct of NDTV before the High Court in a very serious proceeding was quite cavalier and casual.

(*II*) At the time the High Court issued show-cause notices to the three proceedees it did not have before it the recording on one of the five microchips used in the sting operations.

(*III*) The materials given to the proceedees along with the show-cause notices were not exactly the same as submitted before the High Court.

(*IV*) The explanation in the form of Poonam Agarwal's affidavit came on 1-10-2007 on the same day when I.U. Khan filed his reply-affidavit in response to the show-cause notice.

In those circumstances it was not wrong for I.U. Khan to state in Paras 14 and 15 of his memorandum of appeal as under:

> "14. ... This finding is again against the material on record as the original chip of the button camera carried by Mr Kulkarni was formatted by NDTV in violation of the direction issued by the Hon'ble Court. This part of the conversation is not available in the transcript of the bag camera.

15. Because the CD of the button camera firstly cannot be relied upon as it was filed after the reply was filed by the appellant on 1-10-2007....”

Lapses have no effect on R.K. Anand's case or even on the case of I.U. Khan

173. We have recounted here some of the noticeable lapses committed by NDTV in the proceedings that were overlooked by the High Court. Having regard to seriousness of the proceeding we should have wished that it was free from such lapses. But it needs to be made absolutely clear that the irregularities pointed out above were in regard to the first sting concerning I.U. Khan. These in no way affect R.K. Anand or alter his position. The discussions and findings recorded above in respect of R.K. Anand thus remain completely unaffected by the mistakes pointed out here.

174*. Further, having regard to the defence taken by I.U. Khan the aforementioned lapses do not have any material effect on his case either. But before proceeding to examine his defence and how the High Court dealt with it, it would be necessary to see what conversation is shown to have taken place in the sting recordings between Kulkarni and I.U. Khan.

The exchange between Kulkarni and I.U. Khan

175. *Khan*: Meet Kulkarni, he is the prime witness in BMW case. He is our star witness and he is a very public-spirited and devoted man and incidentally, he was in Delhi on the way/day when this unfortunate incident happened. He was going on foot to Nizamuddin Railway Station.

(A bit follows that is hard to understand)

Kulkarni: Mein barbad ho gaya, sir.

Khan: How?

Kulkarni: This particular thing is only you and myself are aware of. But I am not aware of anything, anything. I don't want to go again with that particular guy. I lost my mother, I don't know where my father is. I'm just roaming around for 8 years. Ab yeh mujhe kyun bulaya gaya hai?

Khan: Ab court ne (coughs) we dropped you ... court ne (unclear).

Kulkarni: No, no you ... I think the State told you to drop, right, if I'm not wrong?

Khan: These were the instructions I received from the Headquarters and that's why I got the SHO statement recorded that “on the instruction of the SHO and the ACP, such and such witness has been dropped”. Then how can I make a statement? My clients are Delhi Police. Whatever instructions they will give, I will act upon it. I was very keen to examine you.

Kulkarni: Ya, I know that because I still remember, still remember.

* **Ed.**: Para 174 corrected vide Official Corrigendum No. 1(3)/Ed.B.J./147/2009 dated 30-9-2009.

Khan: Inhone mera haath dabaya … bhi dabaya, khoob dabaya, maine kaha main kya karoo, agar individual client ho to samjha bhi lo, Department hai.

Khan: *Bade Sahab se mile? Nahi mile? Mulakat hi nahi hooyi?*

Kulkarni: Ab yeh kya jhanjhat aur?

Khan: Nahi nahi kuch nahi hoga, ab High Court mein unhone petition file kar di hai ki Kulkarni ki statement….

Kulkarni: To woh record karenge nahi na?

Khan: Nahi.

Kulkarni: Pakka?

Khan: Tum mauj karo … hum ... humne drop kar diya, court ko kya … who is he to say that it should be recorded.

Someone: Investigation to court kar sakta hai, par mode of investigation to determine nahi kar sakta.

Khan: Exactly, they cannot decide the mode of investigation.

(Somebody enters the chamber)

Kulkarni: Khan Sahab, ek minute, chale jata hoo, mein sham ko ghar pe … aa jaon ga.

Khan: Ha, ha who to ana hi hai, ghar pe nahi….

Kulkarni: Who to abhi Dilli mein aya hoo to aya hoo, ek second.

Khan: In Delhi, you're our guest.

Kulkarni: Inka nahi!

Khan: Na inke nahi.

Khan: Aapka aur hamara personal effort/rapport (not clear) hai.

Kulkarni: Who to alag hi baat hai.

Khan: Aur, bhai yaar thanda peeke jana.

Kulkarni: Nahi thanda nahi, bus ek second khali, kyonki wahi….

(They come out of the chamber and talk)

Kulkarni: Summons Bombay challa gaya thaa, ab waha se reject ho ke ayaa hua hai. Ab loon ken na loon? Baad me mere ko raat ko ghar pe (Mr Khan cuts in)

Khan: Tum mere ko miloge kab, yeh batao?

Kulkarni: Aap batao kyonki mere ko … SHO se meri baat hui hai. Aap usko … (Mr Khan cuts in)

Khan: Tum thehre kahan ho?

Kulkarni: Main to thehre hoo out of Delhi.

Khan: Out of Delhi?

Kulkarni: Out of Delhi, haan.

Khan: Sham ko keh baje aaoge?

Kulkarni: Aaj nahi aaonga … mein kal zarror … shamko. Sunday aaram reheat hai aur….

Khan: Sunday ko kis waqt aaoge?

Kulkarni: Aap batao mere ko.

Khan: Aapko suit kaunsa time karta hai? a

Kulkarni: Koi bhi.

Khan: Saat aur aath ke darmiyan?

Kulkarni: Hann, theek hai.

Khan: Kal....

Kulkarni: Lekin kisi ko bhi batao mat. b

Khan: Nahi ji, sawal hi paida nahi hota yaar.

Kulkarni: Na, na.

Khan: *Aur tumhare liye bahut badiya scotch rakhi hui hai....*

Kulkarni: *Scotch ... laughs.*

Khan: *Bahut badiya....* c

Kulkarni: Acha baki sab khairyat sahib?

Khan: Sab khairyat ... Khuda ka....

Kulkarni: Chalo, kal mulaqat hogi.

Kulkarni: Ok, main ... (Mr Khan cuts in)

Khan: Saat aur aath ke darmiyan. d

Kulkarni: *Main, vese meri K.K. Paul se baat hui hai, lekin maine abhi tak nahin bola hoo I have not received summons at all. Woh mere ko bata dena.*

Khan: Kal tum aajao.

Kulkarni: Main ... Huh? Woh hamare dono ki baat hogi.

Khan: Theek hai. e

After this Kulkarni and Deepak Verma return back. As walking along they naturally talk about the sting done by them together. As we shall see presently much depends on what I.U. Khan meant when he asked Kulkarni whether he had met "Bade Saheb".

176. As noted above I.U. Khan does not deny the conversation that is f shown to have taken place between him and Kulkarni. In his first response, that is, in the interview given to NDTV on the morning following the telecast he said that he did not deny anything at all, he did not deny (the utterances) but the inferences sought to be drawn were totally unfounded and wrong. When he said "Bade Saheb" he meant some high officer in the police headquarter. He also said that was the way Kulkarni used to refer to superior g officers in the police headquarter(s) and that is how he had referred to them in his deposition before the trial court. When the trial court asked Kulkarni to clarify he explained that Bade Saheb meant a superior officer of the Police Headquarter. The words Bade Saheb, according to I.U. Khan, did not in any way refer to R.K. Anand.

177. And this was broadly his defence before the High Court. h

The High Court dealing with I.U. Khan's defence

178. The High Court did not accept his defence. The High Court held that there was great familiarity between I.U. Khan, Kulkarni and R.K. Anand. In this regard it observed as follows:

> "We have noted above that there are several references to Mr Khan in the conversations of Mr Kulkarni with Mr Anand. *We cannot overlook these since they suggest a tacit arrangement or at least an understanding between Mr Khan, Mr Anand and Mr Kulkarni.*"

In coming to this conclusion, as is evident from the abovequoted observation the High Court relied a great deal upon the conversations between Kulkarni and R.K. Anand (vide paras 196, 197 and 198 of the High Court judgment).

179. The High Court further held that when I.U. Khan asked Kulkarni whether he had met "Bade Saheb" he only meant R.K. Anand. It rejected I.U. Khan's stand that what he meant by the expression was a senior police officer. The High Court observed that no material was produced on behalf of I.U. Khan in support of the statement that in course of his deposition before the trial court Kulkarni used the expression "Bade Saheb" to mean a senior police officer. It further observed that in the sting operation, just before the conclusion of the meeting, Kulkarni had said that he had met K.K. Paul (who was the then Police Commissioner). The passage referred to is as follows:

> "*Kulkarni*: Main, vese meri K.K. Paul se baat hui hai, lekin maine abhi tak nahin bola hoo I have not received summons at all. Woh mere ko bata dena."

This, according to the High Court, clearly showed that Kulkarni referred to the Police Commissioner by his name and not by the expression "Bade Saheb".

180. The High Court further observed that for Kulkarni there was no reason to meet the senior police officers particularly when he was dropped as a prosecution witness. There was nothing to suggest that while in Delhi Kulkarni used to meet the senior police officers. On the other hand there was sufficient evidence to show that he was very familiar with both I.U. Khan and R.K. Anand, had easy access to both of them and used to frequently meet them.

181. The High Court then took up Kulkarni's affidavit that supported I.U. Khan's plea that by the expression he had meant some senior police officer and not R.K. Anand and rejected it on a number of grounds. After giving the reasons for rejecting the stand of I.U. Khan the High Court held that Bade Saheb was none else than R.K. Anand observing as follows:

> "*190.* On the other hand, when we watched the recording of the events of 28-4-2007 from the button camera, we noted that towards the end of the recording, *Mr Deepak Verma asked Mr Kulkarni about the identity of Bade Saheb and Mr Kulkarni responded by saying that it is Mr Anand.* There is no suggestion that this part of the video recording is doctored or morphed...." (emphasis added)

182. The High Court further observed that as I.U. Khan was fully aware that Kulkarni, a prosecution witness was on highly familiar terms with a senior defence lawyer R.K. Anand, he was obliged to inform the prosecution about it and by not doing so he clearly failed in his duty as a prosecutor who was expected to be fair not only to his client but also to the Court. His conduct was, therefore, plainly unbecoming of a prosecutor.

183. The High Court then proceeded to consider whether the conduct of I.U. Khan amounted to a criminal contempt of court. In this regard the Court refers to the conversation between I.U. Khan and Kulkarni taking place outside the chamber in which a second meeting was fixed up for the following evening with I.U. Khan giving Kulkarni the inducement of good Scotch whisky. From the exchange between the two the court inferred that the extent of familiarity between the two was rather more than normal. I.U. Khan was aware that Kulkarni was on equally, if not more familiar, terms with R.K. Anand. Coupled with this his failure to inform the prosecution or the Court about the connection between Kulkarni and R.K. Anand had the potential and the tendency to interfere or obstruct the natural course of BMW case and certainly the administration of justice, particularly when Mr Khan himself described Mr Kulkarni as the prime witness in BMW case and the "star witness of the prosecution".

184. Finally the High Court held:

> "*207.* Under these circumstances, we are left with no option but to hold that Mr Khan was quite familiar with Mr Kulkarni; Mr Khan was aware that Mr Kulkarni was in touch with Mr Anand; Mr Khan was not unwilling to advise Mr Kulkarni or at least discuss with him the issue of accepting the summons sent by the trial court to Mr Kulkarni. We also have no option but to hold that Mr Khan very seriously erred in not bringing important facts touching upon BMW case to his client's notice, the prosecution. The error is so grave as to make it a deliberate omission that may have a very serious impact on the case of the prosecution in the trial court. Consequently, we have no option but to hold Mr Khan criminally liable, beyond a shadow of doubt, for actually interfering, if not tending to interfere with the due course of the judicial proceeding, that is, BMW case, and thereby actually interfering, if not tending to interfere with the administration of justice in any other manner."

Submissions on behalf of I.U. Khan

185. Mr P.P. Rao, learned Senior Advocate appearing for I.U. Khan mainly submitted that even if the sting recording is accepted as true, on the basis of the exchange that took place between his client and Kulkarni, it cannot be said that he acted in a way or colluded in any action aimed at interfering or tending to interfere with the prosecution of the accused in BMW case or interfering or tending to interfere with or obstructing or tending to obstruct the administration of justice in any other manner. He further submitted that the findings of the High Court were based on assumptions that were not only completely unfounded but in respect of which

the appellant was given no opportunity to defend himself. The High Court held the appellant guilty of committing criminal contempt of court referring to and relying upon certain alleged facts and circumstances that did not form part of the notice and in regard to which he was given no opportunity to defend himself.

186. Mr Rao submitted that along with the notice issued by the High Court the appellant was not given all the materials concerning his case and he was thus handicapped in submitting his show cause. He further submitted that the High Court erroneously placed the case of his client on a par with R.K. Anand and convicted him because R.K. Anand was found guilty even though the two cases were completely different.

187. Mr Rao was also highly critical of the TV channel. He questioned the propriety of the sting operation and the telecast of the sting programme concerning a pending trial and involving a court witness without any information to, much less permission by the trial court or even the High Court or its Chief Justice.

188. Mr Rao submitted that when Kulkarni first approached Poonam Agarwal she thought it imperative to first obtain the approval of her superiors before embarking upon the project, but it did not occur to anyone, including her superiors in the TV channel to obtain the permission or to even inform at least the Chief Justice of the Delhi High Court before taking up the operation fraught with highly sinister implications.

189. Mr Rao also assailed the judgment coming under appeal on a number of other grounds.

Submissions considered

190. We have carefully gone through all the materials concerning I.U. Khan. We have perused the transcript of the exchange between Kulkarni and I.U. Khan and have also viewed the full recording of the sting several times since the full transcript of the recording is not available on the record.

I.U. Khan's conduct quite improper

191. We have not the slightest doubt that the exchange between Kulkarni and I.U. Khan far crosses the limits of proper professional conduct of a prosecutor (especially engaged to conduct a sensational trial) and a designated Senior Advocate of long standing. We are not prepared to accept for a moment that on seeing Kulkarni suddenly after several years in the company of a "burly stranger" (Deepak Verma) I.U. Khan became apprehensive about his personal safety since in the past some violent incidents had taken place in the court premises and some lawyers had lost their lives and consequently he was simply play-acting and pampering Kulkarni in order to mollify him. The plea is not borne out from the transcript and much less from the video recording.

192. In the video recording there is no trace of any fear or apprehension on I.U. Khan's face or in his gestures. He appears perfectly normal and natural, sitting among his colleagues (and may be one or two clients) and at

no point the situation appears to be out of his control. As a matter of fact, we feel constrained to say that the plea is not quite worthy of a lawyer of I.U. Khan's standing and we should have much appreciated had he simply taken the plea of an error of discretion on his part.

193. Coming back to the exchange between I.U. Khan and Kulkarni, we accept that the transcript of the exchange does not present the accurate picture; listening to the live voices of the two (and others present in the chamber) on the CD gives a more realistic idea of the meeting. We grant everything that can be said in favour of I.U. Khan. The meeting took place without any prior appointment from him. Kulkarni was able to reach him, unlike R.K. Anand, without his permission or consent.

194. I.U. Khan did not seem to be overly enthused at the appearance of Kulkarni. Accosted by Kulkarni, he spoke to him out of civility and mostly responded only to his questions and comments. There were others present in the chamber with whom he was equally engaged in conversation. He also greeted someone else who came into the chamber far more cheerfully than Kulkarni. But the undeniable fact remains that he was talking to him all the time about the BMW trial and the related proceedings. Instead of simply telling him to receive the summons and appear before the court as directed, I.U. Khan gave reassurances to Kulkarni telling him about the revision filed in the High Court against the trial court's order. He advised him to relax saying that since he had dropped him (as a prosecution witness) the court was no one to ask for his statement. The part of the exchange that took place outside the chamber was worse. Inside the chamber, at one stage, I.U. Khan seemed even dismissive of Kulkarni but on coming out he appeared quite anxious to fix up another meeting with him at his residence promising good Scotch whisky as inducement.

195. I.U. Khan would be the first person to deny any friendship or even a long acquaintanceship with Kulkarni. The only common factor between them was BMW case in which one was the prosecutor and the other was a prosecution witness, later dropped from the list of witnesses. A lawyer, howsoever affable and sociable by disposition, if he has the slightest respect for professional ethics, would not allow himself such a degree of familiarity with the witness of a criminal trial that he might be prosecuting and would not indulge with him in the kind of exchange as admittedly took place between I.U. Khan and Kulkarni.

196. We are also not prepared to believe that in his conversation with Kulkarni, I.U. Khan did not mean what he was saying and he was simply trying to somehow get rid of Kulkarni. The video of the sting recordings leaves no room for doubt that I.U. Khan was freely discussing the proceeding of BMW case with Kulkarni and was not at all averse to another meeting with him rather he was looking forward to it. We, therefore, fully endorse the High Court finding that the conduct of I.U. Khan was inappropriate for a lawyer in general and a prosecutor in particular.

Criminal contempt???

197. But there is a wide gap between professional misconduct and criminal contempt of court and we now proceed to examine whether on the basis of materials on record the charge of criminal contempt of court can be sustained against I.U. Khan.

198. The High Court held that there was an extraordinary degree of familiarity between I.U. Khan, Kulkarni and R.K. Anand and each of them knew that the other two were equally familiar with each other. So far as BMW trial is concerned Kulkarni was a link between I.U. Khan and R.K. Anand. I.U. Khan, by reason of his familiarity both with R.K. Anand and Kulkarni would also know about the game that was afoot for the subversion of the trial. He failed to inform the prosecution and the court about it and his omission to do so was likely to have a very serious impact on the trial. He was, therefore, guilty of actually interfering with due course of judicial proceeding, in BMW case.

199. In the two sting recordings concerning R.K. Anand there are ample references to I.U. Khan to suggest a high degree of familiarity between the three. But in the sting on I.U. Khan the only words used by him that might connect him to R.K. Anand through Kulkarni are "Bade Saheb". If "Bade Saheb" referred to R.K. Anand, the involvement of I.U. Khan needs no further proof. The question, however, is whether that finding can be safely arrived at.

200. Now, what are the materials that might suggest that while asking Kulkarni whether he had met Bade Saheb, I.U. Khan meant R.K. Anand. Apart from the piece of conversation between Deepak Verma and Kulkarni when they were returning after meeting with I.U. Khan, relied upon by the High Court, there is another material, for whatever its worth, that does not find any mention in the High Court judgment. It is Kulkarni's statement in his interview recorded at the NDTV studio. He said as follows:

> "He (I.U. Khan) directed me to Mr R.K. Anand is in that video you can find 'Bade Saheb'. He meant that Mr R.K. Anand."

We mention it only because it is one of the materials lying on the record. Not that we rely on it in the least. Having known the conduct of Kulkarni throughout this episode as discussed in detail in the earlier part of the judgment it is impossible to rely on this statement and we do not even fault the High Court for not taking any note of it.

201. The only other positive material in this regard is the one referred to by the High Court. The High Court observed that towards the end of the recording by the button camera, "*Mr Deepak Verma asked Mr Kulkarni about the identity of Bade Saheb and Mr Kulkarni responded by saying that it is Mr Anand*". But the reference by the High Court to that particular piece of conversation between Deepak Verma and Kulkarni is neither complete nor accurate. We have noted earlier that the transcript submitted to the High Court by NDTV was incomplete and it covered only the exchange between

Kulkarni and I.U. Khan. If the High Court had before it the full transcript of the entire recording it might have taken a different view.

202. We have viewed the CD labelled as "Button Spy Cam Recording done by Sunil Kulkarni. I.U. Khan Sting Operation" a number of times and we find that on the way back after meeting I.U. Khan, Kulkarni was being quite voluble. He spoke to Deepak Verma and gave him some instructions. A part of their conversation, relevant for our purpose is as follows:

Exchange between Kulkarni and Deepak Verma

Kulkarni: Humming some tune.

Kulkarni: Don't go to car directly. We'll take an auto.

Deepak Verma: Take an auto?

Kulkarni: Haan. Thoda sa aage chalenge.

Kulkarni: Aap ne suna nahin? "Bade Saheb se mile ya nahin?"

Deepak Verma: Haan.

Kulkarni: Ab dekho kal you will get (unclear) you what you want.

Deepak Verma: Kal aap Bade Saheb se milne ja rahe hain?

Kulkarni: Na, Haan unke ghar pe. No, you don't have to come. You just come and stay outside. Theek hai na? (unclear …) Haan ab to aap ke samne hua sab kucchh.

Deepak Verma: Bade Saheb woh hai, Anand?

Kulkarni: Hmm.

(Noise of some auto/heavy vehicle engine)

Deepak Verma: (Unclear …) Ek baar iska photograph lein … iska photograph aaya ki nahin aaya?

Kulkarni: Aaya, Aaya, aaya.

Kulkarni: Pukka trail hoga hamara. Hundred per cent trail hoga.

Deepak Verma: Police waale ko kaise kah raha tha who? Gaadi dilwao.yaar..

* * *

From the manner of speaking Kulkarni appeared to be giving the impression that everything went off according to the plan. He also tended to be slightly melodramatic. (He would not go to the car directly because they were bound to be followed!)

203. Now, while examining what Kulkarni understood or rather what he wanted Deepak Verma to believe what was meant by "Bade Saheb" it is necessary to bear in mind that the whole object of the sting was to uncover the alleged unholy alliance between the defence and the prosecution. It was based on the premise that the prosecution was colluding with the defence in the effort to save the accused in BMW case. In that situation for Kulkarni, who for his own reasons was anxious to get NDTV's help for doing the sting, it was natural to find out and show to Deepak Verma some link between I.U. Khan and R.K. Anand irrespective of whether or not there was, in reality, any link between the two.

204. There is no way to find out whether Kulkarni really believed that by "Bade Saheb" I.U. Khan meant R.K. Anand (Like everything else even on this issue he changed his stand from time to time!) or he just wanted Deepak Verma to believe so. But even if Kulkarni really understood Bade Saheb to mean R.K. Anand, that would not change the position much. For our purpose it is not important what Kulkarni or Deepak Verma or anyone else understood (truthfully or otherwise!) by that expression. One may use an expression to mean a certain thing but to the listener it may mean something quite different. What is important here is to judge what I.U. Khan meant when he used that expression. In our view, on the basis of the exchange between Kulkarni and Deepak Verma, it will be highly unsafe to hold that when I.U. Khan asked Kulkarni whether he had met "Bade Saheb" he meant R.K. Anand.

205. The High Court rejected I.U. Khan's explanation that what he meant by "Bade Saheb" was some senior officer in the police headquarter. According to I.U. Khan, Kulkarni was in the habit of directly approaching the superior police officers and he would refer to them by that expression. In support of the plea in his reply-affidavit (Para 12) I.U. Khan stated as follows:

> "Even during the course of his deposition in court Mr S. Kulkarni had used the expression *Bade Sahab* while referring to the higher police officers. The learned trial court also translated the same in English while recording the statement as *higher police officers*. In the cross-examination Mr S. Kulkarni has stated *I had voluntarily gone to the higher police officers of the police headquarter*." (emphasis added)

206. The High Court rejected the aforesaid plea observing as follows:

> "It was further submitted that during the recording of Mr Kulkarni's evidence on an earlier occasion, a reference to Bade Saheb was made more than once. 'Bade Saheb' was then translated and recorded in the deposition to mean senior police officers. *Learned counsel for Mr Khan, however, did not produce any material to support the last submission*." (emphasis added)

207. Mr P.P. Rao submitted that the approach of the High Court was quite unfair. The proceeding before the High Court was not in the nature of a suit or a criminal trial. In response to the notice issued by the Court the appellant had made a positive statement in his reply-affidavit. The statement was not formally traversed by anyone. There was, therefore, no reason for the appellant to assume that he would be required to produce evidence in support of the statement. In case the High Court felt the need for some evidence in support of the averment it should have at least made it known to the appellant. But the High Court without giving any inkling to the appellant rejected the plea in the final judgment. The appellant was thus clearly denied a proper opportunity to defend himself.

208. We find that the submission is not without substance. The proceeding before the High Court was under the Contempt of Courts Act and

the High Court was not following any well-known and well-established format. In that situation it was only fair to give notice to the proceedees to substantiate the pleas taken in the reply-affidavit by leading proper evidence. It must, therefore be held that the High Court rejected a material plea raised on behalf of I.U. Khan without giving him any opportunity to substantiate it.

209. Further, as noticed above, the High Court, for arriving at the finding that there was a high degree of familiarity among I.U. Khan, Kulkarni and R.K. Anand has repeatedly used the transcripts of the meetings between Kulkarni and R.K. Anand. It is indeed true that in the exchanges between Kulkarni and R.K. Anand there are many references to I.U. Khan. That may give rise to a strong suspicion, of a common connection between the three. But having regard to the charge of criminal contempt any suspicion howsoever strong cannot take the place of proof and we don't feel it wholly prudent to rely upon the exchanges between Kulkarni and R.K. Anand to record a finding against I.U. Khan.

210. Further, according to the High Court, the essence of culpability of I.U. Khan was his omission to inform the prosecution and the Court "that one of its witnesses was more than an acquaintance of the defence lawyer".

211. Mr P.P. Rao submitted that the High Court convicted the appellant for something in regard to which he was never given an opportunity to defend himself. From the notice issued by the High Court it was impossible to discern that the charge of criminal contempt would be eventually fastened on him for his failure to inform the Court and the prosecution about the way Kulkarni was being manipulated by the defence.

212. Mr Rao further submitted that the reason assigned by the Court to hold the appellant guilty was based purely on assumption. The appellant was given no opportunity to show that, as a matter of fact, after Kulkarni met him at Patiala House on 28-4-2007 he had informed the authorities concerned that after being summoned by the court Kulkarni was back to his old tricks. He further submitted that the appellant, given the opportunity, could also show that the decision to not examine him as one of the prosecution witnesses was taken by the authorities concerned in consultation with him.

213. We find substance in Mr Rao's submission. In our considered view, on the basis of materials on record the charge of criminal contempt cannot be held to be satisfactorily established against I.U. Khan. In our opinion he is entitled to the benefit of doubt.

Procedure followed by the High Court

214. A lot has been argued about the procedure followed by the High Court in dealing with the matter. On behalf of R.K. Anand it was strongly contended that by only asking for the copies of the original sting recordings and allowing the original microchips and the magnetic tapes to be retained in the custody of NDTV the High Court committed a serious and fatal lapse.

215. Mr Gopal Subramanium also took the view that though the final judgment passed by the High Court was faultless, it was nevertheless an error on its part to leave the original sting recordings in the safe custody of the TV

channel. On principle and as a matter of proper procedure, the Court, at the first instance, ought to have taken in its custody all the original electronic materials concerning the stings.

216. At first the direction of the High Court leaving the microchips containing the original sting recordings and the magnetic tapes with the TV channel indeed appears to be somewhat strange and uncommon but a moment's thought would show the rationale behind it. If the recordings on the microchips were fake from the start or if the microchips were morphed before notice was issued to the TV channel, those would come to the Court in that condition and in that case the question whether the microchips were genuine or fake/morphed would be another issue. But once the High Court obtained their copies there was no possibility of any tampering with the microchips from that stage. Moreover, the High Court might have felt that the TV channel with its well-equipped studio/laboratory would be a much better place for the handling and conservation of such electronic articles than the High Court Registry. On the facts of the case, therefore, there was no lapse on the part of the High Court in leaving the microchips in the safe custody of the TV channel and in any event it does not have any bearing on the final decision of the case.

217. However, what we find completely inexplicable is why, at least at the beginning of the proceeding, the High Court did not put NDTV along with the two appellants in the array of contemnors. Looking back at the matter (now that we have on the record before us the appellants' affidavits-in-reply to the notice issued by the High Court as well as their first response to the telecast in the form of their live interviews), we are in the position to say that since the contents of the sting recordings were admitted there was no need for the proof of integrity and correctness of the electronic materials. But at the time the High Court issued notices to the two appellants (and two others) the position was completely different. At that stage the issue of integrity, authenticity and reliability of the sting recordings was wide open. The appellants might have taken the stand that not only the sting recordings but their respective responses shown by the TV channel were fake and doctored. In such an event the TV channel would have been required to be subjected to the strictest proof of the electronic materials on which its programmes were based and, in case it failed to establish their genuineness and correctness, it would have been equally guilty, if not more, of serious contempt of court and other criminal offences.

218. By all reckoning, at the time of initiation of the proceeding, the place of NDTV was along with the appellants facing the charge of contempt. Such a course would have put the proceeding on a more even keel and given it a more balanced appearance. Then perhaps there would have been no scope for the grievance that the High Court put the TV channel on the complainant's seat. And then perhaps the TV channel too would have

conducted itself in a more careful manner and the lapses as indicated above in the case of I.U. Khan might not have occurred.

The punishment: Prohibition against appearing in courts

219. We were also addressed on the validity of the High Court's direction prohibiting the two appellants from appearing before the High Court and the courts subordinate to it for a period of four months. Though by the time the appeals were taken up for hearing the period of four months was over, Mr Altaf Ahmed contended that the High Court's direction was beyond its competence and authority. In a proceeding of contempt punishment could only be awarded as provided under the Contempt of Courts Act, though in a given case the High Court could debar the contemnor from appearing in the court till he purged himself of the contempt.

220. Mr Ahmed further submitted that professional misconduct is a subject specifically dealt with under the Advocates Act and the authority to take action against a lawyer for any professional misconduct vests exclusively in the State Bar Council, where he may be enrolled, and the Bar Council of India.

221. The counsel further submitted that a High Court could frame rules under Section 34 of the Advocates Act laying down the conditions subject to which an advocate would be permitted to practise in the High Court and the courts subordinate to it and such rules may contain a provision that an advocate convicted of contempt of court would be barred from appearing before it or before the subordinate courts for a specified period. But so far the Delhi High Court has not framed any rules under Section 34 of the Act. According to him, therefore, the punishment awarded to the appellant by the High Court had no legal sanction.

222. Mr Nageswara Rao, learned Senior Advocate assisting the Court as amicus curiae shared the same view. Mr Rao submitted that the direction given by the High Court was beyond its jurisdiction. In a proceeding of contempt the High Court could only impose a punishment as provided under Section 12 of the Contempt of Courts Act, 1971. The High Court was bound by the provisions of the Contempt of Courts Act and it was not open to it to innovate any new kind of punishment in exercise of its powers under Article 215 of the Constitution or its inherent powers.

223. Mr Rao submitted that a person who is a law graduate becomes entitled to practise the profession of law on the basis of his enrolment with any of the State Bar Councils established under the Advocates Act, 1961. Appearance in court is the dominant, if not the sole content of a lawyer's practice. Since the authority to grant licence to a law graduate to practise as an advocate vests exclusively in a State Bar Council, the power to revoke the licence or to suspend it for a specified term also vests in the same body. Further, the revocation or suspension of licence of an advocate has not only civil but also penal consequences; hence, the relevant statutory provisions in

regard to imposition of punishment must be strictly followed. Punishment by way of suspension of the licence of an advocate can only be imposed by the Bar Council, the competent statutory body, after the charge is established against the advocate concerned in the manner prescribed by the Act and the Rules framed thereunder. The High Court can, of course, prohibit an advocate convicted of contempt from appearing before it or any court subordinate to it till the contemnor purged himself of the contempt. But it cannot assume the authority and the power statutorily vested in the Bar Council.

224. Mr Gopal Subramanium, the other amicus curiae, however, approached the issue in a slightly different manner and took the middle ground. Mr Subramanium submitted that the power to suspend the licence of a lawyer for a reason that may constitute contempt of court and at the same time may also amount to professional misconduct is a power to be exercised by the disciplinary authority i.e. the Disciplinary Committee of the State Bar Council where the advocate concerned is registered or the Bar Council of India. The Supreme Court has held that even it, in exercise of its powers under Article 142, cannot override the statutory provisions and, assuming the position of the Disciplinary Committee, suspend the licence of a lawyer. Such a course cannot be followed even by taking recourse to the appellate powers of the Supreme Court under Section 38 of the Advocates Act while dealing with a case of contempt of court (and not an appeal relating to professional misconduct as such).

225. But approaching the matter from a different angle Mr Subramanium submitted, it is, however, open to the High Court to make rules regulating the appearance of advocates in courts. He further submitted that although the Delhi High Court has not framed any specific rules regulating the appearance of advocates, it is settled law that power vested in an authority would not cease to exist merely because rules prescribing the manner of exercise of power have not been framed.

226. The contention that the direction debarring a lawyer from appearing before it or in courts subordinate to it is beyond the jurisdiction of the High Court is based on the premise that the bar is akin to revocation/suspension of the lawyer's licence which is a punishment for professional misconduct that can only be inflicted by the Bar Council after following the procedure prescribed under the Advocates Act. The contention finds support from the Constitution Bench decision of this Court in *Supreme Court Bar Assn.* v. *Union of India*[21].

227. In para 37 of the decision the Court observed and held as under: (*Supreme Court Bar Assn. case*[21], SCC p. 428)

> "37. The nature and types of punishment which a court of record can impose in a case of established contempt under the common law have

21 (1998) 4 SCC 409

now been specifically incorporated in the Contempt of Courts Act, 1971 insofar as the High Courts are concerned and therefore to the extent the Contempt of Courts Act, 1971 identifies the nature or types of punishments which can be awarded in the case of established contempt, it does not impinge upon the inherent powers of the High Court under Article 215 either. No new type of punishment can be created or assumed."

228. In paras 39 and 40 it observed: (*Supreme Court Bar Assn. case*[21], SCC p. 429)

"*39.* Suspending the licence to practise of any professional like a lawyer, doctor, chartered accountant, etc. when such a professional is found guilty of committing contempt of court, for any specified period, is not a recognised or accepted punishment which a court of record either under the common law or under the statutory law can impose on a contemnor in addition to any of the other recognised punishments.

40. The suspension of an advocate from practise and his removal from the State Roll of Advocates are both punishments specifically provided for under the Advocates Act, 1961, for proven 'professional misconduct' of an advocate. While exercising its contempt jurisdiction under Article 129, the only *cause* or matter before this Court is regarding commission of contempt of court. There is no cause of professional misconduct, properly so-called, pending before the Court. This Court, therefore, in exercise of its jurisdiction under Article 129 cannot take over the jurisdiction of the Disciplinary Committee of the Bar Council of the State or the Bar Council of India to punish an advocate by suspending his licence, which punishment can only be imposed after a finding of 'professional misconduct' is recorded in the manner prescribed under the Advocates Act and the Rules framed thereunder."

(emphasis in original)

229. In para 57 it observed: (*Supreme Court Bar Assn. case*[21], SCC p. 438)

"*57.* In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing 'professional misconduct', depending upon the gravity or nature of his contumacious conduct, but the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an advocate by suspending his licence or by removal of his name from the roll of the State Bar Council for proven professional misconduct *vests exclusively* in the statutory authorities created under the Advocates Act, 1961, while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts." (emphasis in original)

21 *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409

230. Again in para 80 it observed: (*Supreme Court Bar Assn. case*[21], SCC pp. 445-46)

> "*80. In a given case it may be possible, for this Court or the High Court, to prevent the contemner advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate.* In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practise as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practise as an advocate in other courts or tribunals." (emphasis supplied)

231. The matter, however, did not stop at *Supreme Court Bar Assn.*[21] In *Pravin C. Shah* v. *K.A. Mohammed Ali*[22] this Court considered the case of a lawyer who was found guilty of contempt of court and as a consequence was sought to be debarred from appearing in courts till he purged himself of contempt.

232. The Kerala High Court has framed Rules under Section 34 of the Advocates Act and Rule 11 reads thus:

> "11. No advocate who has been found guilty of contempt of court shall be permitted to appear, act or plead in any court unless he has purged, himself of the contempt."

233. In *Pravin C. Shah case*[22] an advocate, notwithstanding his conviction for contempt of court by the Kerala High Court continued to freely appear before the courts. A complaint was made to the Kerala State Bar Council on which a disciplinary proceeding was initiated against the advocate concerned and finally the State Bar Council imposed a punishment on him debarring him from acting or pleading in any court till he got himself purged of the contempt of court by an order of the appropriate court. The advocate concerned challenged the order of the State Bar Council in appeal before the Bar Council of India. The Bar Council of India allowed the appeal and set aside the interdict imposed on the advocate.

234. The matter was brought in appeal before this Court and a two-Judge Bench hearing the appeal framed the question arising for consideration as follows: (*Pravin C. Shah case*[22], SCC p. 655, para 2)

> "2. When an advocate was punished for contempt of court can he appear thereafter as a counsel in the courts, unless he purges himself of such contempt? If he cannot, then what is the way he can purge himself of such contempt?"

21 *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409

22 (2001) 8 SCC 650

235. The Court answered the question in paras 27, 28 and 31 of the judgment as follows: (*Pravin C. Shah case*[22], SCC pp. 661-63)

"*27.* We cannot therefore approve the view that merely undergoing the penalty imposed on a contemnor is sufficient to complete the process of purging himself of the contempt, particularly in a case where the contemnor is convicted of criminal contempt. The danger in giving accord to the said view of the learned Single Judge in the aforecited decision is that if a contemnor is sentenced to a fine he can immediately pay it and continue to commit contempt in the same court, and then again pay the fine and persist with his contemptuous conduct. There must be something more to be done to get oneself purged of the contempt when it is a case of criminal contempt.

28. The Disciplinary Committee of the Bar Council of India highlighted the absence of any mode of purging oneself of the guilt in any of the Rules as a reason for not following the interdict contained in Rule 11. Merely because the Rules did not prescribe the mode of purging oneself of the guilt it does not mean that one cannot purge the guilt at all. The first thing to be done in that direction when a contemnor is found guilty of a criminal contempt is to implant or infuse in his own mind real remorse about his conduct which the court found to have amounted to contempt of court. Next step is to seek pardon from the court concerned for what he did on the ground that he really and genuinely repented and that he has resolved not to commit any such act in future. It is not enough that he tenders an apology. The apology tendered should impress the court to be genuine and sincere. If the court, on being impressed of his genuineness, accepts the apology then it could be said that the contemnor has purged himself of the guilt.

* * *

31. Thus a mere statement made by a contemnor before court that he apologises is hardly enough to amount to purging himself of the contempt. The court must be satisfied of the genuineness of the apology. If the court is so satisfied and on its basis accepts the apology as genuine the court has to make an order holding that the contemnor has purged himself of the contempt. Till such an order is passed by the court the delinquent advocate would continue to be under the spell of the interdict contained in Rule 11 of the Rules."

236. More importantly, another Constitution Bench of this Court in *Ex. Capt. Harish Uppal* v. *Union of India*[23] examined the question whether lawyers have a right to strike and/or give a call for boycott of court(s). In para 34 of the decision the Court made highly illuminating observations in regard to lawyers' *right* to appear before the court and sounded a note of caution for

22 *Pravin C. Shah* v. *K.A. Mohammed Ali*, (2001) 8 SCC 650

23 (2003) 2 SCC 45

the lawyers. Para 34 of the decision needs to be reproduced below: (SCC pp. 71-73)

"*34.* One last thing which must be mentioned is that *the right of appearance in courts is still within the control and jurisdiction of courts. Section 30 of the Advocates Act has not been brought into force* and rightly so. Control of conduct in court can only be within the domain of courts. Thus Article 145 of the Constitution of India gives to the Supreme Court and Section 34 of the Advocates Act gives to the High Court power to frame rules including rules regarding condition on which a person (including an advocate) can practise in the Supreme Court and/or in the High Court and courts subordinate thereto. Many courts have framed rules in this behalf. Such a rule would be valid and binding on all. Let the Bar take note that unless self-restraint is exercised, courts may now have to consider framing specific rules debarring advocates, guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the courts. *Such a rule if framed would not have anything to do with the disciplinary jurisdiction of the Bar Councils. It would be concerning the dignity and orderly functioning of the courts. The right of the advocate to practise envelopes a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for his clients before an arbitrator or arbitrators, etc.* Such a rule would have nothing to do with all the acts done by an advocate during his practice. He may even file vakalat on behalf of a client event though his appearance inside the court is not permitted. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by them in exercise of their disciplinary powers. The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. *But the right to appear and conduct cases in the court is a matter on which the court must and does have major supervisory and controlling power. Hence courts cannot be and are not divested of control or supervision of conduct in court merely because it may involve the right of an advocate.* A rule can stipulate that a person who has committed contempt of court or has behaved unprofessionally and in an unbecoming manner will not have the right to continue to appear and plead and conduct cases in courts. The Bar Councils cannot overrule such a regulation concerning the orderly conduct of court proceedings. On the contrary, it will be their duty to see that such a rule is strictly abided by. Courts of law are structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court.

Proceedings inside the courts are always expected to be held in dignified and orderly manner. The very sight of an advocate, who is guilty of contempt of court or of unbecoming or unprofessional conduct, standing in the court would erode the dignity of the court and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the courts. The power to frame such rules should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the courts are in control of the former. The distinction is clearly brought out by the difference in language in Section 49 of the Advocates Act on the one hand and Article 145 of the Constitution of India and Section 34(1) of the Advocates Act on the other. Section 49 merely empowers the Bar Council to frame rules laying down conditions subject to which an advocate shall have a right to practise i.e. do all the other acts set out above. However, Article 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the court including inter alia rules as to persons practising before this Court. Similarly Section 34 of the Advocates Act empowers High Courts to frame rules, inter alia to lay down conditions on which an advocate shall be permitted to practise in courts. Article 145 of the Constitution of India and Section 34 of the Advocates Act clearly show that there is no absolute right to an advocate to appear in a court. An advocate appears in a court subject to such conditions as are laid down by the court. *It must be remembered that Section 30 has not been brought into force and this also shows that there is no absolute right to appear in a court. Even if Section 30 were to be brought into force control of proceedings in court will always remain with the court. Thus even then the right to appear in court will be subject to complying with conditions laid down by courts just as practice outside courts would be subject to conditions laid down by the Bar Council of India.* There is thus no conflict or clash between other provisions of the Advocates Act on the one hand and Section 34 or Article 145 of the Constitution of India on the other." (emphasis added)

237. In both *Pravin C. Shah*[22] and *Ex. Capt. Harish Uppal*[23] the earlier Constitution Bench decision in *Supreme Court Bar Assn.*[21] was extensively considered. The decision in *Ex. Capt. Harish Uppal*[23] was later followed in a three-Judge Bench decision in *Bar Council of India* v. *High Court of Kerala*[24].

238. In *Supreme Court Bar Assn.*[21] the direction prohibiting an advocate from appearing in court for a specified period was viewed as a total and complete denial of his right to practise law and the bar was considered as a

22 *Pravin C. Shah* v. *K.A. Mohammed Ali*, (2001) 8 SCC 650

23 *Ex. Capt. Harish Uppal* v. *Union of India*, (2003) 2 SCC 45

21 *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409

24 (2004) 6 SCC 311

punishment inflicted on him.* In *Ex. Capt. Harish Uppal*[23] it was seen not as punishment for professional misconduct but as a measure necessary to regulate the court's proceedings and to maintain the dignity and orderly functioning of the courts. We may respectfully add that in a given case a direction disallowing an advocate who is convicted of criminal contempt from appearing in court may not only be a measure to maintain the dignity and orderly functioning of the courts but may become necessary for the self-protection of the court and for preservation of the purity of court proceedings. Let us, for example, take the case where an advocate is shown to have accepted money in the name of a judge or on the pretext of influencing him; or where an advocate is found tampering with the court's record; or where an advocate is found actively taking part in faking court orders (fake bail orders are not unknown in several High Courts!); or where an advocate has made it into a practice to browbeat and abuse judges and on that basis has earned the reputation to get a case transferred from an "inconvenient" court; or where an advocate is found to be in the habit of sending unfounded and unsubstantiated allegation petitions against judicial officers and judges to the superior courts. Unfortunately these examples are not from imagination. These things are happening more frequently than we care to acknowledge.

239. We may also add that these illustrations are not exhaustive but there may be other ways in which a malefactor's conduct and actions may pose a real and imminent threat to the purity of court proceedings, cardinal to any court's functioning, apart from constituting a substantive offence and contempt of court and professional misconduct. In such a situation the court does not only have the right but it also has the obligation cast upon it to protect itself and save the purity of its proceedings from being polluted in any way and to that end bar the malefactor from appearing before the courts for an appropriate period of time.

240. It is already explained in *Ex. Capt. Harish Uppal*[23] that a direction of this kind by the Court cannot be equated with punishment for professional misconduct. Further, the prohibition against appearance in courts does not affect the right of the lawyer concerned to carry on his legal practice in other ways as indicated in the decision. We respectfully submit that the decision in *Ex. Capt. Harish Uppal* v. *Union of India*[23] places the issue in correct perspective and must be followed to answer the question at issue before us.

241. Lest we are misunderstood it needs to be made clear that the occasion to take recourse to the extreme step of debarring an advocate from appearing in court should arise very rarely and only as a measure of last resort in cases where the wrongdoer advocate does not at all appear to be

* Though in para 80 of *Supreme Court Bar Assn. case*[21], as seen earlier (in para 230 herein), there is an observation that in a given case it might be possible for this Court or the High Court, to prevent the contemnor advocate to appear before it till he purges himself of the contempt.

23 *Ex. Capt. Harish Uppal* v. *Union of India*, (2003) 2 SCC 45

genuinely contrite and remorseful for his act/conduct, but on the contrary shows a tendency to repeat or perpetuate the wrong act(s).

242. Ideally every High Court should have rules framed under Section 34 of the Advocates Act in order to meet with such eventualities but even in the absence of the rules the High Court cannot be held to be helpless against such threats. In a matter as fundamental and grave as preserving the purity of judicial proceedings, the High Court would be free to exercise the powers vested in it under Section 34 of the Advocates Act notwithstanding the fact that rules prescribing the manner of exercise of power have not been framed. But in the absence of statutory rules providing for such a course an advocate facing the charge of contempt would normally think of only the punishments specified under Section 12 of the Contempt of Courts Act. He may not even imagine that at the end of the proceeding he might end up being debarred from appearing before the court. The rules of natural justice, therefore, demand that before passing an order debarring an advocate from appearing in courts he must be clearly told that his alleged conduct or actions are such that if found guilty he might be debarred from appearing in courts for a specific period. The warning may be given in the initial notice of contempt issued under Section 14 or Section 17 (as the case may be) of the Contempt of Courts Act. Or such a notice may be given after the proceedee is held guilty of criminal contempt before dealing with the question of punishment.

243. In order to avoid any such controversies in future all the High Courts that have so far not framed rules under Section 34 of the Advocates Act are directed to frame the rules without any further delay. It is earnestly hoped that all the High Courts shall frame the rules within four months from today. The High Courts may also consider framing rules for having Advocates-on-Record on the pattern of the Supreme Court of India.

244. Suborning a witness in a criminal trial is an act striking at the root of the judicial proceeding and it surely deserves the treatment meted out to the appellant. But the appellants were not given any notice by the High Court that if found guilty they might be prohibited from appearing in the High Court, and the courts subordinate to it, for a certain period. To that extent the direction given by the High Court was not in conformity with the principles of natural justice. But as to the consequence of that we shall deal with it in due course.

The question of sentence

245*. Having regard to the misdeeds of which R.K. Anand has been found guilty, the punishment given to him by the High Court can only be regarded as nominal. We feel that the leniency shown by the High Court in meting out the punishment was quite misplaced. And the view is greatly reinforced if one looks at the contemnor's conduct before the High Court. As we shall see presently, before the High Court the contemnor took a defiant stand and constantly tried to obstruct the proceedings.

* **Ed.**: Para 245 corrected vide Official Corrigendum No. E.3/Ed.B.J./147/2009 dated 30-9-2009.

The diversionary and intimidatory tactics in the proceeding

246. Even as contempt notices were issued by the High Court, or even before it, some diversionary and even intimidatory tactics were employed to stonewall the proceeding initiated by it.

Kulkarni's affidavit

247. The first in the series was an affidavit filed on 6-8-2007 by Kulkarni in regard to the stings done by him. The affidavit was not called for by the Court and it was filed quite gratuitously. It was a jumble of nonsense, half-truths and lies. Kulkarni made all conceivable and even some inconceivable allegations against NDTV in general and Poonam Agarwal in particular.

248. Kulkarni stated that Poonam Agarwal had recorded his first interview on 25-4-2003 and thereafter on several other dates till the last one in the last week of May before the telecast. It is not clear on whose behalf Poonam Agarwal would take his earlier interviews because she had joined NDTV only two years prior to July 2007. He then alleged that Poonam Agarwal subjected him to "Gobel's technique" (sic Goebbels') to make him "illicit" (sic elicit) certain answers "to" (sic from) R.K. Anand and I.U. Khan in a particular manner.

249. What is of significance in Kulkarni's affidavit, however, is that he anticipated what in the sting recordings might prove fatal for R.K. Anand and I.U. Khan and tried to do the ground work for their defence. In regard to his meeting with I.U. Khan, Kulkarni said that he met and spoke to him in the manner directed by Poonam Agarwal. He further said on affidavit that when I.U. Khan asked him if he had met "Bade Saheb" he implied some senior police official but it was Poonam Agarwal who forced him to say that I.U. Khan referred to R.K. Anand. Now, this is exactly what I.U. Khan said in his interview to the TV channel and what he would say later in his show cause to the High Court. He also said that as agreed between the two in the meeting of 28-4-2007, he again met I.U. Khan in the evening but the conversation that took place in that meeting exposed NDTV story and, therefore, that recording was withheld from being telecast.

250. Similarly, in regard to his meeting with R.K. Anand, Kulkarni said that he met him on being forced by Poonam Agarwal. He further said on affidavit that he had mentioned the sum of rupees two-and-half crores to R.K. Anand on the direction of Poonam Agarwal. He himself had neither any idea nor the intention to ask him for any money. He further said that on the mention of the sum of money R.K. Anand was shocked and he rebuked him by making the sarcastic remark that he should ask for five crores and not only two-and-half crores. He said that he got the message that no demand for money would be entertained.

251. The similarity between what Kulkarni said in his affidavit and what R.K. Anand had to say about this matter and the manner in which he would say it is unmistakable. We are unable to believe that the manner in which Kulkarni's affidavit foreshadows the proceedees' defence was simply

coincidental. It does not require much imagination to see that Kulkarni had once again switched over sides and he had joined hands with those whom he had earlier tried to trap in the stings.

252. In one of the paragraphs of the affidavit there is a ludicrous description of Kulkarni's meeting with Lovely. It is stated that despite persistent request by him for a meeting there was no positive response from R.K. Anand. Then, "suddenly a Sardar Ji came and started talking with me. In his pocket I saw some flashlight beeping which alerted me that I was trapped. I was upset and wanted to convey all the facts to the Hon'ble Court but Ms Poonam Agarwal prevailed over me and dissuaded me to do the same". Even this apparently absurd story was not without purpose; its object was to provide for the existence of another recording, apart from his own sting, of his meeting with Lovely. The recording, by Lovely, of their meeting was the second diversionary attempt in the proceeding before the High Court.

Another audio recording of the meeting between Kulkarni and Lovely

253. The High Court Registry received an audio cassette along with a letter from one Sunil Garg. In the letter it was stated that the cassette had the recording of some conversation between Lovely and Kulkarni. The cassette proved to be completely blank. Then on notice being issued to him Garg appeared in Court and made a statement on oath. He said that Kulbir Singh alias Lovely was his friend. Shortly before his death he had come to him and handed over to him two audio cassettes saying that those contained the recordings of his conversation with Kulkarni. He had earlier sent one of the two cassettes without playing it on the recorder. He later came to learn from the newspaper reports that the cassette was blank. He then played the other cassette and found it had the recording of some conversation between his friend Lovely and someone else. He recognised the voice of his friend Lovely. He submitted the other cassette in the High Court.

254. We would have completely ignored Kulkarni's affidavit and Garg's audio cassettes as foolish and desperate attempts to create some defence, not worthy of any attention. But there is something more to come that is impossible to ignore.

"Request" for Recusal

255. Of all the obstructive measures adopted before the High Court the most unfortunate and undesirable came from R.K. Anand in the form of a petition "requesting" Manmohan Sarin, J., the Presiding Judge on the Bench dealing with the matter, to recuse himself from the proceeding. This petition, an ill-concealed attempt at intimidation, was, as a matter of fact, R.K. Anand's first response to the notice issued to him by the Court. He stated in this petition that he had the feeling that he was not likely to get justice at the hands of Manmohan Sarin, J. He further stated alluding to some past events, that he had tried his best to forget the past and bury the hatchet but the way and the manner in which the matter was being dealt with had caused the greatest damage to his reputation. He made the prayer that the recusal

application should be heard in camera and the main matter be transferred to another Bench of which Sarin, J. was not a member. Along with the petition he filed a sealed cover containing a note and the materials giving rise to the belief that he was not likely to get justice at the hands of Sarin, J.

256. The recusal petition was primarily based on the plea that R.K. Anand had reasonable apprehension of bias for Sarin, J. was personally hostile to him. The self-perceived hostility between the applicant (R.K. Anand) and Sarin, J. dated back to 1984 when Sarin, J. was still a lawyer. They had a quarrel then that had led to an exchange of verbal abuses. In 1988 Sarin, J. (still a lawyer), in his position as the Vice-President of the Delhi High Court Bar Association, had moved a resolution before the Association's Executive Committee opposing any proposal for the applicant's nomination for appointment as a Judge of the Delhi High Court. Sarin, J., as a lawyer, had among his clients, the magazine, *India Today* (Living Media) and the owners of NDTV were closely associated with *India Today*. Sarin, J. as an advocate had done the cases of the applicant's brothers whom he had referred to him. It was stated that the Judge, thus, might have been privy to some family gossip causing him to be prejudicially disposed towards the applicant.

257. The applicant had earlier sent a complaint to the Prime Minister against the Law Minister, who was one of his (the applicant's) political rival. In the complaint, apart from the Law Minister, allegations were also made against the then Chief Justice of the High Court. And in that connection it was alleged that the Chief Justice had around him a coterie of Judges that included Sarin, J. On the arrest of a sitting Judge of the Delhi High Court by CBI the media had gone to Sarin, J. for his comments and even this, it was stated, might lead him to harbour ill will against the applicant.

258. In a civil case for damages arising from BMW case the matter was settled between the parties (one of the victims of the accident on the one side and the family of the accused Sanjeev Nanda on the other). But Sarin, J. who was a member of the Bench before which the matter came up for recording the settlement, did not allow it to be said in the compromise petition that the accident was caused by a truck and not by any car. It showed, according to the applicant, that Sarin, J. had some preconceived notion that the accident was caused by the car driven by Sanjeev Nanda. The Bench had appointed as amicus curiae a lawyer personally hostile to the applicant. And lastly, the applicant had moved the Chief Justice on the administrative side to assign the matter to some other Bench.

259. In one glance, the grounds on which recusal was asked for appear fit to be rejected out of hands. But the Court gave the matter far greater importance than it merited, apparently because it saw a personal angle in it. The petition was heard for three days before it was rejected by the order dated 4-10-2007. It is a long order running into twenty-seven pages authored by Sarin, J. The order dealt with all the grounds advanced in support of the recusal petition and effectively showed that there was no truth or substance in any of those grounds.

260. In regard to the 1988 Resolution of the Bar Association allegedly passed against R.K. Anand at the instance of Mr Sarin, the Court called for the Association's Register of Resolutions for the years 1988 and 1989. From the Association's Register it transpired that at the relevant time Mr Sarin was not an office-bearer of the Association but was simply a member of its Executive Committee. Further, there was no resolution concerning R.K. Anand. A resolution of the nature stated in the recusal application was passed against someone from the Judicial Service. It is true that one Mr Tufail, the Joint Secretary of the Association had wished to move a resolution against R.K. Anand too and was given the permission to do so by the Executive Committee. But he did not actually move any resolution and later said that he did not have necessary proof in support of the allegations and the matter was dropped.

261. As regards the complaint to the Prime Minister in which Sarin, J. was said to be a member of the alleged coterie around the Chief Justice, Sarin, J. commented that until a copy of the complaint was filed with the recusal application he was not even aware of it.

262. Having thus dealt with the rest of the allegations made in the recusal application, the order, towards its end, said something which alone was sufficient to reject the request for recusal. It was pointed out that the applicant had a flourishing practice; he had been frequently appearing in the Court of Sarin, J. ever since he was appointed as a Judge and for the past twelve years was getting orders, both favourable and unfavourable, for his different clients. He never complained of any unfair treatment by Sarin, J. but recalled his old "hostility" with the Judge only after the notice was issued to him.

263. In the order the Judge concerned further observed:

> "The path of recusal is very often a convenient and a soft option. This is especially so since a Judge really has no vested interest in doing a particular matter. However, the oath of office taken under Article 219 of the Constitution of India enjoins the Judge to duly and faithfully and to the best of his knowledge and judgment, perform the duties of office without fear or favour, affection or ill will while upholding the Constitution and the laws. In a case where unfounded and motivated allegations of bias are sought to be made with a view of forum hunting/ Bench preference or browbeating the court, then, succumbing to such a pressure would tantamount to not fulfilling the oath of office."

The above passage, in our view, correctly sums up what should be the court's response in the face of a request for recusal made with the intent to intimidate the court or to get better of an "inconvenient" Judge or to obfuscate the issues or to cause obstruction and delay the proceedings or in any other way frustrate or obstruct the course of justice.

264. We are constrained to pause here for a moment and to express grave concern over the fact that lately such tendencies and practices are on the increase. We have come across instances where one would simply throw a

stone on a Judge (who is quite defenceless in such matters!) and later on cite the gratuitous attack as a ground to ask the Judge to recuse himself from hearing a case in which he would be appearing. Such conduct is bound to cause deep hurt to the Judge concerned but what is of far greater importance is that it defies the very fundamentals of administration of justice. A motivated application for recusal, therefore, needs to be dealt with sternly and should be viewed ordinarily as interference in the due course of justice leading to penal consequences.

265. The other Judge on the Bench, however, it seems was unable to bear the onslaught and he took the easy way out. He expressed his inability to concur with the order passed by the Presiding Judge observing that "the nature of the controversy before us pertains to my learned Brother alone. It revolves around a number of factual assertions, which can only be known to my learned Brother personally, and which must necessarily be examined in the light of the law on the subject. Therefore, I consider it inappropriate to express any opinion in the matter, one way or the other". Having passed the brief separate order he declined to take any further part in the proceeding.

266. This development provided R.K. Anand with another opportunity to carry on his offensive further. He unhesitatingly availed of the opportunity and filed an application (Crl. M. No. 11677 of 2007) for clarification/review of the order dated 4-10-2007 dismissing his recusal petition. Review was sought primarily on the ground that the order of Sarin, J. was not the order by the Bench since the other Judge had declined to concur with him.

267. After the other Judge opted out of the Bench, the Chief Justice put Lokur, J. in his place. Consequently, the clarification/review application came before Sarin, J., sitting with Lokur, J., and the first thing this Bench was told, and with some assertiveness too, was that it was not competent to hear the application and it could only be heard by the previous Bench as it arose from an order passed by that Bench. The clarification/review application was rejected by a long order dated 29-11-2007 authored by Lokur, J. As we shall see, henceforth all substantive orders in the proceeding were written, not by the Presiding Judge, but by Lokur, J. and the significance of it is not lost on us. The application for recusal though rejected was not completely unsuccessful. It left a lasting shadow on the proceeding.

268. Here, it may be noted that apart from filing an application for its clarification/review before the High Court, the order rejecting the recusal application was also sought to be challenged before this Court by filing SLP (Crl.) No. 7374 of 2007. The SLP was, however, withdrawn on 14-12-2007. Nevertheless, the challenge to the High Court order rejecting the recusal application is still not given up and Paras II and I of the grounds in the present memo of appeal expressly seek to assail that order.

269. Both Mr Salve and Mr Subramanium strongly submitted that the appellant had plainly no respect for the court or the court proceedings.

270. Mr Salve submitted that the recusal application was a brazen attempt to browbeat the High Court and in that attempt the appellant succeeded to a large extent since the prohibition to appear before the courts for a period of only four months could only be considered as a token punishment having regard to the gravity of his conduct.

271. Mr Subramanium also felt strongly about the recusal application but before taking up the issue he fairly tried to give another opportunity to the appellant stating that perhaps even now the appellant might wish to withdraw the grounds in the SLP challenging the order passed by the High Court on the recusal application. The appellant was given ample time to consider the suggestion but later on enquiry Mr Altaf Ahmed stated that he had not pressed those grounds in course of his submissions exercising his discretion as the counsel but he had no instructions to get those grounds deleted from the SLP.

272. The action of the appellant in trying to suborn the court witness in a criminal trial was reprehensible enough but his conduct before the High Court aggravates the matter manifold. He does not show any remorse for his gross misdemeanour and instead tries to take on the High Court by defying its authority. We are in agreement with Mr Salve and Mr Subramanium that punishment given to him by the High Court was wholly inadequate and incommensurate to the seriousness of his actions and conduct. We, accordingly, propose to issue a notice to him for enhancement of punishment.

273. We also hold that by his actions and conduct the appellant has established himself as a person who needs to be kept away from the portals of the court for a longer time. The notice would therefore require him to show cause why the punishment awarded to him should not be enhanced as provided under Section 12 of the Contempt of Courts Act. He would additionally show cause why he should not be debarred from appearing in courts for a longer period. The second part of the notice would also cure the defect in the High Court order in debarring the appellant from appearing in courts without giving any specific notice in that regard as held in the earlier part of the judgment.

274. We have so far been considering the two appeals proper. We now proceed to examine some other important issues arising from the case.

The role of NDTV

275. NDTV came under heavy attack from practically all sides for carrying out the stings and airing the programme based on it. On behalf of R.K. Anand the sting programme was called malicious and motivated, aimed at defaming him personally. Mr P.P. Rao appearing for I.U. Khan questioned the propriety of the stings and the repeated telecast of the sting programme concerning a pending trial and involving a court witness.

276. Mr Rao submitted that before taking up the sting operations, fraught with highly sinister implications, the TV channel should have informed the trial court and obtained its permission. If for any reason it was not possible to inform the trial Judge then permission for the stings should have been taken

from the Chief Justice of the Delhi High Court. Also, it was the duty of that TV channel to place the sting materials before the court before telecasting any programme on that basis.

277. Mr Gopal Subramanium submitted that this case raised the important issue regarding the nature and extent of the right of the media to deal with a pending trial. He submitted that a sting operation was, by its nature, based on deception and hence, overriding public interest alone might justify its publication/telecast. Further, since the operation was based on deception the onus would be heavy on the person behind the sting and publication/telecast of the sting materials to establish his/her bona fides, apart from the genuineness and truthfulness of the sting materials. In regard to sting operations bona fides could not be assumed. In this case, therefore, it was the duty of the High Court to inquire into and satisfy itself whether the sting operation was a genuine exercise by the TV channel to expose the attempted subversion of the trial. He further submitted that the affidavit of Poonam Agarwal was not sufficient to arrive at the conclusion that the action of the TV channel was genuine and bona fide and the matter required further enquiry.

278. Mr Subramanium further submitted that the act of publication/telecast and the contents of publication/telecast, though interlinked, were still needed to be viewed separately and whether or not a publication or telecast was justified would, to a large extent, depend, as much on the contents of the publication/telecast, as the act of publication/telecast itself. He further submitted that, in the facts of the case, the sting operation was in public interest and there was nothing objectionable there. But the same cannot be said of the telecast. The date on which the programme was telecast (30-5-2007 — when Kulkarni's cross-examination was still pending), the "slant" given to the episode by the NDTV presenters, and the way opinions were solicited from eminent lawyers, left much to be explained by the TV channel.

279. Learned counsel submitted that a question may arise whether NDTV was justified in telecasting the programme based on the sting when they were not in a position to vouch for Kulkarni's character. He, however, submitted that the TV channel must at least be given credit for transparency—it made a public disclosure, in the same telecast, that (*a*) Kulkarni had withdrawn his consent for the telecast; (*b*) it did not know if any money had in fact changed hands; and (*c*) it could not vouch for Kulkarni's character. It also gave the contemnors a chance to state their version of the story.

280. In conclusion Mr Subramanium submitted that it would be difficult to conclude that NDTV was guilty of contempt or of conducting a media trial although the "slant in the telecast was regrettable overreach".

281. The other amicus curiae, Mr Nageswara Rao was more severe in his criticism of the telecast of the sting programme by NDTV. He maintained that NDTV was equally guilty of contempt of court, though under a different provision of law. Mr Rao submitted that the programme was an instance of, what is commonly called, "trial by media" and it was telecast while the

criminal trial was going on. He submitted that in our system of law there was no place for trial by media in a sub judice matter.

282. Mr Rao submitted that freedom of speech and expression, subject of course to reasonable restrictions, was indeed one of the most important rights guaranteed by the Constitution of India. But the press or the electronic media did not enjoy any right(s) superior to an individual citizen. Further, the right of free and fair trial was of far greater importance and in case of any conflict between free speech and fair trial the latter must always get precedence.

283. Mr Rao submitted that though the law normally did not permit any pre-censorship of a media report concerning an ongoing criminal trial or sub judice matter, any person publishing the report in contravention of the provisions of law would certainly make himself liable to the proceeding of contempt.

284. Mr Rao further submitted that the immunity provided under Section 3(3) of the Contempt of Courts Act was not available to the TV channel in terms of proviso (*ii*) Explanation (B) to sub-section (3) of Section 3 and thus the telecast of the sting programme by NDTV clearly fell in the prohibited zone under the Act. He further submitted that in such an event, a plea of "larger public good" was not a legal defence. In support of his submission he cited several decisions of this Court in (*i*) *Saibal Kumar Gupta* v. *B.K. Sen*[25], SCR at p. 473; (*ii*) *P.C. Sen, In Re*[26], SCR at pp. 651, 653, 654, 658; (*iii*) *Reliance Petrochemicals Ltd.* v. *Indian Express Newspapers, Bombay (P) Ltd.*[27], SCC at paras 32, 34, 95, 38; and (*iv*) *M.P. Lohia* v. *State of W.B.*[28], SCC at para 10.

285. Mr Salve, learned Senior Advocate appearing for NDTV, on the other hand, defended the telecast of the programme. Mr Salve submitted that commenting on or exposing something foul concerning proceedings pending in courts would not constitute contempt if the court is satisfied that the report/comment is substantially accurate, it is bona fide and it is in public interest. He referred to the new Section 13 in the Contempt of Courts Act substituted with effect from 17-3-2006 which is as under:

> "13. *Contempts not punishable in certain cases.*—Notwithstanding anything contained in any law for the time being in force,—
>
> (*a*) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice;
>
> (*b*) *the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide.*"
>
> (emphasis added)

25 AIR 1961 SC 633 : (1961) 3 SCR 460
26 AIR 1970 SC 1821 : (1969) 2 SCR 649
27 (1988) 4 SCC 592
28 (2005) 2 SCC 686 : 2005 SCC (Cri) 556

286. Mr Salve submitted that in a situation of this kind two competing public interests are likely to arise; one, purity of trial and the other, public reporting of something concerning the conduct of a trial (that may even have the tendency to impinge on the proceedings) where the trial, for any reason, can be considered as a matter of public concern. With regard to the case in hand Mr Salve submitted that in the sting programmes there was nothing to influence the outcome of the BMW trial. But even if the telecast had any potential to influence the trial proceedings that risk was far outweighed by the public good served by the programme.

287. Mr Salve further submitted that in a case where two important considerations arise, vying with each other, the court is the final arbiter to judge whether or not the publication or telecast is in larger public interest; how far, if at all, it interferes or tends to interfere with or obstructs or tends to obstruct the course of justice and on which side the balance tilts. In support of his submission he relied upon a decision of the House of Lords in *Lonrho plc, Re*[29], paras 7.2 and 7.3 at p. 1116.

288. We have already dealt with the allegations made on behalf of R.K. Anand while considering his appeal earlier in this judgment and we find no substance in those allegations.

Reporting of pending trial

289. We are also unable to agree with the submission made by Mr P.P. Rao that the TV channel should have carried out the stings only after obtaining the permission of the trial court or the Chief Justice of the Delhi High Court and should have submitted the sting materials to the court before its telecast. Such a course would not be an exercise in journalism but in that case the media would be acting as some sort of special vigilance agency for the court. On little consideration the idea appears to be quite repugnant both from the points of view of the court and the media.

290. It would be a sad day for the court to employ the media for setting its own house in order; and media too would certainly not relish the role of being the snoopers for the court. Moreover, to insist that a report concerning a pending trial may be published or a sting operation concerning a trial may be done only subject to the prior consent and permission of the court would tantamount to pre-censorship of reporting of court proceedings. And this would be plainly an infraction of the media's right of freedom of speech and expression guaranteed under Article 19(1) of the Constitution.

291. This is, however, not to say that media is free to publish any kind of report concerning a sub judice matter or to do a sting on some matter concerning a pending trial in any manner they please. The legal parameter within which a report or comment on a sub judice matter can be made is well defined and any action in breach of the legal bounds would invite consequences. Compared to normal reporting, a sting operation is an

29 (1990) 2 AC 154 : (1989) 3 WLR 535 : (1989) 2 All ER 1100 (HL)

incalculably more risky and dangerous thing to do. A sting is based on deception and, therefore, it would attract the legal restrictions with far greater stringency and any infraction would invite more severe punishment.

Sting programme whether trial by media??

292. The submissions of Mr N. Rao are based on two premises: one, the sting programme telecast by NDTV was of the genre, "trial by media" and two, the programme interfered or tended to interfere with or obstructed or tended to obstruct the proceedings of the BMW trial that was going on at the time of the telecast. If the two premises are correct then the rest of the submissions would logically follow. But are the two premises correct?

293. What is trial by media? The expression "trial by media" is defined to mean:

> "The impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. During high publicity court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that, regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny."

294. In light of the above it can hardly be said that the sting programme telecast by NDTV was a media trial. Leaving aside some stray remarks or comments by the anchors or the interviewees, the programme showed some people trying to subvert the BMW trial and the state of the criminal administration of justice in the country (as perceived by the TV channel and the interviewees). There was nothing in the programme to suggest that the accused in BMW case were guilty or innocent.

295. The programme was not about the accused but it was mainly about two lawyers representing the two sides and one of the witnesses in the case. It indeed made serious allegations against the two lawyers. The allegations, insofar as R.K. Anand is concerned, stand established after strict scrutiny by the High Court and this Court. Insofar as I.U. Khan is concerned, though this Court held that his conduct did not constitute criminal contempt of court, nonetheless allegations against him too are established to the extent that his conduct has been found to be inappropriate for a Special Public Prosecutor.

296. In regard to the witness the comments and remarks made in the telecast were never subject to a judicial scrutiny but those too are broadly in conformity with the materials on the court's record. We are thus clearly of the view that the sting programme telecast by NDTV cannot be described as a piece of trial by media.

Stings and telecast of sting programmes not constituting criminal contempt

297. Coming now to Section 3 of the Contempt of Courts Act we are unable to appreciate Mr Rao's submission that NDTV did not have the

immunity under sub-section (3) of Section 3 as the telecast was hit by proviso (*ii*) Explanation (B) to that sub-section.

298. Section 3 of the Act insofar as relevant is as under:

"3. *Innocent publication and distribution of matter not contempt.*—(1) A person shall not be guilty of contempt of court on the ground that he has published (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at that time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

(2) * * *

(3) A person shall not be guilty of contempt of court on the ground that he has distributed a publication containing any such matter as is mentioned in sub-section (1), if at the time of distribution he had no reasonable grounds for believing that it contained or was likely to contain any such matter as aforesaid:

Provided that this sub-section shall not apply in respect of the distribution of—

(*i*) any publication which is a book or paper printed or published otherwise than in conformity with the rules contained in Section 3 of the Press and Registration of Books Act, 1867 (25 of 1867);

(*ii*) any publication which is a newspaper published otherwise than in conformity with the rules contained in Section 5 of the said Act.

Explanation. For the purposes of this section, a judicial proceeding

(*a*) is said to be pending—

(A) * * *

(B) in the case of a criminal proceeding under the Code of Criminal Procedure, 1898 (5 of 1898), or any other law

(*i*) where it relates to the commission of an offence, when the charge-sheet or challan is filed, or when the court issues summons or warrant, as the case may be, against the accused, and

(*ii*) in any other case, when the court takes cognizance of the matter to which the proceeding relates, and"

299. Section 5 provides that a fair criticism of a judicial act concerning any case which has been heard and finally decided would not constitute contempt.

300. Sub-section (1) of Section 3 provides immunity to a publisher of any matter which interferes or tends to interfere with, or obstructs or tends to obstruct the course of justice in any civil or criminal proceeding if he reasonably believed that there was no proceeding pending.

301. Sub-section (3) of Section 3 deals with distribution of the publication as mentioned in sub-section (1) and provides immunity to the distributor if he reasonably believed that the publication did not contain any matter which interfered or tended to interfere with, or obstructed or tended to

obstruct the course of justice in any civil or criminal proceeding. The immunity provided under sub-section (3) is subject to the exceptions as stated in the proviso and Explanations to the sub-section.

302. We fail to see any application of Section 3(3) of the Contempt of Courts Act in the facts of this case. In this case there is no distribution of any publication made under sub-section (1). Hence, neither sub-section (3) nor its proviso or Explanation is attracted. NDTV did the sting, prepared a programme on the basis of the sting materials and telecast it at a time when it fully knew that the BMW trial was going on. Hence, if the programme is held to be a matter which interfered or tended to interfere with, or obstructed or tended to obstruct *the due course of* BMW case then the immunity under sub-section (1) will not be available to it and the telecast would clearly constitute criminal contempt within the meaning of Sections 2(*c*)(*ii*) and (*iii*) of the Act.

303. But can the programme be accused of interfering or tending to interfere with, or obstructing or tending to obstruct *the due course of* BMW case? Whichever way we look at the programme we are not able to come to that conclusion. The programme may have any other faults or weaknesses but it certainly did not interfere with or obstruct the due course of the BMW trial. The programme telecast by NDTV showed to the people (the courts not excluded) that a conspiracy was afoot to undermine the BMW trial. What was shown was proved to be substantially true and accurate. The programme was thus clearly intended to *prevent* the attempt to interfere with or obstruct the due course of the BMW trial.

Stings and telecast of sting programmes served important public cause

304. Looking at the matter from a slightly different angle we ask the simple question, what would have been in greater public interest: to allow the attempt to suborn a witness, with the object to undermine a criminal trial, lie quietly behind the veil of secrecy or to bring out the mischief in full public gaze? To our mind the answer is obvious. The sting telecast by NDTV was indeed in larger public interest and it served an important public cause.

305. We have held that the sting programme telecast by NDTV in no way interfered with or obstructed the due course of any judicial proceeding, rather it was intended to prevent the attempt to interfere with or obstruct the due course of law in the BMW trial. We have also held that the sting programme telecast by NDTV served an important public cause. In view of the twin findings we need not go into the larger question canvassed by Mr Salve that even if the programme marginally tended to influence the proceedings in the BMW trial the larger public interest served by it was so important that the little risk should not be allowed to stand in its way.

Excesses in the telecast

306. We have unequivocally upheld the basic legitimacy of the stings and the sting programmes telecast by NDTV. But at the same time we must also point out the deficiencies (or rather the excesses) in the telecast. Mr Subramanium spoke about the "slant" in the telecast as "regrettable

overreach". But we find many instances in the programme that cannot be simply described as "slants". There are a number of statements and remarks which are actually incorrect and misleading.

307. In the first sting programme telecast on 30-5-2007 at 8.00 p.m. the anchor made the opening remarks as under:

> "Good Evening, … an NDTV expose, on how the legal system may have been subverted in the high-profile BMW case. In 1999 six people were run over allegedly by a BMW driven by Sanjeev Nanda, a young, rich industrialist but 8 years later every witness except one has turned hostile. Tonight NDTV investigates did the prosecution, the defence and the only witness not turned hostile Sunil Kulkarni collude…."

The anchor's remarks were apparently from a prepared text since the same remarks were repeated word by word by another anchor as introduction to the second telecast on the same day at 9.00 p.m.

308. Further, in the 9 o'clock telecast after some brief introductory remarks, clips from the sting recordings are shown for several minutes and a commentator from the background (probably Poonam Agarwal) introduces the main characters in BMW case. Kulkarni is introduced by the commentator in the following words:

> "Sunil Kulkarni, a passer-by, who allegedly saw the accident but inexplicably dropped as witness by the prosecution. They claim he had been bought by the Nandas. This despite the fact that he is the only witness who still says the accident was caused by a 'black car' with two men in it, one of them called Sanjeev."

This statement does not find place in the manuscript of the telecast furnished to the Court and can be found only by carefully watching the CD of the telecast submitted before the Court. We are again left with the feeling that NDTV did not submit full and complete materials before the Court and we are surprised that the High Court did not find it amiss.

309. In the first statement Kulkarni is twice described as the only witness in BMW case who after eight years had not turned hostile. The statement is fallacious and misleading. Kulkarni was not being examined in the court as prosecution witness and, therefore, there was no question of his being declared "hostile" by the prosecution. He was being examined as a court witness. Nevertheless, the prosecution was cross-examining him in detail in course of which he was trying to sabotage the prosecution case.

310. The second statement is equally, if not more, fallacious. In the second statement it is said that Kulkarni was "inexplicably" dropped as a prosecution witness. We have seen earlier that Kulkarni was dropped as a prosecution witness for good reasons summed up in the Joint Commissioner's report to the trial court and there was nothing "inexplicable" about it.

311. In the second statement it is further suggested that the prosecution's claim that Kulkarni was bought over by the accused was untrue because he

was the only witness who still said that the accident was caused by a black car with two men in it, one of them being called Sanjeev.

312. It is true that in his deposition before the court Kulkarni said that the accident was caused by a black car but he resiled from his earlier statements made before the police and the Magistrate in a more subtle and clever way than the other two prosecution witnesses, namely, Hari Shankar Yadav and Manoj Malik. Departing from his earlier statements he said in the court that he heard one of the two occupants of the car addressing the other as "Sanch or Sanz" (and not as Sanjeev). Further, though admitting that Sanjeev Nanda was one of the occupants of the car, he positively denied that he got down from the driving seat of the car and placed someone else on the driving seat of the car causing the accident. Thus the damage to the prosecution case that he tried to cause was far more serious than any other prosecution witness.

313. It is not that NDTV did not know these facts. NDTV was covering the BMW trial very closely since its beginning and was aware of all the developments taking place in the case. Then why did it introduce the programme in this way, running down the prosecution and presenting Kulkarni as the only person standing upright while everyone else had fallen down? The answer is not far to seek.

314. One can not start a highly sensational programme by saying that it was prepared with the active help of someone whose own credibility is extremely suspect. The opening remarks were thus designed to catch the viewer and to hold his/her attention, but truth, for the moment at least was relegated to the sidelines. It is indeed true that later on in the programme facts concerning Kulkarni were stated correctly and he was presented in a more balanced way and Mr Subramanium wanted to give NDTV credit points for that. But the impact and value of the opening remarks in a TV programme is quite different from what comes later on. The later corrections were for the sake of the record while the introductory remarks had their own value.

315. Further, on the basis of the sting recordings NDTV might have justifiably said that I.U. Khan, the Special Public Prosecutor appeared to be colluding with the defence (though this Court found that there was no conclusive evidence to come to such a finding). But there was no material before NDTV to make such an allegation against the prosecution as a whole and thus to run down the other agencies and people connected with the prosecution. There are other instances also of wrong and inappropriate choice of words and expressions but we need not go any further in the matter.

316. Another sad feature is its stridency. It is understandable that the programme should have started on a highly sensational note because what was about to be shown was really quite shocking. But the programme never regained poise and it became more and more shrill. All the interviewees, highly eminent people, expressed their shock and dismay over the state of the legal system in the country and the way the BMW trial was proceeding. But as the interview progressed, they somewhat tended to lose their self-restraint

and did not pause to ponder that they were speaking about a sub judice matter and a trial in which the testimony of a court witness was not even over. We are left with the feeling that some of the speakers allowed their passions, roused by witnessing the shocking scenes on the TV screen, to get better of their judgment and made certain very general and broad remarks about the country's legal system that they might not have made if speaking in a more dispassionate and objective circumstances. Unfortunately, not a single constructive suggestion came from anyone as to how to revamp the administration of criminal justice. The programme began on a negative note and remained so till the very end.

Conduct of NDTV in proceeding before the High Court

317. In the earlier part of the judgment some of the glaring lapses committed by NDTV in the proceeding before the High Court are already recounted. Apart from those one or two other issues need to be mentioned here that failed to catch the attention of the High Court.

318. It seems that at the time the sting operations were carried out people were actually apprehensive of something of that kind. Vikas Arora, Advocate had stated in his complaint (dated 19-4-2007) about receiving such a threat from Poonam Agarwal. NDTV in its reply dated 26-4-2007 had denied the allegations in the complaint, at the same time, declaring its resolve to make continuous efforts to unravel the truth. At the same time Poonam Agarwal was planning the stings in her meetings with Kulkarni. As a matter of fact, the first sting was carried out on I.U. Khan just two days after giving reply to Arora's complaint.

319. Further, from the transcript of the first sting carried out on R.K. Anand on 6-5-2007 it appears that he too had expressed some apprehension of this kind to which Kulkarni responded by saying that he did not have money enough to eat how could he do any recording of anyone. (It is difficult to miss the irony that the exchange took place while R.K. Anand was actually being subjected to the sting.) It thus appears that at that time, for some reason, the smell of sting was in the air. In those circumstances we find it strange that in the affidavits filed on behalf of NDTV there should be absolutely no reference to Vikas Arora's complaint.

320. In the earlier part of the judgment we have examined the affidavits filed by Poonam Agarwal and found that she states about all the aspects of the sting operations in great detail. But surprisingly those affidavits do not even refer to, much less deal with the complaint of Vikas Arora despite the striking similarity between the threat that was allegedly given to him and his senior I.U. Khan and the way the sting operation was actually carried out on I.U. Khan.

321. There is another loose end in the whole matter. Kulkarni's sting meeting with I.U. Khan had ended with fixing up another meeting for the following Sunday at the latter's residence. (It was the setting up of this meeting that is primarily the basis for holding him guilty of misconduct as the Special Public Prosecutor.) One should have thought that this meeting

would surely take place because it provided a far better opportunity for the sting. With "good Scotch whisky" flowing it was likely that the planners of the stings would get more substantial evidences of what they suspected. But we are not told anything about this meeting: whether it took place or not? If it took place what transpired in it and whether any sting recording was done? If it did not take place what was the reason for not keeping the appointment and giving up such a good opportunity.

322. Here it may be noted that Kulkarni also in his affidavit filed before the High Court on 6-8-2007 stated that as arranged between them he again met I.U. Khan in the evening but the sting recording of that meeting was withheld by NDTV because that falsified their story. Kulkarni, as was his wont, might be telling lies but that was an additional reason for NDTV to clarify the issue regarding the second meeting between the two.

323. The next meeting between Kulkarni and I.U. Khan that was fixed up in the sting meeting on 28-4-2007 might or might not have taken place but there can be little doubt that they met again between 28-4-2007 and 31-5-2007 (the day following the first sting telecast) when Kulkarni gave I.U. Khan the "certificate" that he had accepted the summons on his advice (which was submitted by I.U. Khan before the trial court when he withdrew from the case).

324. The affidavits filed on behalf of NDTV are completely silent on these aspects.

325. These omissions (and some similar others) on the part of NDTV leave one with the feeling that it was not sharing all the facts within its knowledge with the Court. The disclosures before the Court do not appear to be completely open, full and frank. It would tell the Court only so much as was necessary to secure the conviction of the proceedee wrongdoers. There were some things that it would rather hold back from the Court. We would have appreciated the TV channel to make a fuller disclosure before the High Court of all the facts within its knowledge.

326. Having said all this we would say, in the end, that for all its faults the stings and the telecast of the sting programme by NDTV rendered valuable service to the important public cause to protect and salvage the purity of the course of justice. We appreciate the professional initiative and courage shown by the young reporter Poonam Agarwal and we are impressed by the painstaking investigation undertaken by NDTV to uncover the Shimla connection between Kulkarni and R.K. Anand.

327. We have recounted above the acts of omission and commission by NDTV before the High Court and in the telecast of the sting programme in the hope that the observations will help NDTV and other TV channels in their future operations and programmes. We are conscious that the privately run TV channels in this country are very young, no more than eighteen or twenty years old.

328. We also find that like almost every other sphere of human activity in the country the electronic news media has a very broad spectrum ranging

from very good to unspeakably bad. The better news channels in the country (NDTV being one of them) are second to none in the world in matters of coverage of news, impartiality and objectivity in reporting, reach to the audience and capacity to influence public opinion and are actually better than many foreign TV channels. But that is not to say that they are totally free from biases and prejudices or they do not commit mistakes or gaffes or they sometimes do not tend to trivialise highly serious issues or that there is nothing wanting in their social content and orientation or that they maintain the same standards in all their programmes. In the quest of excellence they have still a long way to go.

329. A private TV channel which is also a vast business venture has the inherent dilemma to reconcile its business interests with the higher standards of professionalism/demands of profession. The two may not always converge and then the TV channel would find its professional options getting limited as a result of conflict of priorities. The media trips mostly on TRPs (television rating points), when commercial considerations assume dominance over higher standards of professionalism.

330. It is not our intent here to lay down any reformist agenda for the media. Any attempt to control and regulate the media from outside is likely to cause more harm than good. The norms to regulate the media and to raise its professional standards must come from inside.

Role of the lawyer

331. The other important issue thrown up by this case and that causes us both grave concern and dismay is the decline of ethical and professional standards among lawyers. The conduct of the two appellants (one convicted of committing criminal contempt of court and the other found guilty of misconduct as Special Public Prosecutor), both of them lawyers of long standing, and designated Senior Advocates, should not be seen in isolation. The bitter truth is that the facts of the case are manifestation of the general erosion of the professional values among lawyers at all levels. We find today lawyers indulging in practices that would have appalled their predecessors in the profession barely two or three decades ago. Leaving aside the many kinds of unethical practices indulged in by a section of lawyers we find that even some highly successful lawyers seem to live by their own rules of conduct.

332. We have viewed with disbelief Senior Advocates freely taking part in TV debates or giving interviews to a TV reporter/anchor of the show on issues that are directly the subject-matter of cases pending before the court and in which they are appearing for one of the sides or taking up the brief of one of the sides soon after the TV show. Such conduct reminds us of the fictional barrister, Rumpole, "the Old Hack of Bailey", who self-deprecatingly described himself as an "old taxi plying for hire". He at least was not bereft of professional values. When a young and enthusiastic journalist invited him to a drink of Dom Perignon, vastly superior and far more expensive than his usual "plonk", "Château Fleet Street", he joined him with alacrity but when in the course of the drink the journalist offered him a

large sum of money for giving him a story on the case: "why he was defending the most hated woman in England", Rumpole ended the meeting simply saying

"In the circumstance I think it is best if I pay for the Dom Perignon."

333. We express our concern on the falling professional norms among the lawyers with considerable pain because we strongly feel that unless the trend is immediately arrested and reversed, it will have very deleterious consequences for the administration of justice in the country. No judicial system in a democratic society can work satisfactorily unless it is supported by a Bar that enjoys the unqualified trust and confidence of the people, that shares the aspirations, hopes and the ideals of the people and whose members are monetarily accessible and affordable to the people.

334*. We are glad to note that Mr Gopal Subramanium, the amicus fully shared our concern and realised the gravity of the issue. In course of his submissions he eloquently addressed us on the elevated position enjoyed by a lawyer in our system of justice and the responsibilities cast upon him in consequence. His written submissions begin with this issue and he quotes extensively from the address of Shri M.C. Setalvad at the Diamond Jubilee Celebrations of the Bangalore Bar Association, 1961, and from the decisions of this Court in *Pritam Pal* v. *High Court of M.P.*[30] (observations of Ratnavel Pandian, J.) and *Sanjiv Datta, In Re*[31] (observations of Sawant, J. at pp. 634-35, para 20). We respectfully endorse the views and sentiments expressed by Mr M.C. Setalvad, Pandian, J. and Sawant, J.

335. Here we must also observe that the Bar Council of India and the Bar Councils of the different States cannot escape their responsibility in this regard. Indeed the Bar Council(s) have very positively taken up a number of important issues concerning the administration of justice in the country. It has consistently fought to safeguard the interests of lawyers and it has done a lot of good work for their welfare. But on the issue of maintaining high professional standards and enforcing discipline among lawyers its performance hardly matches its achievements in other areas. It has not shown much concern even to see that lawyers should observe the statutory norms prescribed by the Council itself. We hope and trust that the Council will at least now sit up and pay proper attention to the restoration of the high professional standards among lawyers worthy of their position in the judicial system and in the society.

336. This takes us to the last leg of this matter.

The larger issue: BMW trial getting out of hand

337. Before laying down the records of the case we must also advert to another issue of great importance that causes grave concern to this Court. At

* **Ed.:** Para 334 corrected vide Official Corrigendum No. E.3/Ed.B.J./147/2009 dated 30-9-2009.

30 1993 Supp (1) SCC 529 : 1993 SCC (Cri) 356

31 (1995) 3 SCC 619

the root of this odious affair is the way the BMW trial was allowed to be constantly interfered with till it almost became directionless.

338. We have noted Kulkarni's conduct in course of investigation and at the commencement of the trial; the fight that broke out in the court premises between some policemen and a section of lawyers over his control and custody; the manner in which Hari Shankar Yadav, a key prosecution witness turned hostile in court; the curious way in which Manoj Malik, another key witness for the prosecution appeared before the court and overriding the prosecution's protest, was allowed to depose only to resile from his earlier statement. All this and several other similar developments calculated to derail the trial would not have escaped the notice of the Chief Justice or the Judges of the Court. But there is nothing to show that the High Court, as an institution, as a body took any step to thwart the nefarious activities aimed at undermining the trial and to ensure that it proceeded on the proper course. As a result, everyone seemed to feel free to try to subvert the trial in any way they pleased.

339. We must add here that this indifferent and passive attitude is not confined to the BMW trial or to the Delhi High Court alone. It is shared in greater or lesser degrees by many other High Courts. From experience in Bihar, the author of these lines can say that every now and then one would come across reports of investigation deliberately botched up or of the trial being hijacked by some powerful and influential accused, either by buying over or intimidating witnesses or by creating insurmountable impediments for the trial court and not allowing the trial to proceed. But unfortunately the reports would seldom, if ever, be taken note of by the collective consciousness of the Court. The High Court would continue to carry on its business as if everything under it was proceeding normally and smoothly. The trial would fail because it was not protected from external interferences.

340. Every trial that fails due to external interference is a tragedy for the victim(s) of the crime. More importantly, every frustrated trial defies and mocks the society based on the rule of law. Every subverted trial leaves a scar on the criminal justice system. Repeated scars make the system unrecognisable and it then loses the trust and confidence of the people.

341. Every failed trial is also, in a manner of speaking, a negative comment on the State's High Court that is entrusted with the responsibility of superintendence, supervision and control of the lower courts. It is, therefore, high time for the High Courts to assume a more proactive role in such matters. A step in time by the High Court can save a criminal case from going astray. An enquiry from the High Court Registry to the quarters concerned would send the message that the High Court is watching; it means business and it will not tolerate any nonsense. Even this much would help a great deal in insulating a criminal case from outside interferences. In very few cases where more positive intervention is called for, if the matter is at the stage of investigation the High Court may call for status report and progress reports from police headquarter or the Superintendent of Police concerned. That

alone would provide sufficient stimulation and pressure for a fair investigation of the case.

342. In rare cases if the High Court is not satisfied by the status/progress reports it may even consider taking up the matter on the judicial side. Once the case reaches the stage of *trial* the High Court obviously has far wider powers. It can assign the trial to some judicial officer who has made a reputation for independence and integrity. It may fix the venue of the trial at a proper place where the scope for any external interference may be eliminated or minimised. It can give effective directions for protection of witnesses and victims and their families. It can ensure a speedy conclusion of the trial by directing the trial court to take up the matter on a day-to-day basis.

343. The High Court has got ample powers for all this both on the judicial and administrative sides. Article 227 of the Constitution of India that gives the High Court the authority of superintendence over the subordinate courts has great dynamism and now is the time to add to it another dimension for monitoring and protection of criminal trials. Similarly, Article 235 of the Constitution that vests the High Court with the power of control over subordinate courts should also include a positive element. It should not be confined only to posting, transfer and promotion of the officers of the subordinate judiciary. The power of control should also be exercised to protect them from external interference that may sometimes appear overpowering to them and to support them to discharge their duties fearlessly.

344. In light of the discussions made above we pass the following orders and directions:

1. The appeal filed by I.U. Khan is allowed and his conviction for criminal contempt is set aside. The period of four months' prohibition from appearing in the Delhi High Court and the courts subordinate to it is already over. The punishment of fine given to him by the High Court is set aside. The Full Court of the Delhi High Court may still consider whether or not to continue the honour of Senior Advocate conferred on him in light of the findings recorded in this judgment.

2. The appeal of R.K. Anand is dismissed subject to the notice of enhancement of punishment issued to him as indicated in paras 272 and 273 of the judgment. He is allowed eight weeks' time from the date of service of notice for filing his show cause.

3. Those of the High Courts which have so far not framed any rules under Section 34 of the Advocates Act, shall frame appropriate rules without any further delay as directed in paras 242 and 243 of the judgment.

4. Put up the appeal of R.K. Anand after the show cause is filed.

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(BEFORE ANIL R. DAVE, KURIAN JOSEPH AND ADARSH KUMAR GOEL, JJ.)

MAHIPAL SINGH RANA, ADVOCATE .. Appellant;

Versus

STATE OF UTTAR PRADESH .. Respondent.

Criminal Appeal No. 63 of 2006[†], decided on July 5, 2016

A. **Contempt of Court — Contempt by advocates — Advocate convicted for criminal contempt — Sanctions/Punishments that may be imposed in addition to punishments that may be imposed for criminal contempt under Contempt of Courts Act, 1971 — Authority competent therefor — Right to practise and Right to appear/plead in court — Inter se relationship, explained**

— ***(1) Barring of convicted advocate from appearing/pleading in any court, by court, till contempt is purged*** Firstly, held, regulation of right of appearance in courts is within jurisdiction of courts and not Bar Councils — Thus court can bar convicted advocate from appearing/pleading before any court for an appropriate period of time, till convicted advocate purges himself of the contempt, even in absence of suspension or termination of enrolment/ right to practise/licence to practise

— ***(2) Bar from appearing/pleading in court till contempt is purged can be imposed by court whether or not High Court Rules have been framed therefor*** — Secondly, held, bar on appearance/pleading in any court till contempt is purged can be imposed by court in terms of High Court Rules framed on this issue under S. 34 of Advocates Act, if such Rules exist — However, even if there is no such rule framed under said S. 34, unless convicted advocate purges himself of contempt or is permitted by court, conviction results in debarring such advocate from appearing/pleading in court, even in absence of suspension or termination of enrolment/right to practise/licence to practise

— ***(3) Suspension of enrolment of convicted advocate under S. 24-A, Advocates Act, 1961 for two years*** — Thirdly, held, even post enrolment, said S. 24-A leads to debarment/suspension of enrolment of convicted advocate for a maximum of two years (as prescribed thereunder)

— ***(4) Suspension/Termination of enrolment/licence to practise/right to practise of convicted advocate beyond 2 years' maximum under S. 24-A, Advocates Act, 1961, till contempt is purged*** Fourthly, held, such additional suspension/termination of right to practise beyond two years can be imposed under Ss. 35 to 37 of Advocates Act, 1961 by State Bar Council or Bar Council of India in the first instance, upon convicted advocate However, upon failure of Bar Council to act after its attention has been duly invited to the misconduct, said sanction can be imposed suo motu by Supreme Court under S. 38 of 1961 Act or by High Court under Art. 226 of Constitution — Moreover, it is not desirable to allow a convicted person to perform important public functions

[†] From the Judgment and Order dated 2 12 2005 in Criminal Contempt Petition No. 16 of 2004 passed by the High Court of Judicature at Allahabad

— ***(5) Mode and manner of purging of contempt*** — Fifthly, held, it is preposterous to suggest that if convicted person undergoes punishment or if he tenders fine amount for having committed criminal contempt, purge would be completed There must be something more, and there is no need for any Rules to have been framed therefor Contempt can be purged inter alia in the manner laid down in *Bar Council of India*, (2004) 6 SCC 311 and *R.K. Anand*, (2009) 8 SCC 106

— ***(6) Sanctions imposed on convicted appellant advocate in present case*** — Thus, in addition to punishment imposed under 1971 Act, appellant barred from appearing in courts concerned till contempt was purged; his enrolment suspended for two years under S. 24-A of Advocates Act, 1961; and since Bar Councils had not acted at all after due notice to them, licence to practise of appellant suspended for further five years, until he purged himself of contempt — Advocates Act, 1961 — Ss. 38, 35 to 37 and 24-A — Constitution of India Arts. 226, 215, 129, 136 and 142 Contempt of Courts Act, 1971, Ss. 2(c) and 12

B. **Advocates Act, 1961 — Ss. 35, 38 and 24-A — Misconduct/Criminal contempt of intimidating and threatening Judge — Bar Council not taking action inspite of High Court direction — Suo motu exercise of power by High Court under Art. 226 of the Constitution and/or Supreme Court under S. 38 of Advocates Act in case of such inaction, held, permissible — Hence, upon such inaction of Bar Councils after due notice, Court can suspend/terminate enrolment/licence to practise/right to practise of convicted advocate, till contempt is purged — Constitution of India, Art. 226**

C. **Advocates Act, 1961 — Ss. 38 and 35 to 37 — Misconduct by advocate — Failure of Bar Council to act — Bar Council not taking action inspite of High Court direction — Suo motu exercise of power by High Court under Art. 226 of the Constitution and/or Supreme Court under S. 38 of Advocates Act in case of such inaction of Bar Councils after due notice, held, permissible — Constitution of India, Art. 226**

D. **Advocates — Right to Appear/Practise in court — Power of courts to regulate — Held, regulation of right of appearance/pleading in courts is within the jurisdiction of the courts, and not the Bar Councils — Hence, the court must have major supervisory power on the right to appear and conduct in the court — This inter alia includes the power to bar advocate convicted of criminal contempt from appearing/pleading before any court for an appropriate period of time, till contempt is purged — Advocates Act, 1961, Ss. 33 to 38 and 24-A**

E. **Advocates Act, 1961 — S. 24-A — Sufficiency of punishment for an advocate committing "moral turpitude" under, doubted — Question as to whether passage of 2 yrs can cleanse such a person to be readmitted into noble profession, as it is undesirable to allow a convicted person to perform important public functions — Matter referred for consideration of all concerned**

F. **Advocates Act, 1961 — S. 24-A — Disqualification from enrolment under, held, applicable at entry level and post enrolment**

G. **Advocates — Regulation of legal profession — Need of changes in law — Directions issued — Law Commission and Central Government to review**

relevant aspects relating to regulation of legal profession within specified time-limit and report to Court regarding same — Advocates Act, 1961

H. **Contempt of Courts Act, 1971 — Ss. 12 and 2(c) — Imprisonment when warranted as punishment — Factors delineated**

I. **Contempt of Court — Punishment for Contempt — Criminal contempt — Mode and manner of purging of contempt — Explained**

J. **Advocates — Generally — Right to practise and Right to appear/plead in court — Inter se relationship, explained**

K. **Contempt of Court — Criminal contempt — Scandalise or lower authority of court — Physical assault/Intimidation/Threatening of Judge — Reference to High Court under S. 15(2), Contempt of Courts Act, 1971 — Maintainability — Freedom of court concerned to invoke 1971 Act procedure or S. 228 IPC/S. 195(1)(b)(i) CrPC procedure**

— Complainant Judge making reference to High Court under S. 15(2), held, maintainable It is for Judge to decide under what provision, he would take action — Plea that he could have tried appellant under S. 228 IPC or under CrPC, not tenable Plea that for incidents in question dt. 16-4-2003 and 13-5-2003, notice was issued on 28-4-2004 and thus there was delay, also not tenable — Conviction confirmed

L. **Contempt of Court — Defences — Complaints allegedly pending against Judge in face of whom contempt committed, held, even if true, then also it is no defence to contempt**

Held :

(1) Right to practise and Right to appear/plead in court—Genus-specie relationship—Regulation thereof

The right of an advocate to practise envelops a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, etc. The right to practise and the right to appear in courts are not synonymous. An advocate may carry on chamber practise or even practise in courts in various other ways e.g. drafting and filing of pleadings and vakalatnama for performing those acts. For that purpose his physical appearance in courts may not at all be necessary. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by the Bar Council in exercise of its disciplinary powers. The right to practise, no doubt, is thus the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must have the major supervisory power. Hence the court cannot be divested of the control or supervision of the court merely because it may involve the right of an advocate. (Para 32)

Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who was found guilty of contempt of court on the previous hour, standing in court and arguing a case or cross-examining a witness on the same day, unaffected by the contemptuous behaviour he hurled at the court, would erode the dignity of the court and even corrode the majesty of it

besides impairing the confidence of the public in the efficacy of the institution of the courts. (Para 32)

Pravin C. Shah v. *K.A. Mohd. Ali*, (2001) 8 SCC 650: *Prayag Das* v. *Civil Judge, Bulandshahr*, AIR 1974 All 133 : 1973 SCC OnLine All 333, *affirmed*

Regulation of right of appearance in courts is within the jurisdiction of the courts. The court must have major supervisory power on the right of an advocate to appear and conduct in the court. Thus, an advocate found guilty of contempt cannot be allowed to act or plead in any court till he purges himself of contempt. Debarring a person from appearing in court is within the purview of the jurisdiction of the court and is different from suspending or terminating the licence to practice which could be done by the Bar Council and on failure of the Bar Council, in exercise of appellate jurisdiction of the Supreme Court under Section 38 of the Advocates Act, 1961 or by the High Court under Article 226 of the Constitution. (Paras 33 and 32)

Since regulation of the right of appearance in courts is within the jurisdiction of courts, this necessitates vesting of power with the High Court to formulate rules for regulating the proceedings inside the court including the conduct of advocates during such proceedings. That power should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the High Court should be in control of the former. For the purpose of regulating the appearance of advocates in courts the High Court should be the appropriate authority to make rules and on a proper construction of Section 34(1) of the Advocates Act it must be inferred that the High Court has the power to make rules for regulating the appearance of advocates and proceedings inside the courts. Obviously the High Court is the only appropriate authority to be entrusted with this responsibility. Furthermore, even if there is no rule framed under Section 34 of the Advocates Act disallowing an advocate who is convicted of criminal contempt, is not only a measure to maintain dignity and orderly function of courts, it may become necessary for the protection of the court and for preservation of the purity of court proceedings. Thus, the court not only has a right but also an obligation to protect itself and save the purity of its proceedings from being polluted, by barring the advocate concerned from appearing before the courts for an appropriate period of time. (Paras 32 and 35)

Thus, in view of *R.K. Anand*, (2009) 8 SCC 106, unless an advocate convicted of criminal contempt of court purges himself of contempt or is permitted by the court, conviction results in debarring an advocate from appearing in court even in the absence of suspension or termination of the licence to practise. (Para 50)

Hence, the directions of the High Court to the effect that the appellant shall not be permitted to appear in courts of District Etah until he purges himself of contempt, are affirmed. (Paras 50 and 55.2)

Harish Uppal v. *Union of India*, (2003) 2 SCC 45; *R.K. Anand* v. *Delhi High Court*, (2009) 8 SCC 106 : (2010) 2 SCC (Cri) 563, *followed*

Pravin C. Shah v. *K.A. Mohd. Ali*, (2001) 8 SCC 650; *Bar Council of India* v. *High Court of Kerala*, (2004) 6 SCC 311; *Amit Chanchal Jha* v. *High Court of Delhi*, (2015) 13 SCC 288 : (2016) 1 SCC (Civ) 704 : (2016) 1 SCC (Cri) 590 : (2016) 1 SCC (L&S) 234; *State of U.P.* v. *Mahipal Singh Rana*, 2005 SCC OnLine All 1256 : (2006) 1 All LJ 462, *affirmed*

While in exercise of contempt jurisdiction, the Supreme Court or High Courts cannot take over jurisdiction of Disciplinary Committee of the Bar Council and in the first instance it is for the Bar Council to punish the advocate by debarring

him from practise or suspending his licence to practise, as may be warranted on the basis of his having been found guilty of contempt, if the Bar Council fails to take action, the Supreme Court could invoke its appellate power under Section 38 of the Advocates Act. As held above, in a given case, the Supreme Court or the High Court can prevent the contemnor advocate from appearing before it or other courts till he purges himself of the contempt, which is different from suspending or revoking the licence or debarring him to practise. What is permissible for the Supreme Court by virtue of statutory appellate power under Section 38 of the Advocates Act is also permissible to a High Court under Article 226 of the Constitution in appropriate cases on failure of the Bar Council to take action after its attention is invited to the misconduct. (Paras 30 and 52)

In the present case, in spite of direction of the High Court as long back as more than ten years ago, no action is shown to have been taken by the Bar Council against the appellant advocate convicted for criminal contempt of court. Notice was issued by the Supreme Court to the Bar Council of India on 27-1-2006 and after all the facts having been brought to the notice of the Bar Council of India, the said Bar Council has also failed to take any action. In view of such failure of the statutory obligation of the Bar Council of the State of Uttar Pradesh as well as the Bar Council of India, the Supreme Court has to exercise appellate jurisdiction under the Advocates Act in view of proved misconduct calling for disciplinary action. In *Supreme Court Bar Assn.*, (1998) 4 SCC 409, the Supreme Court observed that where the Bar Council fails to take action in spite of reference made to it, the Supreme Court can exercise suo motu powers for punishing the contemnor for professional misconduct. The appellant has already been given sufficient opportunity in this regard. (Para 51)

Thus, in exercise of appellate jurisdiction under Section 38 of the Advocates Act, as a disciplinary measure for proved misconduct, it is directed that the licence of the appellant to practise will stand suspended for a further period of five years (in addition to the suspension of enrolment of the appellant under Section 24-A of the 1961 Act). He will also remain debarred from appearing in any court in District Etah even after five years unless he purges himself of contempt in the manner laid down by the Supreme Court in *Bar Council of India*, (2004) 6 SCC 311 and *R.K. Anand*, (2009) 8 SCC 106 and as directed by the High Court. (Paras 54 and 55.4)

Supreme Court Bar Assn. v. *Union of India*, (1998) 4 SCC 409, *explained* and *applied*

Bar Council of India v. *High Court of Kerala*, (2004) 6 SCC 311; *R.K. Anand* v. *Delhi High Court*, (2009) 8 SCC 106 : (2010) 2 SCC (Cri) 563; *Ministry of Information and Broadcasting, In re*, (1995) 3 SCC 619; *Bar Council of Maharashtra* v. *M.V. Dabholkar*, (1976) 2 SCC 291; *Jaswant Singh* v. *Virender Singh*, 1995 Supp (1) SCC 384; *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, *relied on*

Vinay Chandra Mishra, In re, (1995) 2 SCC 584, *cited*

N.R. Madhava Menon: *"Raising the Bar for the Legal Profession"*, *The Hindu* dated 15-9-2012; S. Prabhakaran: *"Browbeating, Prerogative of Lawyers"*, *The Hindu* dated 7-6-2016, *relied on*

Under Section 24-A of the 1961 Act, a person convicted of even a most heinous offence is eligible to be enrolled as an advocate after expiry of two years from expiry of his sentence. This aspect needs urgent attention of all concerned. However, the bar applicable at the entry level under Section 24-A is not wiped out after the enrolment. Having regard to the object of the provision, the said bar certainly operates post enrolment also. However, till a suitable amendment is made,

the bar is operative only for two years in terms of the statutory provision. In these circumstances, Section 24-A which debars a convicted person from being enrolled applies to an advocate on the rolls of the Bar Council for a period of two years, if convicted for contempt. (Paras 47 to 49)

It may also be appropriate to refer to the legal position about undesirability of a convicted person being allowed to perform important public functions. (Para 44)

Union of India v. *Tulsiram Patel*, (1985) 3 SCC 398 : 1985 SCC (L&S) 672; *Rama Narang* v. *Ramesh Narang*, (1995) 2 SCC 513; *Lily Thomas* v. *Union of India*, (2013) 7 SCC 653 : (2013) 3 SCC (Civ) 678 : (2013) 3 SCC (Cri) 641 : (2013) 2 SCC (L&S) 811; *Manoj Narula* v. *Union of India*, (2014) 9 SCC 1; *Election Commission* v. *Saka Venkata Rao*, AIR 1953 SC 210, *relied on*

Thus, apart from upholding the conviction and sentence awarded by the High Court to the appellant, except for the imprisonment, the appellant will suffer the automatic consequence of his conviction for criminal contempt of court under Section 24-A of the Advocates Act which is applicable at the post enrolment stage also. Thus, the enrolment of the appellant will stand suspended for two years from the date of this order. (Paras 53 and 55.3)

(2) Finding on facts on conviction for criminal contempt

So far as the allegations made by the appellant with regard to the complaints made by him against the complainant Judge are concerned, once it is held that the appellant had appeared before the court and had made contemptuous statements, the said allegations are irrelevant. The averments regarding the complaints cannot be a defence for the appellant. Even if it is assumed that those averments about the complaints to be correct, then also, the appellant cannot use such contemptuous language in the court against the Presiding Judge. (Para 26)

So also, there is no merit in the contention of the appellant that there was delay on the part of the complainant Judge in sending the reference and he could have tried the appellant under Section 228 of the Penal Code and the procedure prescribed under the Code of Criminal Procedure. It is for the learned Judge to decide as to whether action should be taken under the 1971 Act or under any other law. (Para 27)

Thus, upon perusal of the facts found by the High Court and looking at the contents of the letters written by the judicial officers concerned, there is no doubt about the fact that the appellant did appear before the court and used the language which was contemptuous in nature. Hence, no error has been committed by the High Court while coming to the conclusion that the appellant had committed contempt of court under the provisions of the 1971 Act. (Paras 25 and 24)

The High Court has rightly convicted the appellant under the 1971 Act after having come to a conclusion that denial of the incidents and allegations of mala fides against the complainant Judge had been made by the appellant to save himself from the consequences of contempt proceedings. The appellant had refused to tender apology for his conduct. His affidavit in support of stay vacation/ modification and supplementary affidavit did not show any remorse and he had justified himself again and again, which also shows that he had no regard for the majesty of law. (Para 28)

In deciding whether contempt is serious enough to merit imprisonment, the court will take into account the likelihood of interference with the administration of justice and the culpability of the offender. The intention with which the act complained of is done is a material factor in determining what punishment, in a

given case, would be appropriate. In the case at hand, the High Court has rightly held that the appellant was guilty of criminal contempt. However, in view of advanced age of the appellant and also in the light of further direction of the Supreme Court, the sentence of imprisonment is set aside. (Para 29)

Thus, conviction of the appellant is justified and is upheld. Sentence of imprisonment awarded to the appellant however is set aside in view of his advanced age but sentence of fine and default sentence are upheld. (Paras 55.1 and 55.2)

State of U.P. v. *Mahipal Singh Rana*, 2005 SCC OnLine All 1256 : (2006) 1 All LJ 462, *affirmed*

Pallav Sheth v. *Custodian*, (2001) 7 SCC 549, *cited*

(3) Purging of contempt

Purging is a process by which an undesirable element is expelled either from one's own self or from a society. It is a cleaning process. "Purge" is a word which acquired implications first in theological connotations. In the case of a sin, purging of such sin is made through the expression of sincere remorse coupled with doing the penance required. In the case of a guilt, purging means to get himself cleared of the guilt. It is preposterous to suggest that if the convicted person undergoes punishment or if he tenders the fine amount imposed on him the purge would be completed. Thus, merely undergoing the penalty imposed on a contemnor is not sufficient to complete the process of purging himself of the contempt, particularly in a case where the contemnor is convicted of criminal contempt. The danger is that if a contemnor is sentenced to a fine he can immediately pay it and continue to commit contempt in the same court, and then again pay the fine and persist with his contemptuous conduct. There must be something more to be done to get oneself purged of the contempt when it is a case of criminal contempt. Merely because the Rules do not prescribe the mode of purging oneself of the guilt it does not mean that one cannot purge the guilt at all. Contempt can inter alia be purged in the manner directed in *Bar Council of India*, (2004) 6 SCC 311 and *R.K. Anand*, (2009) 8 SCC 106. (Para 32)

(4) Directions for reform of the law

The legal profession being the most important component of the justice delivery system, it must continue to perform its significant role and regulatory mechanism and should not be seen to be wanting in taking prompt action against any malpractice. The inaction of the Bar Council of Uttar Pradesh as well as the Bar Council of India in spite of direction in the impugned order of the High Court and in spite of notice to the Bar Council of India by the Supreme Court; the failure of all concerned to advert to the observations made by the Gujarat High Court 33 years ago, have all been noticed. Thus, there appears to be urgent need to review the provisions of the Advocates Act dealing with regulatory mechanism for the legal profession and other incidental issues, in consultation with all concerned. (Para 56)

Thus, the Law Commission is to go into all relevant aspects relating to regulation of legal profession in consultation with all concerned at an early date and the Government of India will consider taking further appropriate steps in the light of the report of the Law Commission within six months thereafter. The Central Government may file an appropriate affidavit in this regard within one month after expiry of one year. To consider any further direction in the light of developments that may take place, put up the matter for further consideration one month after expiry of the period of one year. (Paras 58 and 59)

Modern Dental College and Research Centre v. *State of M.P.* (2016) 7 SCC 353, *followed*
'C' v. *Bar Council of Gujarat*, (1982) 2 Guj LR 706 : 1982 SCC OnLine Guj 124, *affirmed*

SS-D/57193/CVRL

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23. AIR 1974 All 133 : 1973 SCC OnLine All 333, *Prayag Das* v. *Civil Judge, Bulandshahr* 357*b-c*
24. AIR 1953 SC 210, *Election Commission* v. *Saka Venkata Rao* 366*a*

The Judgment of the Court was delivered by

ANIL R. DAVE, J. The present appeal is preferred under Section 19 of the Contempt of Courts Act, 1971 (hereinafter referred to as "the Act") against the judgment and order dated 2-12-2005 delivered by the High Court of Judicature at Allahabad in *State of U.P.* v. *Mahipal Singh Rana*[1], whereby the High Court found the appellant guilty of criminal contempt for intimidating and threatening a Civil Judge (Senior Division), Etah in his court on 16-4-2003 and 13-5-2003 and sentenced him to simple imprisonment of two months with a fine of Rs 2000 and in default of payment of fine, the appellant to undergo further imprisonment of 2 weeks. The High Court further directed the Bar Council of Uttar Pradesh to consider the facts contained in the complaint of the Civil Judge (Senior Division), Etah, and earlier contempt referred to in the judgment and to initiate appropriate proceedings against the appellant for professional misconduct.

Reference to the larger Bench and the issue

2. On 27-1-2006[2], this appeal was admitted by this Court and that part of the impugned judgment, which imposed the sentence, was stayed and the appellant was directed not to enter the court premises at Etah (U.P.). Keeping in view the importance of the question involved while admitting the appeal on 27-1-2006, notice was directed to be issued to the Supreme Court Bar Association as well as to the Bar Council of India. The matter was referred to the larger Bench. The learned Solicitor General of India was requested to assist the Court in the matter.

3. On 6-3-2013[3] restriction on entry of the appellant into the court premises as per the order dated 27-1-2006[2] was withdrawn. Thereby, the appellant

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1 2005 SCC OnLine All 1256 : (2006) 1 All LJ 462

2 *Mahipal Singh Rana* v. *State of U.P.*, Criminal Appeal No. 63 of 2006, order dated 27-1-2006 (SC), wherein it was directed:

"The appeal is admitted. Only that part of the impugned order which deals with the sentence is stayed. We, therefore, direct that the appellant shall not enter the court premises at Etah. Keeping in view the importance of the question involved in this appeal, issue notice to the Supreme Court Bar Association as also to the Bar Council of India through their respective Secretaries. Moreover, having regard to the importance of the question involved, let the matter be referred to a larger Bench. Let the records be placed before the Hon'ble the Chief Justice of India for passing necessary orders. We would request the learned Solicitor General of India to assist the Court in the matter."

3 *Mahipal Singh Rana* v. *State of U.P.*, Criminal Appeal No. 63 of 2006, order dated 6-3-2013 (SC), wherein it was directed:

"Let notice of this criminal appeal be issued to the Advocate General, State of Uttar Pradesh as this criminal appeal arises out of an order passed by the High Court in the contempt jurisdiction, returnable in ten weeks. From the proceedings of this Court, we find that on 27-1-2006, while staying the order of sentence, this Court had directed the appellant not to enter the court premises at Etah. Even before the

was permitted to enter the court premises. The said restriction was, however, restored[1] later. On 20-8-2015[4], notice was issued to the Attorney General on the larger question whether on conviction under the Contempt of Courts Act or any other offence involving moral turpitude an advocate could be permitted to practise.

4. Thus the following questions arise for consideration:

4.1.(*i*) Whether a case has been made out for interference with the order passed by the High Court convicting the appellant for criminal contempt and sentencing him to simple imprisonment for two months with a fine of Rs 2000 and further imprisonment for two weeks in default and debarring him from appearing in courts in Judgeship at Etah; and

4.2.(*ii*) Whether on conviction for criminal contempt, the appellant can be allowed to practise.

The facts and the finding of the High Court

5. The facts of the present appeal disclose that the Civil Judge (Senior Division), Etah made a reference under Section 15(2) of the Act to the High Court through the learned District Judge, Etah (U.P.) on 7-6-2003 recording two separate incidents dated 16-4-2003 and 13-5-2003, which had taken place

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(footnote 3 *contd.*)

order was passed by this Court on 27-1-2006, by an interim order of the High Court, the appellant was restrained from entering into the court premises at Etah. We are informed that for the last more than nine years the appellant has not entered into the court premises at Etah. We find no justification to continue this restriction imposed upon the appellant any longer. We, accordingly, direct that the appellant shall be entitled to practise at Etah if he has a valid licence issued by the Bar Council of Uttar Pradesh. However, it is directed that the appellant shall abide by the undertaking which he gave before the Allahabad High Court in Criminal Contempt No. 21 of 1998 based on which the said contempt proceedings were dropped vide order dated 3-8-1999."

4 *Mahipal Singh Rana* v. *State of U.P.*, Criminal Appeal No. 63 of 2006, order dated 20-8-2015 (SC), wherein it was directed:

"We have heard the learned counsel appearing for both the sides and have considered details of criminal cases, which had been filed against the appellant. Prima facie, we are in agreement with the view expressed by the High Court and in the circumstances, we recall part of the order dated 6-3-2013 whereby we had permitted the appellant to enter the court premises in Etah, Uttar Pradesh. Effect of this order is that now, once again the appellant shall not be permitted to enter the court premises in Etah, unless he is required in any case in his personal capacity. On a larger question as to whether a lawyer who has been convicted under the provisions of the Contempt of Courts Act or any other offence involving moral turpitude, we issue notice to the learned Attorney General, returnable on 26-8-2015 to address the issue. The learned Attorney General shall be supplied with a copy of this appeal by the Registry forthwith. The Registry is also directed to send an intimation of this order to the learned District Judge, Etah, Uttar Pradesh for information. List on 26-8-2015."

in his court in which the appellant had appeared before him and conducted himself in a manner which constituted "criminal contempt" under Section 2(*c*) of the Act.

6. The said letter was received by the High Court along with a forwarding letter of the District Judge dated 7-6-2003 and the letters were placed before the Administrative Judge on 7-7-2003, who forwarded the matter to the Registrar General vide order dated 18-6-2004 for placing the same before the Hon'ble the Chief Justice of the High Court and on 11-7-2004, the Hon'ble the Chief Justice of the High Court referred the matter to the court concerned dealing with contempt cases and notice was also issued to the appellant.

7. The facts denoting the behaviour of the appellant, as recorded by the Civil Judge (Senior Division), Etah, can be seen from the contents of his letter addressed to the learned District Judge, Etah. The letter reads as under:

> "Sir,
>
> It is humbly submitted that on 16-4-2003, while I was hearing 6-Ga-2 in Original Suit No. 114 of 2003 titled as "*Yaduveer Singh Chauhan* v. *U.P. Power Corpn.*", Shri Mahipal Singh Rana, Advocate appeared in the Court, and, while using intemperate language, spoke in a loud voice:
>
> > "How did you pass an order against my client in the case titled as "*Kanchan Singh* v. *Ratan Singh*"? How did you dare pass such an order against my client?
> >
> > I tried to console him, but he started shouting in a state of highly agitated mind:
> >
> > > 'Kanchan Singh is my relative and how was this order passed against my relative? No judicial officer has, ever, dared pass an order against me. Then, how did you dare do so? When any judicial officer passes an order on my file against my client, I set him right. I shall make a complaint against you to the Hon'ble High Court", and he threatened me: "I will not let you remain in Etah in future, I can do anything against you. I have relations with highly notorious persons and I can get you harmed by such notorious persons to the extent I want to do, and I myself am capable of doing any deed (misdeed) as I wish, and I am not afraid of anyone. In the court compound, even my shoes are worshipped and I was prosecuted in two murder cases. And I have made murderous assaults on people and about 15 to 20 cases are going on against me. If you, in future, dare pass an order on the file against my client in which I am a counsel, it will not be good for you.'
>
> Due to the abovementioned behaviour of Shri Mahipal Singh Rana, Advocate, the judicial work was hindered and the aforesaid act of Shri Mahipal Singh falls within the ambit of committing the contempt of court.
>
> In this very succession, on 13-5-2003, while I was hearing 6-Ga-2 in OS No. 48 of 2003 titled as "*Roshanlal* v. *Nauvat Ram*", Shri Mahipal Singh Rana, Advocate appeared in the Court and spoke in a loud voice:

'Why did you not get OS No. 298 of 2001 titled as "*Jag Mohan* v. *Suman*" called out so far, whereas the aforesaid case is very important, inasmuch as I am the plaintiff therein'. I said to Shri Mahipal Singh Rana, Advocate: 'Hearing of a case is going on. Thereafter, your case will be called out for hearing', thereupon he got enraged and spoke: 'That case will be heard first which I desire to be heard first. Nothing is done as per your desire. Even an advocate does not dare create a hindrance in my case. I shall get the case decided which I want and that case will never be decided, which I do not want. You cannot decide any case against my wishes'. Meanwhile when the counsel for Smt Suman in OS No. 298 of 2001 titled as "*Jag Mohan* v. *Suman*" handed some papers over to Shri Mahipal Singh Rana, Advocate for receiving the same, he threw those papers away and misbehaved with the counsel for Smt Suman. Due to this act of Shri Mahipal Singh Rana, the judicial work was hindered and his act falls within the ambit of committing the contempt of court.

Your good self is therefore requested that in order to initiate proceedings relating to committing the contempt of court against Shri Mahipal Singh Rana, Advocate, my report may kindly be sent to the Hon'ble High Court by way of REFERENCE.

With regards."

8. On the same day, the learned Civil Judge (Senior Division) also wrote another letter to the Registrar General of the High Court, giving some more facts regarding contemptuous behaviour of the appellant with a request to place the facts before the Hon'ble the Chief Justice of the High Court so that appropriate action under the Act may be taken against the appellant. As the aforestated letters refer to the facts regarding behaviour of the appellant, we do not think it necessary to reiterate the same here.

9. Ultimately, in pursuance of the information given to the High Court, proceedings under the Act had been initiated against the appellant.

10. Before the High Court, it was contended on behalf of the appellant that it was not open to the court to proceed against the appellant under the provisions of the Act because if the behaviour of the appellant was not proper or he had committed any professional misconduct, the proper course was to take action against the appellant under the provisions of the Advocates Act, 1961. It was also contended that summary procedure under the Act could not have been followed by the court for the purpose of punishing the appellant. Moreover, it was also submitted that the appellant was not at all present before the learned Civil Judge (Senior Division), Etah on 16-4-2003 and 13-5-2003.

11. Ultimately, after hearing the parties concerned, the High Court did not accept the defence of the appellant and after considering the facts of the case, it delivered the impugned judgment whereby punishment has been imposed upon the appellant. The High Court observed: (*Mahipal case*[1], SCC OnLine All paras 21, 23-24, 30-31 & 35-41)

1 *State of U.P.* v. *Mahipal Singh Rana*, 2005 SCC OnLine All 1256 : (2006) 1 All LJ 462

"*21.* Extraordinary situations demand extraordinary remedies. The subordinate courts in Uttar Pradesh are witnessing disturbing period. In most of the subordinate courts, the advocates or their groups and Bar Associations have virtually taken over the administration of justice to ransom. These advocates even threaten and intimidate the Judges to obtain favourable orders. The judicial officers often belonging to different districts are not able to resist the pressure and fall prey to these advocates. This disturbs the equilibrium between the Bar and the Bench giving undue advantage and premium to the Bar. In these extraordinary situations the High Court cannot abdicate its constitutional duties to protect the judicial officers.

* * *

23. ... The criminal history of the contemnor, the acceptance of facts in which his actions were found contumacious and he was discharged on submitting apologies on two previous occasions, and the allegations against him in which he was found to continue with intimidating the judicial officers compelled us to issue interim orders restraining his entry of the contemnor in the Judgeship at Etah. The Bar Council of Uttar Pradesh is fully aware of his activities but has chosen not to take any action in the matter. In fact the Bar Council hardly takes cognizance of such matters at all. The Court did not interfere with the statutory powers of the Bar Council of Uttar Pradesh to take appropriate proceedings against the contemnor with regard to his right of practice, and did not take away right of practice vested in him by virtue of his registration with the Bar Council. He was not debarred from practice but was only restrained to appear in the Judgeship at Etah in the cases he was engaged as an advocate. The repeated contumacious conduct, without any respect to the court committed by him repeatedly by intimidating and browbeating the judicial officers, called for maintaining discipline, protecting the judicial officers and for maintaining peace in the premises of Judgeship at Etah.

24. Should the High Court allow such advocate to continue to terrorise, browbeat and bully the judicial officers? It is submitted that he has a large practice. We are not concerned here whether the contemnor or such advocates are acquiring large practice by intimidating judicial officers. These are questions to be raised before the Bar Council. We, however, must perform our constitutional duty to protect our judicial officers. This is one such case illustrated in para 78 of *Supreme Court Bar Assn. case*[5], in which the occasion had arisen to prevent the contemnor to appear before courts at Etah. The withdrawal of such privilege did not amount to suspending or revoking his licence to practice as an advocate in other courts or tribunal, drafting the petitions and advising his clients. It only prevented him from intimidating the judicial officers and from vitiating the atmosphere conducive for administration of justice in the Judgeship at Etah.

* * *

5 *Supreme Court Bar Assn. v. Union of India*, (1998) 4 SCC 409

30. The Supreme Court held that Section 20 of the Contempt of Courts Act, has to be construed in a manner which would avoid anomaly and hardships both as regards the litigant as also by placing a pointless fetter on the part of the court to punish for its contempt. In *Pallav Sheth*[6] the Custodian received information of the appellant having committed contempt of taking over benami concerns, transferring funds to these concerns and operating their accounts, from a letter dated 5-5-1998 received from the Income Tax Authorities. Soon thereafter on 18-6-1998 a petition was filed for initiating action in contempt and notices were issued by the Court on 9-4-1999. The Supreme Court found that on becoming aware of the forged applications the contempt proceedings were filed on 18-6-1998 well within the period of limitation prescribed by Section 20 of the Act. The action taken by the Special Court by its order dated 9-4-1999 directing the applications to be treated as show-cause notice, was thus valid and that the contempt action was not barred by Section 20 of the Act.

31. In the present case the alleged contempt was committed in the court of Shri Onkar Singh Yadav, Civil Judge (Senior Division), Etah on 16-4-2003 and 13-5-2003. The officer initiated the proceedings by making reference to the High Court through the District Judge vide his letters dated 7-6-2003, separately in respect of the incidents. These letters were received by the Court with the forwarding letter of the District Judge dated 1-6-2003 and were placed before the Administrative Judge on 7-7-2003, who returned the matter to the Registrar General with his order dated 18-6-2004 to be placed before the Hon'ble the Chief Justice and that by his order dated 11-7-2004, the Hon'ble the Chief Justice referred the matter to court having contempt determination. Show-cause notices were issued by the court to the contemnor on 28-10-2004. In view of the law as explained in *Pallav Sheth*[6] the contempt proceedings would be taken to be initiated on 7-6-2003 by the Civil Judge (Senior Division), Etah, which was well within the period of one year from the date of the incidents prescribed under Section 20 of the Act.

* * *

35. We do not find that the contemnor Shri Mahipal Singh Rana is suffering from any mental imbalance. He is fully conscious of his actions and takes responsibility of the same. He suffers from an inflated ego, and has a tremendous superiority complex and claims himself to be a champion for the cause of justice, and would not spare any effort, and would go to the extent of intimidating the Judges if he feels the injustice has been done to his client. We found ourselves unable to convince him that the law is above everyone, and that even if he is an able lawyer belonging to superior caste, he could still abide by the dignity of court and the decency required from an advocate appearing in any court of law.

36. The due administration of law is of vastly greater importance than the success or failure of any individual, and for that reason public policy

6 *Pallav Sheth* v. *Custodian*, (2001) 7 SCC 549

as well as good morals require that every advocate should pay attention to his conduct. An advocate is an officer of the court, a part of machinery employed for administration of justice, for meeting out to the litigants the exact measure of their legal rights. He is guilty of a crime if he knowingly sinks his official duty, in what may seem to be his own or his clients' temporary advantage.

37. We find that the denial of incidents and allegations of mala fides against Shri Onkar Singh Yadav, the then Civil Judge (Senior Division), Etah have been made only to save himself from the contumacious conduct.

38. Shri Mahipal Singh Rana, the contemnor has refused to tender apologies for his conduct. His affidavit in support of stay vacation/ modification and supplementary affidavit do not show any remorse. He has justified himself again and again, in a loud and thundering voice.

39. We find that Shri Mahipal Rana the contemnor is guilty of criminal contempt in intimidating and threatening Shri Onkar Singh Yadav the then Civil Judge (Senior Division), Etah in his court on 16-4-2003 and 13-5-2003 and of using loud and indecent language both in court and in his pleadings in Suit No. 515 of 2002. He was discharged from proceeding of contempt in Criminal Contempt Petition No. 21 of 1998 and Criminal Contempt No. 60 of 1998 on his tendering unconditionally apology on 3-8-1999 and 11-11-2002 respectively. He however did not mend himself and has rather become more aggressive and disrespectful to the court. He has virtually become a nuisance and obstruction to the administration of justice at the Judgeship at Etah. We are satisfied that the repeated acts of criminal contempt committed by him are of such nature that these substantially interfere with the due course of justice. We thus allow the references and punish him under Section 12 of the Contempt of Courts Act, 1971, with two months' imprisonment and also impose a fine of Rs 2000 on him. In case of non-payment of fine he will undergo further a period of imprisonment of two weeks. However, the punishment so imposed shall be kept in abeyance for a period of sixty days to enable the contemnor Shri Rana to approach the Hon'ble Supreme Court, if so advised.

40. We also direct the Bar Council of Uttar Pradesh to take the facts constituted in the complaints of Shri Onkar Singh Yadav, the then Civil Judge (Senior Division), Etah, the two earlier contempts referred in this judgment, and to draw proceedings against him for professional misconduct.

41. Under the rules of this Court, the contemnor shall not be permitted to appear in courts in the Judgeship at Etah, until he purges the contempt. The Registrar General shall draw the order and communicate it to the Bar Council of Uttar Pradesh and the Bar Council of India within a week. The contemnor shall be taken into custody to serve the sentence immediately of the sixty days if no restraint order is passed by the appellate court."

Rival contentions

12. The learned counsel appearing for the appellant before this Court specifically denied the instances dated 16-4-2003 and 13-5-2003 and further submitted that the appellant had not even gone to the Court of the learned Civil Judge (Senior Division), Etah on the aforestated two days and therefore, the entire case made out against the appellant was false and frivolous. The learned counsel, therefore, submitted that the High Court had committed an error by not going into the fact as to whether the appellant had, in fact, attended the Court of the learned Civil Judge (Senior Division), Etah on 16-4-2003 and 13-5-2003. The learned counsel further submitted that the High Court ought to have considered the fact that the appellant had filed several complaints against the learned Judge who was the complainant and therefore, with an oblique motive the entire contempt proceedings were initiated against the appellant. The said complaints ought to have been considered by the High Court. It was further submitted that contempt proceedings were barred by limitation. The incidents in question are dated 16-4-2003 and 13-5-2003 while notice was ordered to be issued on 28-4-2004.

13. The learned counsel, thus, submitted that the action initiated against the appellant was not just and proper and the impugned judgment[1] awarding punishment to the appellant under the Act is bad in law and therefore, deserved to be set aside. In the alternative, it is submitted that the appellant was 84 years of age and keeping that in mind, the sentence for imprisonment may be set aside and instead, the fine may be increased.

14. On the other hand, the learned counsel appearing for the State of Uttar Pradesh submitted that the impugned judgment[1] was just, legal and proper and the same was delivered after due deliberation and careful consideration of the relevant facts. He submitted that looking at the facts of the case, the High Court rightly came to the conclusion that the appellant was not only present in the Court on those two days i.e. on 16-4-2003 and 13-5-2003, but the appellant had also misbehaved and misconducted in such a manner that his conduct was contemptuous and therefore, the proceedings under the Act had to be initiated against him.

15. The learned counsel for the State of U.P. also drew attention of the Court to the nature of the allegations made by the appellant against the learned Judge and about the contemptuous behaviour of the appellant. The learned counsel also relied upon the report submitted to the learned District Judge and submitted that the impugned judgment is just, legal and proper. He also submitted that the misbehaviour and contemptuous act of the appellant was unpardonable and therefore, the High Court had rightly imposed punishment upon the appellant.

16. In response to the notice issued by this Court on 20-8-2015[4] in respect of the question framed, the learned counsel appearing for the Bar Council of India submitted that Section 24-A of the Advocates Act, 1961 provides for a bar against admission of a person as an advocate if he is convicted of an

1 *State of U.P.* v. *Mahipal Singh Rana*, 2005 SCC OnLine All 1256 : (2006) 1 All LJ 462

4 *Mahipal Singh Rana* v. *State of U.P.*, Criminal Appeal No. 63 of 2006, order dated 20-8-2015 (SC)

offence involving moral turpitude, apart from other situations in which such bar operates. The proviso however, provides for the bar being lifted after two years of release. However, the provision did not expressly provide for removal of an advocate from the roll of the advocates if conviction takes place after enrolment of a person as an advocate. Only other relevant provision under which action could be taken is Section 35 for proved misconduct.

17. It is further stated by the counsel for the Bar Council of India that though the High Court directed the Bar Council of Uttar Pradesh to initiate proceedings for professional misconduct on 2-12-2005, the consequential action taken by the Bar Council of the State of Uttar Pradesh was not known. It is further stated that the term moral turpitude has to be understood having regard to the nature of the noble profession of law which requires a person to possess higher level of integrity. Even a minor offence could be termed as an offence involving moral turpitude in the context of an advocate who is expected to be aware of the legal position and the conduct expected from him as a citizen is higher than others.

18. It was further submitted that only the State Bar Council or Bar Council of India possess the power to punish an advocate for "professional misconduct" as per the provisions of Section 35 of the Advocates Act, 1961 and reiterated the law laid down by this Court in *Supreme Court Bar Assn.* v. *Union of India*[5]. In addition, the counsel submitted that a general direction to all the courts be given to communicate about conviction of an advocate for an offence involving moral turpitude to the State Bar Council concerned or the Bar Council of India immediately upon delivering the judgment of conviction so that proceedings against such advocates can be initiated under the Advocates Act, 1961.

19. The learned Additional Solicitor General of India appearing on behalf of the Union of India, submitted that normally in case of all professions, the apex body of the professionals takes action against the erring professional and in case of legal profession, the Bar Council of India takes disciplinary action and punishes the advocate concerned if he is guilty of any misconduct, etc. Reference was made to the Architects Act, 1972; the Chartered Accountants Act, 1949; the Company Secretaries Act, 1980; the Pharmacy Practice Regulations, 2015; the Indian Medical Council (Professional Conduct, Etiquettes and Ethics) Regulations, 2002; the National Council for Teacher Education Act, 1993; the Cost and Works Accountants Act, 1959; the Actuaries Act, 2006; the Gujarat Professional Civil Engineers Act, 2006; the Representation of the People Act, 1951, containing the provisions for disqualifying a person from continuing in a regulated profession upon conviction for an offence involving moral turpitude. Reference was also made to Section 24-A of the Advocates Act which provides for a bar on enrolment as an advocate of a person who has committed any offence involving moral turpitude. It was further submitted that if a person is disqualified from enrolment, it could not be the intention of the legislature to permit a person already enrolled as an advocate to continue him in practice if he is convicted

5 (1998) 4 SCC 409

of an offence involving moral turpitude. Bar against enrolment should also be deemed to be bar against continuation.

20. It was further submitted by the Additional Solicitor General of India that Article 145 of the Constitution empowers the Supreme Court to make rules for regulating practice and procedure including the persons practising before this Court. Section 34 of the Advocates Act empowers the High Courts to frame rules laying down the conditions on which an advocate shall be permitted to practice in courts. Thus, there is no absolute right of an advocate to appear in court. Appearance before court is subject to such conditions as are laid down by this Court or the High Court. An advocate could be debarred from appearing before the Court even if the disciplinary jurisdiction for misconduct was vested with the Bar Council as laid down in *Supreme Court Bar Assn.*[5] and as further clarified in *Pravin C. Shah* v. *K.A. Mohd. Ali*[7], *Harish Uppal* v. *Union of India*[8], *Bar Council of India* v. *High Court of Kerala*[9] and *R.K. Anand* v. *Delhi High Court*[10]. Thus, according to the counsel, apart from the Bar Council taking appropriate action against the appellant, this Court could debar him from appearance before any court.

21. Shri Dushyant Dave, learned Senior Counsel and the President of the Supreme Court Bar Association supported the interpretation canvassed by the learned Additional Solicitor General. He submitted that image of the profession ought to be kept clean by taking strict action against persons failing to maintain ethical standards.

22. We have heard the learned counsel appearing for the parties and have perused the judgments cited by them.

Consideration of the questions

23. We may now consider the questions posed for consideration.

Re: Question (i)

24. Upon going through the impugned judgment[1], we are of the view that no error has been committed by the High Court while coming to the conclusion that the appellant had committed contempt of court under the provisions of the Act.

25. We do not agree with the submissions of the learned counsel for the appellant that the appellant did not appear on those two days before the court. Upon perusal of the facts found by the High Court and looking at the contents of the letters written by the judicial officers concerned, we have no doubt about the fact that the appellant did appear before the court and used the language which was contemptuous in nature.

5 *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409
7 (2001) 8 SCC 650
8 (2003) 2 SCC 45
9 (2004) 6 SCC 311
10 (2009) 8 SCC 106 : (2010) 2 SCC (Cri) 563
1 *State of U.P.* v. *Mahipal Singh Rana*, 2005 SCC OnLine All 1256 : (2006) 1 All LJ 462

26. So far as the allegations made by the appellant with regard to the complaints made by him against the complainant Judge, after having held that the appellant had appeared before the court and had made contemptuous statements, we are of the opinion that those averments regarding the complaints are irrelevant. The averments regarding the complaints cannot be a defence for the appellant. Even if we assume those averments about the complaints to be correct, then also, the appellant cannot use such contemptuous language in the court against the Presiding Judge.

27. There is no merit in the contention of the appellant that there was delay on the part of the complainant Judge in sending the reference and he could have tried the appellant under Section 228 of the Penal Code and the procedure prescribed under the Code of Criminal Procedure. It is for the learned Judge to decide as to whether action should be taken under the Act or under any other law.

28. The High Court has rightly convicted the appellant under the Act after having come to a conclusion that denial of the incidents and allegations of mala fides against the complainant Judge had been made by the appellant to save himself from the consequences of contempt proceedings. The appellant had refused to tender apology for his conduct. His affidavit in support of stay vacation/modification and supplementary affidavit did not show any remorse and he had justified himself again and again, which also shows that he had no regard for the majesty of law.

29. It is a well-settled proposition of law that in deciding whether contempt is serious enough to merit imprisonment, the court will take into account the likelihood of interference with the administration of justice and the culpability of the offender. The intention with which the act complained of is done is a material factor in determining what punishment, in a given case, would be appropriate. In the case at hand, the High Court has rightly held that the appellant was guilty of criminal contempt. We are however, inclined to set aside the sentence for imprisonment in view of advanced age of the appellant and also in the light of our further direction as a result of findings of Question (*ii*).

Re: Question (ii)

Court's jurisdiction vis-à-vis statutory powers of the Bar Councils

30. This Court, while examining its powers under Article 129 read with Article 142 of the Constitution with regard to awarding sentence of imprisonment together with suspension of his practise as an Advocate, in *Supreme Court Bar Assn.*[5], the Constitution Bench held that while in exercise of contempt jurisdiction, this Court cannot take over jurisdiction of Disciplinary Committee of the Bar Council[11] and it is for the Bar Council to punish the advocate by debarring him from practise or suspending his licence as may be warranted on the basis of his having been found guilty of contempt, if the Bar Council fails to take action, this Court could invoke its appellate power under

5 *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409
11 *Id.*, paras 43, 57, 78

Section 38 of the Advocates Act[12]. In a given case, this Court or the High Court can prevent the contemnor advocate from appearing before it or other courts till he purges himself of the contempt which is different from suspending or revoking the licence or debarring him to practise[13].

31. Reference may be made to the following observations in *Supreme Court Bar Assn. case*[5]: (SCC pp. 444-46, paras 79-81)

> "79. An advocate who is found guilty of contempt of court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that advocate by either debarring him from practise or suspending his licence, as may be warranted, in the facts and circumstances of each case. The learned Solicitor General informed us that there have been cases where the Bar Council of India taking note of the contumacious and objectionable conduct of an advocate, had initiated disciplinary proceedings against him and even punished him for "professional misconduct", on the basis of his having been found guilty of committing contempt of court. We do not entertain any doubt that the Bar Council of the State or Bar Council of India, as the case may be, when apprised of the established contumacious conduct of an advocate by the High Court or by this Court, would rise to the occasion, and take appropriate action against such an advocate. Under Article 144 of the Constitution "all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court". The Bar Council which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette is also obliged to act "in aid of the Supreme Court". It must, whenever facts warrant, rise to the occasion and discharge its duties uninfluenced by the position of the contemnor advocate. It must act in accordance with the prescribed procedure, whenever its attention is drawn by this Court to the contumacious and unbecoming conduct of an advocate which has the tendency to interfere with due administration of justice. It is possible for the High Courts also to draw the attention of the Bar Council of the State to a case of professional misconduct of a contemnor advocate to enable the State Bar Council to proceed in the manner prescribed by the Act and the Rules framed thereunder. There is no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the courts and the majesty of law and prevent any interference in the administration of justice. The learned counsel for the parties present before us do not dispute and rightly so that whenever a court of record records its findings about the conduct of an advocate while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the Bar Council concerned, appropriate action should be initiated by the Bar Council concerned in

12 *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409, para 79
13 *Id.*, para 80
5 *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409

accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette. Nothing is more destructive of public confidence in the administration of justice than incivility, rudeness or disrespectful conduct on the part of a counsel towards the court or disregard by the court of the privileges of the Bar. In case the Bar Council, even after receiving "reference" from the Court, fails to take action against the advocate concerned, this Court might consider invoking its powers under Section 38 of the Act by sending for the record of the proceedings from the Bar Council and passing appropriate orders. Of course, the appellate powers under Section 38 would be available to this Court only and not to the High Courts. We, however, hope that such a situation would not arise.

80. In a given case it may be possible, for this Court or the High Court, to prevent the contemnor advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practise as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practice as an advocate in other courts or tribunals.

81. We are conscious of the fact that the conduct of the contemnor in *V.C. Mishra case*[14] was highly contumacious and even atrocious. It was unpardonable. The contemnor therein had abused his professional privileges while practising as an advocate. He was holding a very senior position in the Bar Council of India and was expected to act in a more reasonable way. He did not. These factors appear to have influenced the Bench in that case to itself punish him by suspending his licence to practise also while imposing a suspended sentence of imprisonment for committing contempt of court but while doing so this Court vested itself with a jurisdiction where none exists. The position would have been different had a reference been made to the Bar Council and the Bar Council did not take any action against the advocate concerned. In that event, as already observed, this Court in exercise of its appellate jurisdiction under Section 38 of the Act read with Article 142 of the Constitution of India, might have exercised suo motu powers and sent for the proceedings from the Bar Council and passed appropriate orders for punishing the contemnor advocate for professional misconduct after putting him on notice as required by the proviso to Section 38 which reads thus:

> 'Provided that no order of the Disciplinary Committee of the Bar Council of India shall be varied by the Supreme Court so as to prejudicially

14 *Vinay Chandra Mishra, In re*, (1995) 2 SCC 584

affect the person aggrieved without giving him a reasonable opportunity of being heard.'

But it could not have done so in the first instance."

32. In *Pravin C. Shah*[7] this Court held that an advocate found guilty of contempt cannot be allowed to act or plead in any court till he purges himself of contempt. This direction was issued having regard to Rule 11 of the Rules framed by the High Court of Kerala under Section 34(1) of the Advocates Act and also referring to the observations in para 80 of the judgment of this Court in *Supreme Court Bar Assn.*[5] It was explained that debarring a person from appearing in court was within the purview of the jurisdiction of the Court and was different from suspending or terminating the licence which could be done by the Bar Council and on failure of the Bar Council, in exercise of appellate jurisdiction of this Court. The observations are: (*Pravin C. Shah case*[7], SCC pp. 658-62, paras 16-18, 24 & 27-28)

"*16*. Rule 11 of the Rules is not a provision intended for the Disciplinary Committee of the Bar Council of the State or the Bar Council of India. It is a matter entirely concerning the dignity and the orderly functioning of the courts. The right of the advocate to practise envelops a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, etc. Rule 11 has nothing to do with all the acts done by an advocate during his practice except his performance inside the court. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by the Bar Council in exercise of its disciplinary powers. The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must have the major supervisory power. Hence the court cannot be divested of the control or supervision of the court merely because it may involve the right of an advocate.

17. When the Rules stipulate that a person who committed contempt of court cannot have the unreserved right to continue to appear and plead and conduct cases in the courts without any qualm or remorse, the Bar Council cannot overrule such a regulation concerning the orderly conduct of court proceedings. Courts of law are structured in such a design as to evoke respect and reverence for the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who was found

7 *Pravin C. Shah* v. *K.A. Mohd. Ali*, (2001) 8 SCC 650

5 *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409

guilty of contempt of court on the previous hour, standing in the court and arguing a case or cross-examining a witness on the same day, unaffected by the contemptuous behaviour he hurled at the court, would erode the dignity of the court and even corrode the majesty of it besides impairing the confidence of the public in the efficacy of the institution of the courts. This necessitates vesting of power with the High Court to formulate rules for regulating the proceedings inside the court including the conduct of advocates during such proceedings. That power should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the High Court should be in control of the former.

18. In the above context it is useful to quote the following observations made by a Division Bench of the Allahabad High Court in *Prayag Das* v. *Civil Judge, Bulandshahr*[15]: (AIR p. 136, para 9)

> '[T]he High Court has a power to regulate the appearance of advocates in courts. The right to practise and the right to appear in courts are not synonymous. An advocate may carry on chamber practise or even practise in courts in various other ways e.g. drafting and filing of pleadings and vakalatnama for performing those acts. For that purpose his physical appearance in courts may not at all be necessary. For the purpose of regulating his appearance in courts the High Court should be the appropriate authority to make rules and on a proper construction of Section 34(1) of the Advocates Act it must be inferred that the High Court has the power to make rules for regulating the appearance of advocates and proceedings inside the courts. Obviously the High Court is the only appropriate authority to be entrusted with this responsibility.'

* * *

24. Purging is a process by which an undesirable element is expelled either from one's own self or from a society. It is a cleaning process. Purge is a word which acquired implications first in theological connotations. In the case of a sin, purging of such sin is made through the expression of sincere remorse coupled with doing the penance required. In the case of a guilt, purging means to get himself cleared of the guilt. The concept of purgatory was evolved from the word "purge", which is a state of suffering after this life in which those souls, who depart this life with their deadly sins, are purified and rendered fit to enter into heaven where nothing defiled enters (vide *Words and Phrases*, Permanent Edn., Vol. 35-A, p. 307). In *Black's Law Dictionary* the word "purge" is given the following meaning: 'To cleanse; to clear. To clear or exonerate from some charge or imputation of guilt, or from a contempt.' It is preposterous to suggest that if the convicted person undergoes punishment or if he tenders the fine amount imposed on him the purge would be completed.

* * *

15 AIR 1974 All 133 : 1973 SCC OnLine All 333

27. We cannot therefore approve the view that merely undergoing the penalty imposed on a contemnor is sufficient to complete the process of purging himself of the contempt, particularly in a case where the contemnor is convicted of criminal contempt. The danger in giving accord to the said view of the learned Single Judge in the aforecited decision is that if a contemnor is sentenced to a fine he can immediately pay it and continue to commit contempt in the same court, and then again pay the fine and persist with his contemptuous conduct. There must be something more to be done to get oneself purged of the contempt when it is a case of criminal contempt.

28. The Disciplinary Committee of the Bar Council of India highlighted the absence of any mode of purging oneself of the guilt in any of the Rules as a reason for not following the interdict contained in Rule 11. Merely because the Rules did not prescribe the mode of purging oneself of the guilt it does not mean that one cannot purge the guilt at all. The first thing to be done in that direction when a contemnor is found guilty of a criminal contempt is to implant or infuse in his own mind real remorse about his conduct which the court found to have amounted to contempt of court. Next step is to seek pardon from the court concerned for what he did on the ground that he really and genuinely repented and that he has resolved not to commit any such act in future. It is not enough that he tenders an apology. The apology tendered should impress the court to be genuine and sincere. If the court, on being impressed of his genuineness, accepts the apology then it could be said that the contemnor has purged himself of the guilt."

33. In *Bar Council of India* v. *High Court of Kerala*[9], constitutionality of Rule 11 of the Rules framed by the High Court of Kerala for barring a lawyer from appearing in any court till he got himself purged of contempt by an appropriate order of the court, was examined. This Court held that the rule did not violate Articles 14 and 19(1)(*g*) of the Constitution nor amounted to usurpation of power of adjudication and punishment conferred on the Bar Councils and the result intended by the application of the Rule was automatic. It was further held that the Rule was not in conflict with the law laid down in *Supreme Court Bar Assn.*[5] judgment. Referring to the Constitution Bench judgment in *Harish Uppal*[8], it was held that regulation of right of appearance in courts was within the jurisdiction of the courts. It was observed, following *Pravin C. Shah*[7], that the court must have major supervisory power on the right to appear and conduct in the court. The observations are: (*Bar Council of India case*[9], SCC p. 323, para 46)

"*46.* Before a contemnor is punished for contempt, the court is bound to give an opportunity of hearing to him. Even such an opportunity of hearing is necessary in a proceeding under Section 345 of the Code of

9 (2004) 6 SCC 311
5 *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409
8 *Harish Uppal* v. *Union of India*, (2003) 2 SCC 45
7 *Pravin C. Shah* v. *K.A. Mohd. Ali*, (2001) 8 SCC 650

Criminal Procedure. But if a law which is otherwise valid provides for the consequences of such a finding, the same by itself would not be violative of Article 14 of the Constitution of India inasmuch as only because another opportunity of hearing to a person, where a penalty is provided for as a logical consequence thereof, has been provided for. Even under the penal laws some offences carry minimum sentence. The gravity of such offences, thus, is recognised by the legislature. The courts do not have any role to play in such a matter."

34. Reference was also made to the following observations in *Harish Uppal*[8]: (SCC pp. 72-73, para 34)

"*34.* ... The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must and does have major supervisory and controlling power. Hence courts cannot be and are not divested of control or supervision of conduct in court merely because it may involve the right of an advocate. A rule can stipulate that a person who has committed contempt of court or has behaved unprofessionally and in an unbecoming manner will not have the right to continue to appear and plead and conduct cases in courts. The Bar Councils cannot overrule such a regulation concerning the orderly conduct of court proceedings. On the contrary, it will be their duty to see that such a rule is strictly abided by. Courts of law are structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who is guilty of contempt of court or of unbecoming or unprofessional conduct, standing in the court would erode the dignity of the court and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the courts. The power to frame such rules should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the courts are in control of the former. This distinction is clearly brought out by the difference in language in Section 49 of the Advocates Act on the one hand and Article 145 of the Constitution of India and Section 34(1) of the Advocates Act on the other. Section 49 merely empowers the Bar Council to frame rules laying down conditions subject to which an advocate shall have a right to practise i.e. do all the other acts set out above. However, Article 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the court including inter alia rules as to persons practising before this Court. Similarly Section 34 of the Advocates Act empowers High Courts to frame rules, inter alia to lay down conditions on which an advocate shall be permitted to practise in courts. Article 145 of the Constitution of India and Section 34 of the Advocates Act clearly show that

8 *Harish Uppal* v. *Union of India*, (2003) 2 SCC 45

there is no absolute right to an advocate to appear in a court. An advocate appears in a court subject to such conditions as are laid down by the court. It must be remembered that Section 30 has not been brought into force and this also shows that there is no absolute right to appear in a court. Even if Section 30 were to be brought into force control of proceedings in court will always remain with the court. Thus, even then the right to appear in court will be subject to complying with conditions laid down by courts just as practice outside courts would be subject to conditions laid down by the Bar Council of India. There is thus no conflict or clash between other provisions of the Advocates Act on the one hand and Section 34 or Article 145 of the Constitution of India on the other."

35. In *R.K. Anand*[10] it was held that even if there was no rule framed under Section 34 of the Advocates Act disallowing an advocate who is convicted of criminal contempt, is not only a measure to maintain dignity and orderly function of courts, it may become necessary for the protection of the court and for preservation of the purity of court proceedings. Thus, the court not only has a right but also an obligation to protect itself and save the purity of its proceedings from being polluted, by barring the advocate concerned from appearing before the courts for an appropriate period of time[16]. This Court noticed the observations about the decline of ethical and professional standards of the Bar, and the need to arrest such trend in the interests of administration of justice. It was observed that in the absence of unqualified trust and confidence of people in the Bar, the judicial system could not work satisfactorily. Further observations are that the performance of the Bar Councils in maintaining professional standards and enforcing discipline did not match its achievements in other areas. This Court expressed hope and expected that the Bar Council will take appropriate action for the restoration of high professional standards among the lawyers, working of their position in the judicial system and the society.

36. It was further observed in *R.K. Anand case*[10]: (SCC pp. 205-06, paras 331, 333 & 335)

"*331*. The other important issue thrown up by this case and that causes us both grave concern and dismay is the decline of ethical and professional standards among lawyers. The conduct of the two appellants (one convicted of committing criminal contempt of court and the other found guilty of misconduct as Special Public Prosecutor), both of them lawyers of long standing, and designated Senior Advocates, should not be seen in isolation. The bitter truth is that the facts of the case are manifestation of the general erosion of the professional values among lawyers at all levels. We find today lawyers indulging in practices that would have appalled their predecessors in the profession barely two or three decades ago. Leaving aside the many kinds of unethical practices indulged in by a section of lawyers we find that even some highly successful lawyers seem to live by their own rules of conduct.

10 *R.K. Anand* v. *Delhi High Court*, (2009) 8 SCC 106 : (2010) 2 SCC (Cri) 563
16 *R.K. Anand* v. *Delhi High Court*, (2009) 8 SCC 106, paras 238, 239, 242

* * *

333. We express our concern on the falling professional norms among the lawyers with considerable pain because we strongly feel that unless the trend is immediately arrested and reversed, it will have very deleterious consequences for the administration of justice in the country. No judicial system in a democratic society can work satisfactorily unless it is supported by a Bar that enjoys the unqualified trust and confidence of the people, that shares the aspirations, hopes and the ideals of the people and whose members are monetarily accessible and affordable to the people.

* * *

335. Here we must also observe that the Bar Council of India and the Bar Councils of the different States cannot escape their responsibility in this regard. Indeed the Bar Council(s) have very positively taken up a number of important issues concerning the administration of justice in the country. It has consistently fought to safeguard the interests of lawyers and it has done a lot of good work for their welfare. But on the issue of maintaining high professional standards and enforcing discipline among lawyers its performance hardly matches its achievements in other areas. It has not shown much concern even to see that lawyers should observe the statutory norms prescribed by the Council itself. We hope and trust that the Council will at least now sit up and pay proper attention to the restoration of the high professional standards among lawyers worthy of their position in the judicial system and in the society."

37. In *Ministry of Information and Broadcasting, In re*[17], it was observed that the members of legal profession are required to maintain exemplary conduct in and outside of the Court. The respect for the legal system was due to the role played by the stalwarts of the legal profession and if there was any deviation in the said role, not only the profession but also the administration of justice as a whole would suffer. In this regard, the relevant observations are: (SCC pp. 634-35, para 20)

"*20*. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behaviour. It must not be forgotten that the legal profession has always been held in high esteem and

17 (1995) 3 SCC 619

its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practised it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible. The casualness and indifference with which some members practise the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty. We say no more."

38. In *Bar Council of Maharashtra* v. *M.V. Dabholkar*[18] the following observations have been made about the vital role of the lawyer in administration of justice: (SCC p. 298, para 15)

"*15*. Now to the legal issue bearing on canons of professional conduct. The rule of law cannot be built on the ruins of democracy, for where law ends tyranny begins. If such be the keynote thought for the very survival of our Republic, the integral bond between the lawyer and the public is unbreakable. And the vital role of the lawyer depends upon his probity and professional lifestyle. Be it remembered that the central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of justice—social justice. The Bar cannot behave with doubtful scruples or strive to thrive on litigation. Canons of conduct cannot be crystallised into rigid rules but *felt* by the collective conscience of the practitioners as right:

> 'It must be a conscience alive to the proprieties and the improprieties incident to the discharge of a sacred public trust. It must be a conscience governed by the rejection of self-interest and selfish ambition. It must be a conscience propelled by a consuming desire to play a leading role in the fair and impartial administration of justice, to the end that public confidence may be kept undiminished at all times in the belief that we shall always seek truth and justice in the preservation of the rule of law. It must be a conscience, not shaped by rigid rules of doubtful validity, but answerable only to a moral code

18 (1976) 2 SCC 291

which would drive irresponsible Judges from the profession. Without such a conscience, there should be no Judge."*

and, we may add, no lawyer. Such is the high, standard set for professional conduct as expounded by courts in this country and elsewhere." (emphasis in original)

39. In *Jaswant Singh* v. *Virender Singh*[19] it was observed: (SCC pp. 403-04, para 33)

"*33.* ... An advocate has no wider protection than a layman when he commits an act which amounts to contempt of court. It is most unbefitting for an advocate to make imputations against the Judge only because he does not get the expected result, which according to him is the fair and reasonable result available to him. Judges cannot be intimidated to seek favourable orders. Only because a lawyer appears as a party in person, he does not get a licence thereby to commit contempt of the court by intimidating the Judges or scandalising the courts. He cannot use language, either in the pleadings or during arguments, which is either intemperate or unparliamentary. These safeguards are not for the protection of any Judge individually but are essential for maintaining the dignity and decorum of the courts and for upholding the majesty of law. Judges and courts are not unduly sensitive or touchy to fair and reasonable criticism of their judgments. Fair comments, even if, outspoken, but made without any malice or attempting to impair the administration of justice and made in good faith, in proper language, do not attract any punishment for contempt of court. However, when from the criticism a deliberate, motivated and calculated attempt is discernible to bring down the image of judiciary in the estimation of the public or to impair the administration of justice or tend to bring the administration of justice into disrepute the courts must bestir themselves to uphold their dignity and the majesty of law. The appellant, has, undoubtedly committed contempt of court by the use of objectionable and intemperate language. No system of justice can tolerate such unbridled licence on the part of a person, be he a lawyer, to permit himself the liberty of scandalising a court by casting unwarranted, uncalled for and unjustified aspersions on the integrity, ability, impartiality or fairness of a Judge in the discharge of his judicial functions as it amounts to an interference with the due course of administration of justice."

40. In *Subrata Roy Sahara* v. *Union of India*[20] it was observed: (SCC p. 641, para 188)

"*188.* The number of similar litigants, as the parties in this group of cases, is on the increase. They derive their strength from abuse of the

* Hastings, Hon John S.: Judicial Ethics as it Relates to Participation in Money-Making Activities — Conference on Judicial Ethics, p. 8. The School of Law, University of Chicago (1964).

19 1995 Supp (1) SCC 384

20 (2014) 8 SCC 470 : (2011) 4 SCC (Civ) 421 : (2014) 3 SCC (Cri) 712

legal process. Counsel are available, if the litigant is willing to pay their fee. Their percentage is slightly higher at the lower levels of the judicial hierarchy, and almost non-existent at the level of the Supreme Court. One wonders what is it that a Judge should be made of, to deal with such litigants who have nothing to lose. What is the level of merit, grit and composure required to stand up to the pressures of today's litigants? What is it that is needed to bear the affront, scorn and ridicule hurled at officers presiding over courts? Surely one would need superhumans to handle the emerging pressures on the judicial system. The resultant duress is gruelling. One would hope for support for officers presiding over courts from the legal fraternity, as also, from the superior judiciary up to the highest level. Then and only then, will it be possible to maintain equilibrium essential to deal with complicated disputations which arise for determination all the time irrespective of the level and the stature of the court concerned. And also, to deal with such litigants."

41. In *Amit Chanchal Jha* v. *High Court of Delhi*[21] this Court again upheld the order of debarring the advocate from appearing in court on account of his conviction for criminal contempt.

42. We may also refer to certain articles on the subject. In "*Raising the Bar for the Legal Profession*", published in *The Hindu* newspaper dated 15-9-2012, Dr N.R. Madhava Menon wrote:

"... Being a private monopoly, the profession is organised like a pyramid in which the top 20 per cent command 80 per cent of paying work, the middle 30 per cent managing to survive by catering to the needs of the middle class and government litigation, while the bottom 50 per cent barely survive with legal aid cases and cases managed through undesirable and exploitative methods! Given the poor quality of legal education in the majority of the so-called law colleges (over a thousand of them working in small towns and panchayats without infrastructure and competent faculty), what happened with uncontrolled expansion was the overcrowding of ill-equipped lawyers in the bottom 50 per cent of the profession fighting for a piece of the cake. In the process, being too numerous, the middle and the bottom segments got elected to professional bodies which controlled the management of the entire profession. The so-called leaders of the profession who have abundant work, unlimited money, respect and influence did not bother to look into what was happening to the profession and allowed it to go its way of inefficiency, strikes, boycotts and public ridicule. This is the tragedy of the Indian Bar today which had otherwise a noble tradition of being in the forefront of the freedom struggle and maintaining the rule of law and civil liberties even in difficult times."

21 (2015) 13 SCC 288 : (2016) 1 SCC (Civ) 704 : (2016) 1 SCC (Cri) 590 : (2016) 1 SCC (L&S) 234

43. In "*Browbeating, Prerogative of Lawyers*", published in *The Hindu* newspaper dated 7-6-2016, Shri S. Prabhakaran, Co-Chairman of the Bar Council of India and Senior Advocate, in response to another article "*Do Not Browbeat Lawyers*", published in the said newspaper on 3-6-2016, writes:

> "... The next argument advanced against the rules is that the threat of action for browbeating the Judges is intended to silence the lawyers. But the authors have forgotten very conveniently that (*i*) when rallies and processions were taken out inside court halls obstructing the proceedings, (*ii*) when courts were boycotted for all and sundry reasons in violation of the law laid down by the Supreme Court in *Harish Uppal*[8], (*iii*) when two instances of murder of very notorious lawyers inside the Egmore court complex took place on the eve of elections to the Bar Associations, (*iv*) when a lady litigant who came to the Family Court in Chennai was physically assaulted by a group of lawyers who also coerced the police to register a complaint against the victim, (*v*) when a group of lawyers barged into the chamber of a Magistrate in Puducherry and wrongfully confined him till he released a lawyer on his own bond in a criminal complaint of sexual assault filed by a lady, (*vi*) when a group of lawyers gheraoed a Magistrate for not granting bail and one of them spat on his face, leading to strong protests by the Association of Judicial Officers, and (*vii*) when very recently, a lady litigant was physically assaulted by a group of lawyers for sitting in the chair intended for lawyers inside the court hall, lawyers such as the authors of the article under response maintained a stoic silence.
>
> Even lawyers who claim to be human rights activists choose to be silent when the human rights of millions of litigants are affected by boycott of courts. It shows that some lawyers, like the authors of the article under response, have always maintained silence and do not mind being silenced by a few unruly members of the Bar who go on the rampage at times. But they do not want to be silenced by any rule prescribing a decent code of conduct in court halls. The raison d'être appears to be that browbeating is the prerogative of the lawyers and it shall be allowed with impunity."

Undesirability of convicted person to perform important public functions

44. It may also be appropriate to refer to the legal position about undesirability of a convicted person being allowed to perform important public functions. In *Union of India* v. *Tulsiram Patel*[22] it was observed that it was not advisable to retain a person in civil service after conviction.[23] In *Rama Narang* v. *Ramesh Narang*[24] reference was made to Section 267 of the Companies Act barring a convicted person from holding the post of a Managing Director in a company. This Court observed that having regard to the said wholesome provision, stay of conviction ought to be granted only in rare cases. In *Lily*

8 *Harish Uppal* v. *Union of India*, (2003) 2 SCC 45
22 (1985) 3 SCC 398 : 1985 SCC (L&S) 672
23 *Id.*, para 153
24 (1995) 2 SCC 513

Thomas v. *Union of India*[25], this Court held that an elected representative could not continue to hold the office after conviction[26]. In *Manoj Narula* v. *Union of India*[27] similar observation was made. In *Election Commission* v. *Saka Venkata Rao*[28] the disqualification against eligibility for contesting election was held to operate for continuing on the elected post.

Interpretation of Section 24-A: Need to amend the provision

45. Section 24-A of the Advocates Act is as follows:

"**24-A.** ***Disqualification for enrolment.***—(1) No person shall be admitted as an advocate on a State roll—

(*a*) if he is convicted of an offence involving moral turpitude;

(*b*) if he is convicted of an offence under the provisions of the Untouchability (Offences) Act, 1955 (22 of 1955);

(*c*) if he is dismissed or removed from employment or office under the State on any charge involving moral turpitude.

Explanation. In this clause, the expression "State" shall have the meaning assigned to it under Article 12 of the Constitution:

Provided that the disqualification for enrolment as aforesaid shall cease to have effect after a period of two years has elapsed since his release or dismissal or, as the case may be, removal.

(2) Nothing contained in sub-section (1) shall apply to a person who having been found guilty is dealt with under the provisions of the Probation of Offenders Act, 1958 (20 of 1958)."

46. Dealing with the above provision, the Division Bench of the Gujarat High Court in *'C'* v. *Bar Council of Gujarat*[29] observed: (SCC OnLine Guj para 5)

"5. ... We, however, wish to avail of this opportunity to place on record our feeling of distress and dismay at the fact that a public servant who is found guilty of an offence of taking an illegal gratification in the discharge of his official duties by a competent court can be enrolled as a member of the Bar even after a lapse of two years from the date of his release from imprisonment. It is for the authorities who are concerned with this question to reflect on the question as to whether such a provision is in keeping with the high stature which the profession (which we so often describe as the noble profession) enjoys and from which even the members of highest judiciary are drawn. It is not a crime of passion committed in a moment of loss of equilibrium. Corruption is an offence which is committed after deliberation and it becomes a way of life for him. A corrupt apple cannot become a good apple with passage of time. It is for the legal profession

25 (2013) 7 SCC 653 : (2013) 3 SCC (Civ) 678 : (2013) 3 SCC (Cri) 641 : (2013) 2 SCC (L&S) 811
26 *Id.*, para 28
27 (2014) 9 SCC 1
28 AIR 1953 SC 210
29 (1982) 2 Guj LR 706 : 1982 SCC OnLine Guj 124

to consider whether it would like such a provision to continue to remain on the statute book and would like to continue to admit persons who have been convicted for offences involving moral turpitude and persons who have been found guilty of acceptance of illegal gratification, rape, dacoity, forgery, misappropriation of public funds, relating to counterfeit currency and coins and other offences of like nature to be enrolled as members merely because two years have elapsed after the date of their release from imprisonment. Does passage of 2 years cleanse such a person of the corrupt character trait, purify his mind and transform him into a person fit for being enrolled as a member of this noble profession? Enrolled so that widows can go to him, matters pertaining to properties of minors and matters on behalf of workers pitted against rich and influential persons can be entrusted to him without qualms, court records can be placed at his disposal, his word at the Bar should be accepted? Should a character certificate in the form of a black gown be given to him so that a promise of probity and trustworthiness is held out to the unwary litigants seeking justice? A copy of this order may, therefore, be sent to the appropriate authorities concerned with the administration of the Bar Council of India and the State Bar Council, Ministry of Law of the Government of India and Law Commission in order that the matter may be examined fully and closely with the end in view to preserve the image of the profession and protect the seekers for justice from dangers inherent in admitting such persons on the rolls of the Bar Council."

47. In spite of the above observations no action appears to have been taken at any level. The result is that a person convicted of even a most heinous offence is eligible to be enrolled as an advocate after expiry of two years from expiry of his sentence. This aspect needs urgent attention of all concerned.

48. Apart from the above, we do not find any reason to hold that the bar applicable at the entry level is wiped out after the enrolment. Having regard to the object of the provision, the said bar certainly operates post enrolment also. However, till a suitable amendment is made, the bar is operative only for two years in terms of the statutory provision.

49. In these circumstances, Section 24-A which debars a convicted person from being enrolled applies to an advocate on the rolls of the Bar Council for a period of two years, if convicted for contempt.

50. In addition to the said disqualification, in view the judgment of this Court in *R.K. Anand*[10], unless a person purges himself of contempt or is permitted by the court, conviction results in debarring an advocate from appearing in court even in the absence of suspension or termination of the licence to practise. We therefore, uphold the directions of the High Court in para 42 of the impugned order quoted above to the effect that the appellant shall not be permitted to appear in courts of District Etah until he purges himself of contempt.

10 *R.K. Anand* v. *Delhi High Court*, (2009) 8 SCC 106 : (2010) 2 SCC (Cri) 563

Inaction of the Bar Councils—Nature of directions required

51. We may now come to the direction to be issued to the Bar Council of Uttar Pradesh or to the Bar Council of India. In the present case, in spite of direction of the High Court as long back as more than ten years, no action is shown to have been taken by the Bar Council. Notice was issued by this Court to the Bar Council of India on 27-1-2006[2] and after all the facts having been brought to the notice of the Bar Council of India, the said Bar Council has also failed to take any action. In view of such failure of the statutory obligation of the Bar Council of the State of Uttar Pradesh as well as the Bar Council of India, this Court has to exercise appellate jurisdiction under the Advocates Act in view of proved misconduct calling for disciplinary action. As already observed, in *Supreme Court Bar Assn. case*[5], this Court observed that where the Bar Council fails to take action in spite of reference made to it, this Court can exercise suo motu powers for punishing the contemnor for professional misconduct. The appellant has already been given sufficient opportunity in this regard.

52. We may add that what is permissible for this Court by virtue of statutory appellate power under Section 38 of the Advocates Act is also permissible to a High Court under Article 226 of the Constitution in appropriate cases on failure of the Bar Council to take action after its attention is invited to the misconduct.

53. Thus, apart from upholding the conviction and sentence awarded by the High Court to the appellant, except for the imprisonment, the appellant will suffer automatic consequence of his conviction under Section 24-A of the Advocates Act which is applicable at the post enrolment stage also as already observed.

54. Further, in exercise of appellate jurisdiction under Section 38 of the Advocates Act, we direct that the licence of the appellant will stand suspended for a further period of five years. He will also remain debarred from appearing in any court in District Etah even after five years unless he purges himself of contempt in the manner laid down by this Court in *Bar Council of India*[9] and *R.K. Anand*[10] and as directed by the High Court. Question (*ii*) stands decided accordingly.

Conclusion

55. We thus, conclude:

55.1. Conviction of the appellant is justified and is upheld;

55.2. Sentence of imprisonment awarded to the appellant is set aside in view of his advanced age but sentence of fine and default sentence are upheld. Further direction that the appellant shall not be permitted to appear in courts in District Etah until he purges himself of contempt is also upheld;

55.3. Under Section 24-A of the Advocates Act, the enrolment of the appellant will stand suspended for two years from the date of this order;

2 *Mahipal Singh Rana* v. *State of U.P.*, Criminal Appeal No. 63 of 2006, order dated 27-1-2006 (SC)
5 *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409
9 *Bar Council of India* v. *High Court of Kerala*, (2004) 6 SCC 311
10 *R.K. Anand* v. *Delhi High Court*, (2009) 8 SCC 106 : (2010) 2 SCC (Cri) 563

55.4. As a disciplinary measure for proved misconduct, the licence of the appellant will remain suspended for further five years.

An epilogue

56. While this appeal will stand disposed of in the manner indicated above, we do feel it necessary to say something further in continuation of repeated observations earlier made by this Court referred to above. Legal profession being the most important component of justice delivery system, it must continue to perform its significant role and regulatory mechanism and should not be seen to be wanting in taking prompt action against any malpractice. We have noticed the inaction of the Bar Council of Uttar Pradesh as well as the Bar Council of India in spite of direction in the impugned order[1] of the High Court and in spite of notice to the Bar Council of India by this Court. We have also noticed the failure of all concerned to advert to the observations[29] made by the Gujarat High Court 33 years ago. Thus, there appears to be urgent need to review the provisions of the Advocates Act dealing with regulatory mechanism for the legal profession and other incidental issues, in consultation with all concerned.

57. In a recent judgment of this Court in *Modern Dental College and Research Centre* v. *State of M.P.*[30] dated 2-5-2016, while directing review of regulatory mechanism for the medical profession, this Court observed that there is a need to review the regulatory mechanism of the other professions as well. The relevant observations are:

> "There is perhaps urgent need to review the regulatory mechanism for other service oriented professions also. We do hope this issue will receive attention of authorities concerned, including the Law Commission, in due course."

58. In view of the above, we request the Law Commission of India to go into all relevant aspects relating to regulation of legal profession in consultation with all concerned at an early date. We hope that the Government of India will consider taking further appropriate steps in the light of the report of the Law Commission within six months thereafter. The Central Government may file an appropriate affidavit in this regard within one month after expiry of one year.

59. To consider any further direction in the light of developments that may take place, put up the matter for further consideration one month after expiry of the period of one year.

1 *State of U.P.* v. *Mahipal Singh Rana*, 2005 SCC OnLine All 1256 : (2006) 1 All LJ 462
29 *'C'* v. *Bar Council of Gujarat*, (1982) 2 Guj LR 706 : 1982 SCC OnLine Guj 124
30 (2016) 7 SCC 353

(2019) 16 Supreme Court Cases 407

(BEFORE ARUN MISHRA AND VINEET SARAN, JJ.)

R. MUTHUKRISHNAN .. Petitioner;

Versus

REGISTRAR GENERAL, HIGH COURT OF JUDICATURE AT MADRAS .. Respondent.

Writ Petition (C) No. 612 of 2016[*], decided on January 28, 2019

A. Advocates Act, 1961 — S. 34 and Ss. 35 to 37 — Power of High Court to frame rules under S. 34 re conditions subject to which an advocate shall be permitted to practise in High Court and subordinate courts vis-à-vis Disciplinary powers of Bar Council of India/State Bar Councils under Ss. 35 to 37 — Relative scope of — Rr. 14-A to 14-D of Madras High Court Rules, 1970, which envisage disciplinary control over advocates, held, ultra vires S. 34 — Regulatory jurisdiction/rule-making power under S. 34 distinguished from contempt jurisdiction of High Court and Supreme Court and power of Supreme Court under Or. 4 R. 10, Supreme Court Rules, 1966 to withdraw privilege to practice as Advocate-on-Record — Need of healthy Bar and Bench relationship and their independence, stressed — Duties and responsibility of Bar Council and advocates, emphasised

— Independence of Bar should be maintained so that advocates perform their duties without fear — Nobility of profession should not be disturbed — Simultaneously, it is the duty of Bar Council of India/State Bar Councils to improve their functioning on the disciplinary side — Bar Councils should improve functioning of their Disciplinary Committees to make system more accountable, publish performance audit on disciplinary side of various Bar Councils — Same be made public — Basically Court should not control Bar — It is statutory duty of Bar Councils to make the Bar more noble and also to protect Judges and legal system, not to destroy Bar itself by inaction

— However, where Bar Council is not taking appropriate disciplinary action, High Court, in exercise of writ jurisdiction can issue appropriate direction to Bar Council to take action as per law — But neither High Court nor Supreme Court can take upon itself disciplinary control of the Bar, which under Ss. 35 to 37 of the Advocates Act has been reposed in the Bar Councils

It is possible for Court to prevent contemnor advocate from appearing before it till he purges himself of contempt but that is different from suspending or revoking his licence to practice or debarring him from practice for misconduct — In case of debarment due to contempt of court, enrolment of such advocate continues on roll of Bar Council but such advocate cannot appear in court unless he purges himself of contempt — In a given case an advocate found guilty of committing contempt of court may also be guilty of committing "professional misconduct" but said jurisdictions are separate,

[*] Under Article 32 of the Constitution of India

distinct and exercisable by different fora by following different procedures Punishments on advocates in terms of *Mahipal Singh Rana*, (2016) 8 SCC 335, can only be imposed in cases of contempt of court by advocates

— In case of Advocate-on-Record, Supreme Court possesses jurisdiction under its rules to withdraw the privilege to practice as Advocate-on-Record as that privilege is conferred by the Court — Withdrawal of that privilege does not tantamount to suspending or revoking licence

— Though appeal lies to Supreme Court under S. 38, Advocates Act, 1961, Supreme Court also cannot convert itself to a statutory body to exercise said original jurisdiction

— Recent incidents in Madras High Court are shocking — There is no room for taking out procession in court premises, slogan raising in courts, use of loudspeakers, use of intemperate language with Judges or to create any kind of disturbance in peaceful, respectful and dignified functioning of court Going to press/media to criticise Judges is contempt of gravest form In case of genuine grievance against any Judge, appropriate process is to lodge a complaint to higher authorities concerned Moreover, Judges who are attacked are also not supposed to go to press to ventilate their point of view — Courts, Tribunals and Judiciary — High Courts — Madras High Court Rules, 1970 — Rr. 14-A to 14-D — Held, ultra vires S. 34, Advocates Act — Supreme Court Rules, 1966 — Or. 4 R. 10 — Contempt of Court by Advocate — Contempt proceedings against advocates distinguished from disciplinary action under Advocates Act, 1961 — Professional standards, ethics and Duties of Advocates — Constitution of India, Arts. 129 and 215 (Paras 56 to 87 and 30 to 33)

B. **Constitution of India — Art. 226 — Appropriate disciplinary action against advocates — Failure of Bar Council to take action — High Court, held, in exercise of writ jurisdiction can issue appropriate direction to Bar Council to take action as per law — Advocates Act, 1961, Ss. 35 to 37 (Paras 80 and 81)**

C. **Advocates — Generally — Independence of Bar — Lawyers, their importance and contributions — Why independence of Bar imperative**

— They help in maintaining rule of law and ensure that various institutions work within their legal parameters Independence of legal profession is also recognised internationally Courts, Tribunals and Judiciary Judicial Process Role of the Bar, Administration and Public Institutions/Officers Rule of Law (Paras 15 to 18, 24 to 29 and 34 to 46)

D. **Advocates — Professional standards, ethics and Duties of Advocates — Healthy Bar and Bench relationship and mutual reverence, dignity and decorum, stressed**

Fine balance and active co-operation between them required to ensure independence of both and to ensure equal justice There is no room for

arrogance They form backbone of democracy Protection of basic structure of Constitution is possible by firmness of Bar and Bench and by proper discharge of their duties and responsibilities — International standards also require a healthy Bench and Bar relationship — Courts, Tribunals and Judiciary — Judicial Process — Role of the Bar, Administration and Public Institutions/ Officers — Rule of Law (Paras 19 to 24 and 34 to 46)

E. **Advocates Act, 1961 — S. 34 and Ss. 9 to 33 and 35 to 44 — Scheme of Advocates Act vis-à-vis contempt jurisdiction clarified (Paras 56 to 73)**

A petition under Article 32 of the Constitution, questioned the vires of Rules 14-A, 14-B, 14-C and 14-D of the Madras High Court Rules, 1970, made by the Madras High Court under Section 34(1) of the Advocates Act, 1961.

Allowing the petition and quashing the impugned provisions, the Supreme Court

Held :

Bar and Bench — Importance of Advocates and legal profession

While issuing notice, the Court observed that prima facie the Rules framed by the High Court appear to be encroaching on the disciplinary power of the Bar Council. (Para 14)

R. Muthukrishnan v. *High Court of Madras*, 2017 SCC OnLine SC 1791; *R. Muthukrishnan* v. *High Court of Madras*, 2018 SCC OnLine SC 3167, *relied on*

The Advocates Act has been enacted pursuant to the recommendations of the All India Bar Committee made in 1953 after taking into account the recommendations of the Law Commission on the subject of the reforms of judicial administration. The main features of the Bill for the enactment of the Act include the creation of autonomous Bar Council, one for the whole of India and one for each State. The Act has been enacted to amend and consolidate the law relating to the legal practitioners and to provide for the constitution of the Bar Council and an All India Bar. (Para 15)

The legal profession cannot be equated with any other traditional professions. It is not commercial in nature and is a noble one considering the nature of duties to be performed and its impact on the society. The independence of the Bar and autonomy of the Bar Council has been ensured statutorily in order to preserve the very democracy itself and to ensure that judiciary remains strong. Where the Bar has not performed the duty independently and has become a sycophant that ultimately results in the denigrating of the judicial system and judiciary itself. There cannot be existence of a strong judicial system without an independent Bar. (Para 16)

It cannot be gainsaid that lawyers have contributed in the struggle for independence of the nation. They have helped in the framing of the Constitution of India and have helped the courts in evolving jurisprudence by doing hard labour and research work. The nobility of the legal system is to be ensured at all costs so that the Constitution remains vibrant and to expand its interpretation so as to meet new challenges. (Para 17)

It is basically the lawyers who bring the cause to the court are supposed to protect the rights of individuals of equality and freedom as constitutionally envisaged and to ensure the country is governed by the rule of law. Considering the significance of the Bar in maintaining the rule of law, right to be treated equally and enforcement of various other fundamental rights, and to ensure that various institutions work within their parameters, its independence becomes imperative and cannot be compromised. The lawyers are supposed to be fearless and independent in the protection of rights of litigants. What lawyers are supposed to protect, is the legal system and procedure of law of deciding the cases. (Para 18)

Independent Bar and independent Bench form the backbone of the democracy. In order to preserve the very independence, the observance of constitutional values, mutual reverence and self-respect are absolutely necessary. The Bar and Bench are complementary to each other. Without active cooperation of the Bar and the Bench, it is not possible to preserve the rule of law and its dignity. Equal and even-handed justice is the hallmark of the judicial system. The protection of the basic structure of the Constitution and of rights is possible by the firmness of the Bar and the Bench and by proper discharge of their duties and responsibilities. We cannot live in a jungle raj. (Paras 19 to 24)

The role of a lawyer is indispensable in the system of delivery of justice. He is bound by the professional ethics and to maintain the high standard. His duty is to the court, to his own client, to the opposite side, and to maintain the respect of opposite party counsel also. What may be proper to others in the society, may be improper for him to do as he belongs to a respected intellectual class of the society and a member of the noble profession, the expectation from him is higher. Advocates are treated with respect in society. People repose immense faith in the judiciary and judicial system and the first person who deals with them is a lawyer. Litigants repose faith in a lawyer and share with them privileged information. They put their signatures wherever asked by a lawyer. An advocate is supposed to protect their rights and to ensure that untainted justice is delivered to his cause. (Para 25)

The high values of the noble profession have to be protected by all concerned at all costs and in all the circumstances cannot be forgotten even by the youngsters in the fight of survival in formative years. The nobility of the legal profession requires an advocate to remember that he is not over attached to any case as advocate does not win or lose a case, real recipient of justice is behind the curtain, who is at the receiving end. As a matter of fact, we do not give to a litigant anything except recognising his rights. A litigant has a right to be impartially advised by a lawyer. Advocates are not supposed to be money guzzlers or ambulance chasers. A lawyer should not expect any favour from the Judge and should not involve by any means in influencing the fair decision-making process. It is his duty to master the facts and the law and submit the same precisely in the court, his duty is not to waste the courts' time. (Para 26)

Alexander Cockburn, referred to

The Court is shocked to note that the instances of abject misbehaviour of the advocates in the premises of the Madras High Court resulting into requisitioning of CISF to maintain safety and majesty of the Court and rule of law. (Para 31)

Mahipal Singh Rana v. *State of U.P.*, (2016) 8 SCC 335 : (2016) 4 SCC (Civ) 1 : (2016) 3 SCC (Cri) 476 : (2016) 2 SCC (L&S) 390, *referred to*

The legislature has reposed faith in the autonomy of the Bar while enacting the Advocates Act and it provides for autonomous Bar Councils at the State and Central level. The ethical standard of the legal profession and legal education has been assigned to the Bar Council. It has to maintain the dignity of the legal profession and independence of the Bar. The disciplinary control has been assigned to the Disciplinary Committees of the Bar Councils of various States and the Bar Council of India and an appeal lies to the Court under Section 38 of the Act. (Para 33)

Bar and Bench — International standards

The Bar Association must be self-governing is globally recognised. Same is a resolution of the United Nations also. Even Special Rapporteur on the Independence of Judges and Lawyers finds that Bar Associations play a vital role in safeguarding the independence and integrity of the legal profession and its members. The UN's Basic Principles on the Role of Lawyers published in 1990 noted that such institutions must possess independence and its self-governing nature. The Bar Association has a crucial role to play in a democratic society to ensure the protection of human rights in particular due process and fair-trial guarantees. (Para 34)

United Nations, Basic Principles on the Role of Lawyers, *referred to*

The principle of independence of the legal profession is recognised internationally. The pursuit of the independence of the Judges and the lawyers are not, therefore, merely an aspirational principle. It is a central tenet of international human rights law of great practical importance. (Para 36)

Attorney General of Canada v. *Law Society of British Columbia*, 1982 SCC OnLine Can SC 80 : (1982) 2 SCR 307; *Andrews* v. *Law Society of British Columbia*, 1989 SCC OnLine Can SC 8 : (1989) 1 SCR 143, *referred to*

Papers of Justice Michael Kirby AC CMG on "Independence of the Legal Profession: Global and Regional Challenges": *Robert F. Drinan, S.J., Dean, Boston College Law School, Brighton, Massachusetts pointing out the independence of the Bar and its facets in 28th Annual Convention Banquet of the National Lawyers Guild held at San Francisco, California on 13-11-1965*: "The Importance of an Independent Bar" by Stephen A. Saltzburg *Scholarly Commons*, *referred to*

A Bar Association is generally deemed to be independent when it is mostly free from external influence and can withstand pressure from external sources on matters such as the regulation of the profession, disbarment proceedings and the right of lawyers to join the association. Judicial independence ensures that lawyers are able to carry out their duties in a free and secure environment and an independent judiciary also acts as a check on the independence of lawyers and vice versa. (Para 39)

There have to be clear and transparent rules on admission to the Bar, disciplinary proceedings and disbarment. (Para 40)

Rondel v. *Worsley*, (1969) 1 AC 191 : (1967) 3 WLR 1666 (HL); *Saif Ali* v. *Sydney Mitchell & Co.*, 1980 AC 198 : (1978) 3 WLR 849 (HL); *Giannarelli* v. *Wraith*, (1988) 165 CLR 543 :

(1988) 81 ALR 417; *Shapero* v. *Kentucky Bar Assn.*, 1988 SCC OnLine US SC 112 : 100 L Ed 2d 475 : 486 US 466 (1988), *referred to*

IBA Presidential Task Force, Report on the Independence of the Legal Profession, September 2016: *"Independence of the Bench; the Independence of the Bar and the Bar's Role in the Judicial System", Sir Anthony Mason, AC, KBE, Chief Justice of Australia"*: Observations of Sir Owen Dixon, Chief Justice of Australia, *referred to*

Scheme of Advocates Act vis-à-vis inherent and contempt jurisdictions of High Courts and Supreme Court

It is apparent from the provisions and scheme of the Advocates Act that it has never intended to confer the disciplinary powers upon the High Court or upon the Supreme Court except to the extent dealing with an appeal under Section 38. (Para 56)

By amending the High Court Rules in 1970, the Madras High Court has inserted impugned Rules 14-A to 14-D. The Rules have been framed in exercise of the power conferred under Section 34 of the Advocates Act. Section 34 of the Act does not confer such a power to frame rules to debar a lawyer for professional misconduct. The amendment made by providing Rules 14-A(*vii*) to (*xii*) is not authorised under the Advocates Act. The High Court has no power to exercise the disciplinary control. It would amount to usurpation of the power of the Bar Council conferred under the Advocates Act. However, the High Court may punish an advocate for contempt and then debar him from practising for such specified period as may be permissible in accordance with law, but without exercising contempt jurisdiction by way of disciplinary control no punishment can be imposed. As such the impugned Rules could not have been framed within the purview of Section 34. Provisions clearly impinge upon the independence of the Bar and encroach upon the exclusive power conferred upon the Bar Council of the State and the Bar Council of India under the Advocates Act. The amendment made to Rules 14-A to 14-D have to be held to be ultra vires of the power of the High Court. (Para 57)

The Bar Councils under the Advocates Act alone have exclusive jurisdiction to inquire into and suspend or debar an advocate from practising law for professional or other misconduct. (Para 59)

Supreme Court Bar Assn. v. *Union of India*, (1998) 4 SCC 409, *relied on*

Vinay Chandra Mishra, In re, (1995) 2 SCC 584, *held not good law*

Two separate jurisdictions — Separate forum and procedure

In a given case an advocate found guilty of committing contempt of court may at the same time be guilty of committing "professional misconduct" but the two jurisdictions are separate, distinct and exercisable by different fora by following different procedures. Exclusive power for punishing an advocate for professional misconduct is with Bar Councils. Punishment for suspending the licence of an advocate can only be imposed by a competent statutory body. Under the Advocates Act the power to grant licences is with the Bar Council, the jurisdiction to suspend the licence or to debar him vests in the same body. Though appeal lies to the Court under Section 38, it cannot convert it to statutory body exercising "original jurisdiction". The Court, in the exercise of jurisdiction under Articles 129 and 142

while punishing in the contempt of court, cannot suspend a licence to practice. It is possible for the Supreme Court or the High Court to prevent contemnor advocate to appear before it till he purges himself of contempt but that is different from suspending or revoking his licence to practice or debarring him from practice for misconduct. (Paras 60 to 73)

R.K. Anand v. *High Court of Delhi*, (2009) 8 SCC 106 : (2010) 2 SCC (Cri) 563, *explained* and *relied on*

Bar Council of Maharashtra v. *M.V. Dabholkar*, (1975) 2 SCC 702; *Hadkinson* v. *Hadkinson*, 1952 P 285 : (1952) 2 All ER 567 (CA); *Pravin C. Shah* v. *K.A. Mohd. Ali*, (2001) 8 SCC 650, *relied on*

Court on its Own Motion v. *State*, 2008 SCC OnLine Del 965 : (2008) 151 DLT 695, *held affirmed*

Harish Uppal v. *Union of India*, (2003) 2 SCC 45; *Mahipal Singh Rana* v. *State of U.P.*, (2016) 8 SCC 335 : (2016) 4 SCC (Civ) 1 : (2016) 3 SCC (Cri) 476 : (2016) 2 SCC (L&S) 390, *clarified* and *distinguished*

Bar Council of India v. *High Court of Kerala*, (2004) 6 SCC 311; *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409, *referred to*

Prayag Das v. *Civil Judge, Bulandshahr*, 1973 SCC OnLine All 333 : AIR 1974 All 133; *Mahabir Prasad Singh* v. *Jacks Aviation (P) Ltd.*, (1999) 1 SCC 37; *Ramon Services (P) Ltd.* v. *Subhash Kapoor*, (2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152; *Common Cause* v. *Union of India*, (2006) 9 SCC 304 : (2006) 2 SCC (Cri) 501; *Ashok Leyland Ltd.* v. *State of T.N.*, (2004) 3 SCC 1; *Homan* v. *Employers Reinsurance Corpn.*, 345 Mo 650 : 136 SW 2d 289, 302 (1939), *cited*

In case of Advocate-on-Record, the Supreme Court possesses jurisdiction under its rules to withdraw the privilege to practice as Advocate-on-Record as that privilege is conferred by the Court. The withdrawal of that privilege does not tantamount to suspending or revoking the licence. The provisions contained in Order 4 Rule 10 of the Supreme Court Rules have been pressed into service so as to sustain the amended Rules. As the Supreme Court enrols Advocate-on-Record it has the power to remove his name from the register of Advocate-on-Record either permanently or for a specific period. That does not tantamount to the suspension of enrolment made by the Bar Council under the Advocates Act which can be ordered by Bar Council only. (Paras 71 and 60)

Supreme Court Bar Assn. v. *Union of India*, (1998) 4 SCC 409, *distinguished*

Contempt jurisdiction is for the purpose of upholding honour or dignity of the court, to avoid sharp or unfair practices. An advocate shall not to be immersed in a blind quest of relief for his client. "Law is not trade, briefs no merchandise". His duty is to legitimately present his side of the case to assist in the administration of justice. The Judges are selected from the Bar and purity of the Bench depends on the purity of the Bar. Degraded Bar results in degraded Bench. (Para 72)

Mohit Chaudhary, In re, (2017) 16 SCC 78, *relied on*

Mahipal Singh Rana v. *State of U.P.*, (2016) 8 SCC 335 : (2016) 4 SCC (Civ) 1 : (2016) 3 SCC (Cri) 476 : (2016) 2 SCC (L&S) 390, *referred to*

Ministry of Information & Broadcasting, In re, (1995) 3 SCC 619; *R.* v. *O' Connell*, (1844) 7 Irish Law Reports 313; *Bar Council of Maharashtra* v. *M.V. Dabholkar*, (1976) 2 SCC 291; *'G', a Senior Advocate of the Supreme Court, In re*, AIR 1954 SC 557 : 1954 Cri LJ 1410;

State of U.P. v. *Mahipal Singh Rana*, 2005 SCC OnLine All 1256 : (2006) 1 All LJ 462; *Madan Gopal Gupta* v. *Agra University*, 1972 SCC OnLine All 386 : AIR 1974 All 39; *Prayag Das* v. *Civil Judge, Balandshahr*, 1973 SCC OnLine All 333 : AIR 1974 All 133; *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409; *R.K. Anand* v. *High Court of Delhi*, (2009) 8 SCC 106 : (2010) 2 SCC (Cri) 563; *Harish Uppal* v. *Union of India*, (2003) 2 SCC 45; *Bar Council of India* v. *High Court of Kerala*, (2004) 6 SCC 311, *cited*

Virginia Law Review, Vol. 11, No. 4 (Feb 1925) pp. 263 77; *Warvelle's Legal Ethics*, 2nd Edn., p. 182, *cited*

Rules 14-A to 14-D invalid

Rule 14-A provides for power to debar an advocate from appearing before the High Court and the subordinate courts in case an advocate who is found to have accepted money in the name of a Judge or on the pretext of influencing him; or an advocate who is found to have tampered with the court record or court order; or an advocate who browbeats and/or abuses a Judge or judicial officer; or an advocate who is found to have sent or spread unfounded and unsubstantiated allegations/ petitions against a judicial officer or a Judge to the Superior Court; or an advocate who actively participates in a procession inside the court campus and/or involves in gherao inside the court hall or holds placard inside the court hall; or an advocate who appears in the court under the influence of liquor may be debarred by the court. However, it is not provided that the court would do so in exercising contempt jurisdiction. The debarment is sought to be done by way of disciplinary control, which is not permissible. (Para 76)

Rule 14-B as amended provides for power to take action. Rule 14-B(*iv*) states that where any such misconduct referred to under Rule 14-A is committed by an advocate before the High Court, the High Court shall have the power to initiate action against the advocate concerned and debar him from appearing before the High Court and all subordinate courts; or where any such misconduct is committed before the Court of Principal District Judge, the Principal District Judge shall have the power to initiate action against the advocate concerned and debar him from appearing before any court within such district; or where any such misconduct referred to under Rule 14-A is committed before any subordinate court, the court concerned shall submit a report to the Principal District Court and the Principal District Judge shall have the power to initiate action against the advocate concerned and debar him from appearing before any court within such district. Rule 14-C prescribes the procedure to be followed and Rule 14-D authorises the High Court or Principal District Judge to pass an interim order prohibiting the advocate concerned from appearing before the High Court or subordinate courts, as the case may be, pending inquiry. (Para 77)

The High Court is not authorised by the provisions of the Advocates Act to frame such rules as the impugned Rules 14-A to 14-D. Section 34 does not confer such power of debarment by way of disciplinary methods or disciplinary inquiry as against an advocate as that has to be dealt with by the Bar Council as provided in other sections in a different chapter of the Act. (Para 78)

Independence of Bar — Nobility of profession — Need to improve functioning on disciplinary side

a The debarment cannot be ordered by the High Court until and unless the advocate is prosecuted under the Contempt of Courts Act. It cannot be resorted to by undertaking disciplinary proceedings as contemplated under Rules 14-A to 14-D as amended in 2016. That is a clear usurpation of the power of the Bar Council and is wholly impermissible. There is no doubt about it that the incidents pointed out were grim and stern action was required against the erring advocates as they belied b the entire nobility of the lawyer's profession. (Para 79)

Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409, *relied on*

Bar Councils on Disciplinary Side must discharge their duties effectively

It is also true that the Disciplinary Committees of the Bar Councils has failed to deliver the good. It is seen that the disciplinary control of the Bar Council is not c as effective as it should be. The cases are kept pending for a long time, then after one year they stand transferred to the Bar Council of India, as provided under the Advocates Act and thereafter again the matters are kept pending for years together. It is high time that the Bar Council, as well as the various State Bar Councils, should take stock of the situation and improve the functioning of the disciplinary side. It is absolutely necessary to maintain the independence of the Bar and if the cleaning d process is not done by the Bar itself, its independence is in danger. The corrupt, unwanted, unethical element has no place in the Bar. If nobility of the profession is destroyed, the Bar can never remain independent. Independence is constituted by the observance of certain ideals and if those ideals are lost, the independence would only remain on paper, not in real sense. (Para 80)

e The situation is really frustrating if the repository of the faith in the Bar fails to discharge their statutory duties effectively, no doubt about it that the same can be and has to be supervised by the courts. The obligatory duties of the Bar Council have found statutory expression in the Advocates Act and the Rules framed thereunder with respect to disciplinary control and cannot be permitted to become statutory mockery, such non-performance or delayed performance of such duties f is impermissible. The Bar Council is duty-bound to protect the Bar itself by taking steps against black sheep and cannot bely expectation of the Bar in general and spoil its image. The very purpose of disciplinary control by the Bar Council cannot be permitted to be frustrated. (Para 81)

In a case where the Bar Council is not taking appropriate action against the advocate, it would be open to the High Court to entertain the writ petition and to g issue appropriate directions to the Bar Council to take action in accordance with the law in the discharge of duties enjoined upon it. But at the same time, the High Court and even the Supreme Court cannot take upon itself the disciplinary control as envisaged under the Advocates Act. No doubt about it that the Court has the duty to maintain its decorum within the court premises, but that can be achieved by h taking appropriate steps under the Contempt of Courts Act in accordance with law as permitted under the decisions of the Supreme Court and even by rule-making

power under Section 34 of the Advocates Act. An advocate can be debarred from practising in the Court until and unless he purges himself of contempt. (Para 81)

Attacks on judicial system — Contempt of court

It has been seen from time to time that various attacks have been made on the judicial system. It has become very common to the members of the Bar to go to the press/media to criticise the Judges in person and to commit sheer contempt by attributing political colours to the judgments. It is nothing less than an act of contempt of gravest form. Whenever any political matter comes to the Court and is decided, either way, political insinuations are attributed by unscrupulous persons/advocates. Such acts are nothing, but an act of denigrating the judiciary itself and destroys the faith of the common man which he reposes in the judicial system. In case of genuine grievance against any Judge, the appropriate process is to lodge a complaint to the higher authorities concerned who can take care of the situation and it is impermissible to malign the system itself by attributing political motives and by making false allegations against the judicial system and its functionaries. Judges who are attacked are not supposed to go to press or media to ventilate their point of view. (Para 82)

Contempt of court is a weapon which has to be used sparingly as more the power, same requires more responsibility but it does not mean that the court has fear of taking action and its repercussions. The hallmark of the court is to provide equal and even-handed justice and to give an opportunity to each of the system to ensure that it improves upon. Unfortunately, some advocates feel that they are above the Bar Council due to its inaction and they are the only champion of the causes. The hunger for cheap publicity is increasing which is not permitted by the noble ideals cherished by the great doyens of the Bar, they have set by their conduct what should be in fact the professional etiquettes and ethics which are not capable of being defined in a narrow compass. The statutory rules prohibit advocates from advertising and in fact to cater to the press/media, distorted versions of the court proceedings is sheer misconduct and contempt of court which has become very common. It is making it more difficult to render justice in a fair, impartial and fearless manner though the situation is demoralising that something has to be done by all concerned to revamp the image of the Bar. It is not open to wash dirty linen in public and enter in accusation/debates, which tactics are being adopted by unscrupulous elements to influence the judgments and even to deny justice with ulterior motives. It is for the Bar Council and the senior members of the Bar who have never forgotten their responsibility to rise to the occasion to maintain the independence of the Bar which is so supreme and is absolutely necessary for the welfare of this country and the vibrant democracy. (Para 83)

Separation of powers

The separation of powers made by the forefathers, who framed the Constitution, ensured independent functioning. It is unfortunate without any rational basis the independence of the system is being sought to be protected by those who should keep aloof from it. Independence of each system is to come from within. If things are permitted to be settled by resorting to unscrupulous means and the institution is maligned by creating pressure of any kind, the very independence of the system would be endangered. Cases cannot be decided by media trial. The Bar and the Bench in order to protect independence have their own inbuilt machinery for redressal of grievance if any and they are supposed to settle their grievances in accordance therewith only. No outside interference is permissible. Considering the nobility, independence, dignity which is enjoined and the faith which is reposed by the common man of the country in the judiciary, it is absolutely necessary that there is no maligning of the system. Mutual respect and reverence are the only way out. A lot of sacrifices are made to serve the judiciary for which one cannot regret as it is with a purpose and to serve judiciary is not less than call of military service. For the protection of democratic values and to ensure that the rule of law prevails in the country, no one can be permitted to destroy the independence of the system from within or from outside. We have to watch on Bar independence. Let each of us ensure our own institution is not jeopardised by the blame game and make an endeavour to improve upon its own functioning and independence and how individually and collectively we can deliver the good to the citizens of this great country and deal with every tear in the eye of poor and down-trodden as per constitutional obligation enjoined on us. (Para 84)

Duty of Bar Councils — Directions

Soul searching is absolutely necessary and the blame game and maligning must stop forthwith. Confidence and reverence and positive thinking is the only way. It is pious hope that the Bar Council would improve upon the function of its Disciplinary Committees so as to make the system more accountable, publish performance audit on the disciplinary side of various Bar Councils. The same should be made public. The Bar Council of India under its supervisory control can implement good ideas as always done by it and would not lag behind in cleaning process so badly required. It is to make the profession more noble and it is absolutely necessary to remove the black sheep from the profession to preserve the rich ideals of the Bar and on which it struggled for the values of freedom. It is basically not for the Court to control the Bar. It is the statutory duty of the Bar to make it more noble and also to protect the Judges and the legal system, not to destroy the Bar itself by inaction and the system which is an important pillar of democracy. (Para 85)

Rule-making power of High Court exceeded — Autonomy of Bar Council in disciplinary matters cannot be taken over by Court

The High Court has overstretched and exceeded its power even in the situation which was so grim which appears to have compelled it to take such a measure.

In fact, its powers are much more in the Contempt of Courts Act to deal with such situation court need not look for the Bar Council to act. It can take action, punish for the Contempt of Courts Act in case it involves misconduct done in court/proceedings. Circumstances may be grim, but the autonomy of the Bar in the disciplinary matters cannot be taken over by the courts. It has other more efficient tools to maintain the decorum of court. In case power is given to the court even if complaints lodged by a lawyer to the higher administrative authorities as to the behaviour of the Judges may be correct then also he may be punished by initiating disciplinary proceedings as permitted to be done in impugned Rules 14-A to 14-D that would be making the Bar too sycophant and fearful which would not be conducive for fair administration of justice. Fair criticism of judgment and its analysis is permissible. Lawyers' fearlessness in court, independence, uprightness, honesty, equality are the virtues which cannot be sacrificed. It is duty of the lawyer to lodge appropriate complaint to the authorities concerned which right cannot be totally curtailed, however, making such allegation publicly tantamounts to contempt of court and may also be a professional misconduct that can be taken care of either by the Bar Council under the Advocates Act and by the Court under the Contempt of Courts Act. The misconduct as specified in Rule 14-A may also in appropriate cases tantamount to contempt of court and can be taken care of by the High Court in its contempt jurisdiction. (Para 86)

Resultantly, the impugned Rules 14-A to 14-D as framed in May 2016 by the Madras High Court are struck down as ultra vires Section 34 of the Advocates Act and are hereby quashed. The writ petition is allowed. No costs. (Para 87)

SS-D/62564/SVRL

Advocates who appeared in this case :
Petitioner-in-Person;
Mohan Parasaran, Senior Advocate (Nikhil Nayyar, N. Sai Vinod, Dhananjay Baijal, Divyanshu Rai and Naveen Hegde, Advocates) for the Respondent.

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The Judgment of the Court was delivered by

ARUN MISHRA, J.— The petitioner, who is an advocate, has filed the petition under Article 32 of the Constitution of India, questioning the vires of amended Rules 14-A, 14-B, 14-C and 14-D of the Rules of High Court of Madras, 1970 made by the High Court of Madras under Section 34(1) of the Advocates Act, 1961 (hereinafter referred to as "the Advocates Act").

2. The High Court has inserted Rule 14-A in the Rules of High Court of Madras, 1970 empowering the High Court to debar an advocate from practising. The High Court has been empowered to take action under Rule 14-B where any misconduct referred to under Rule 14-A is committed by an advocate before the High Court then the High Court can debar him from appearing before the High Court and all subordinate courts. Under Rule 14-B(*v*) the Principal District Judge has been empowered to initiate action against the advocate concerned and debar him from appearing before any court within such district. In case misconduct is committed before any subordinate court, the court concerned shall submit a report to the Principal District Judge and in that case, the Principal District Judge shall have the power to take appropriate action. The procedure to be followed has been provided in the newly inserted Rule 14-C and pending inquiry, there is power conferred by way of Rule 14-D to pass an interim order prohibiting the advocate concerned from appearing before the High Court or the subordinate courts.

3. The amended provisions of Rules 14-A, 14-B, 14-C and 14-D are extracted hereunder:

> "**14-A.** ***Power to debar.***— * * *
>
> (*vii*) An advocate who is found to have accepted money in the name of a Judge or on the pretext of influencing him; or
>
> (*viii*) An advocate who is found to have tampered with the court record or court order; or
>
> (*ix*) An advocate who browbeats and/or abuses a Judge or Judicial Officer; or
>
> (*x*) An advocate who is found to have sent or spread unfounded and unsubstantiated allegations/petitions against a Judicial Officer or a Judge to the superior court; or
>
> (*xi*) An advocate who actively participates in a procession inside the court campus and/or involves in gherao inside the Court Hall or holds placard inside the Court Hall; or
>
> (*xii*) An advocate who appears in the court under the influence of liquor;
>
> shall be debarred from appearing before the High Court or subordinate courts permanently or for such period as the court may think fit and the Registrar General shall thereupon report the said fact to the Bar Council of Tamil Nadu.
>
> **14-B.** ***Power to take action.***— * * *
>
> (*iv*) Where any such misconduct referred to under Rule 14-A is committed by an advocate before the High Court, the High Court shall have the power to initiate action against the advocate concerned and debar him from appearing before the High Court and all subordinate courts.
>
> (*v*) Where any such misconduct referred to under Rule 14-A is committed by an advocate before the Court of Principal District Judge, the Principal District Judge shall have the power to initiate action against the advocate concerned and debar him from appearing before any court within such District.
>
> (*vi*) Where any such misconduct referred to under Rule 14-A is committed by an advocate before any subordinate court, the court concerned shall submit

a report to the Principal District Court within whose jurisdiction it is situate and on receipt of such report, the Principal District Judge shall have the power to initiate action against the advocate concerned and debar him from appearing before any court within such district.

14-C. ***Procedure to be followed.***—The High Court or the Court of Principal District Judge, as the case may be, shall, before making an order under Rule 14-A, issue to such advocate a summon returnable before it, requiring the advocate to appear and show cause against the matters alleged in the summons and the summons shall if practicable, be served personally upon him.

14-D. ***Power to pass interim order.*** The High Court or the Court of Principal District Judge may, before making the final order under Rule 14-C, pass an interim order prohibiting the advocate concerned from appearing before the High Court or subordinate courts, as the case may be, in appropriate cases, as it may deem fit, pending inquiry."

4. Rule 14-A provides that an advocate who is found to have accepted money in the name of a Judge or on the pretext of influencing him; or who has tampered with the court record or court order; or browbeats and/or abuses a Judge or judicial officer; or is responsible for sending or spreading unfounded and unsubstantiated allegations/petitions against a judicial officer or a Judge to the superior court; or actively participates in a procession inside the court campus and/or involves in gherao inside the court hall, or holds placard inside the court hall or appears in the court under the influence of liquor, the courts have been empowered to pass an interim order of suspension pending enquiry, and ultimately to debar him from appearing in the High Court and all other subordinate courts, as the case may be.

5. The aforesaid amended Rules 14-A to 14-D came into force with effect from the date of its publication in the Gazette on 25-5-2016. The petitioner has questioned the vires of amended Rules 14-A to 14-D on the ground of being violative of Articles 14 and 19(1)(*g*) of the Constitution of India, as also Sections 30, 34(1), 35 and 49(1)(*c*) of the Advocates Act, as the power to debar for such misconduct has been conferred upon the Bar Council of Tamil Nadu and Puducherry and the High Court could not have framed such rules within ken of Section 34(1) of the Advocates Act. The High Court could have framed rules as to the "conditions subject to which an advocate shall be permitted to practice in the High Court and the courts subordinate thereto". Debarment by way of disciplinary measure is outside the purview of Section 34(1) of the Act. The Bar Council enrols advocates and the power to debar for misconduct lies with the Bar Council. The effort is to confer the unbridled power of control over the advocates which is against the rule of law. "Misconduct" has been defined under Section 35 of the Advocates Act. Reliance has been placed on a Constitution Bench decision of this Court in *Supreme Court Bar Assn.* v. *Union of India*[1].

1 (1998) 4 SCC 409

6. The High Court of Judicature at Madras in its counter-affidavit has pointed out that the Rules are kept in abeyance for the time being and the Review Committee is yet to take a decision in the matter of reviewing the Rules. In the reply filed the High Court has justified the amendment made to the Rules on the ground that they have been framed in compliance with the directions issued by this Court in *R.K. Anand* v. *High Court of Delhi*[2] in which this Court has directed the High Courts to frame rules under Section 34 of the Advocates Act and to frame the rules for having Advocates-on-Record based on the pattern of this Court. It has been further pointed out that the conduct and appearance of an advocate inside the court premises are within the jurisdiction of a court to regulate. The High Court has relied upon the decision in *Pravin C. Shah* v. *K.A. Mohd. Ali*[3] in which vires of similar rule was upheld as such the Rules framed debarring the advocates for misconduct in court are thus permissible.

7. The High Court has also relied upon the decision in *Harish Uppal* v. *Union of India*[4] to contend that court has the power to debar advocates on being found guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the courts. The High Court has referred to the decision in *Bar Council of India* v. *High Court of Kerala*[5].

8. The High Court has contended that the Rules have been framed within the framework of the directions issued by this Court and in exercise of the power conferred under Section 34(1) of the Advocates Act. Pursuant to the directions issued in *R.K. Anand case*[2], the matter was placed before the High Court's Rule Committee on 17-3-2010. The Committee consisting of Judges, members of the Bar Council and members of the Bar was formed, and the minutes were approved by the Full Court on 23-9-2010. Thereafter the Chief Justice of the High Court of Madras on 2-9-2014 constituted a committee consisting of two Judges, the Chairman of Bar Council of Tamil Nadu & Puducherry, Advocate General of the High Court, President, Madras Bar Association, President, Madras High Court Advocates' Association, and the President of Women Lawyers' Association to finalise the Rules.

9. The High Court has further contended in the reply that the Director, Government of India, Ministry of Home Affairs vide communication dated 31-5-2007 enclosed a copy of the "Guidelines" and informed the Chief Secretaries of the State Governments to review and strengthen the security arrangements for the High Courts and District/subordinate courts in the country to avoid any untoward incident. The High Court has further contended that there have been numerous instances of abject misbehaviour by the advocates within the premises of the High Court of Madras in the year 2015. The advocates have rendered the functioning of the court utterly impossible by resorting to activities like holding protests and waving placards inside the court halls, raising slogans and marching down the corridors of the court. Some advocates had resorted to using hand-held microphones to disrupt the proceedings of the Madurai Bench

2 (2009) 8 SCC 106 : (2010) 2 SCC (Cri) 563
3 (2001) 8 SCC 650
4 (2003) 2 SCC 45
5 (2004) 6 SCC 311

and even invaded the chambers of the Judges. There were two incidents when there were bomb hoaxes where clock-like devices were smuggled into the court premises and placed in certain areas. The Judges of the High Court were feeling totally insecure. Even CISF had to be employed. Thus, there was an urgent need to maintain the safety and majesty of the court and rule of law. After various meetings, the Rules were framed and notified. Order 4 Rule 10 of the Supreme Court Rules, 2013 is similar to the Rules which have been framed. In *Mohit Chaudhary, In re*[6], this Court had suspended the contemnor from practising as an Advocate-on-Record for a period of one month.

10. In *Mahipal Singh Rana* v. *State of U.P.*[7], the Court has observed that the Bar Council of India might require restructuring on the lines of other regulatory professional bodies, and had requested the Law Commission to prepare a report. An Advisory Committee was constituted by the Bar Council of India. A Sub-Committee on "Strikes, Boycotts & Abstaining from Court Works" was also constituted. The Law Commission had finalised and published Report No. 266 dated 23-3-2017 and has taken note of the Rules framed by the Madras High Court. The Court has a right to regulate the conduct of the advocates and the appearance inside the court. As such it is not a fit case to exercise extraordinary jurisdiction and a prayer has been made to dismiss the writ petition.

11. The petitioner-in-person has urged that Rules are ultra vires and impermissible to be framed within the scope of Section 34(1) of the Advocates Act. They take away the independence of the Bar and run contrary to the Constitution Bench decision of this Court in *Supreme Court Bar Assn.* v. *Union of India*[1].

12. Shri Mohan Parasaran, learned Senior Counsel appearing on behalf of the High Court, has contended that the Rules have been framed within the ambit of Section 34(1) and in tune with the directions issued by this Court in *R.K. Anand* v. *High Court of Delhi*[2]. He has also referred to various other decisions. It was submitted that under Section 34 of the Advocates Act, the High Court is empowered to frame rules to debar the advocate in case of unprofessional and/or unbecoming conduct of an advocate. Advocates have no right to go on strike or give a call of boycott, not even on a token strike, as has been observed in *Harish Uppal*[4]. It was also observed that the court may now have to frame specific rules debarring advocates, guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the courts. Advocates appear in court subject to such conditions as are laid down by the court, and practice outside court shall be subject to the conditions laid down by the Bar Council of India.

6 (2017) 16 SCC 78
7 (2016) 8 SCC 335 : (2016) 4 SCC (Civ) 1 : (2016) 3 SCC (Cri) 476 : (2016) 2 SCC (L&S) 390
1 (1998) 4 SCC 409
2 (2009) 8 SCC 106 : (2010) 2 SCC (Cri) 563
4 *Harish Uppal* v. *Union of India*, (2003) 2 SCC 45

13. Mr Parasaran has also relied upon *Bar Council of India* v. *High Court of Kerala*[5] in which the validity of Rule 11 of the Rules framed by the High Court of Kerala came up for consideration. The learned Senior Counsel has also referred to the provisions contained in Order 4 Rule 10 of the Supreme Court Rules, 2013 framed by this Court with respect to debarring an Advocate-on-Record who is guilty of misconduct or of conduct unbecoming of an Advocate-on-Record, an order may be passed to remove his name from the register of Advocates-on-Record either permanently or for such period as the court may think fit. This Court has punished an Advocate-on-Record and has debarred him for a period of one month in *Mohit Chaudhary*[6]. The High Court has framed the rules to preserve the dignity of the court and protect rule of law. Considering the prevailing situation, it was necessary to bring order in the premises of the High Court. Thus framing of rules became necessary. The Bar Council of India and the State Bar Council have failed to fulfil the duties enjoined upon them. Therefore, it became incumbent upon the High Court to act as observed in *Mahipal Singh Rana*[7] by this Court.

14. This Court has issued a notice on the petition on 9-10-2017[8] and on 4-9-2018[9]. The Court observed that prima facie the Rules framed by the High Court appear to be encroaching on the disciplinary power of the Bar Council. As the time was prayed by the High Court to submit the report of the Review Committee, time was granted. In spite of the same, the Review Committee has not considered the matter, considering the importance of the matter and the stand taken justifying the rules. We have heard the same on merits and have also taken into consideration the detailed written submissions filed on behalf of the High Court.

15. The Advocates Act has been enacted pursuant to the recommendations of the All India Bar Committee made in 1953 after taking into account the recommendations of the Law Commission on the subject of the reforms of judicial administration. The main features of the Bill for the enactment of the Act include the creation of autonomous Bar Council, one for the whole of India and one for each State. The Act has been enacted to amend and consolidate the law relating to the legal practitioners and to provide for the constitution of the Bar Council and an All India Bar.

16. The legal profession cannot be equated with any other traditional professions. It is not commercial in nature and is a noble one considering the nature of duties to be performed and its impact on the society. The independence of the Bar and autonomy of the Bar Council has been ensured statutorily in order to preserve the very democracy itself and to ensure that judiciary remains strong. Where the Bar has not performed the duty independently and has become a sycophant that ultimately results in the denigrating of the judicial

5 (2004) 6 SCC 311
6 *Mohit Chaudhary, In re*. (2017) 16 SCC 78
7 *Mahipal Singh Rana* v. *State of U.P.* (2016) 8 SCC 335 : (2016) 4 SCC (Civ) 1 : (2016) 3 SCC (Cri) 476 : (2016) 2 SCC (L&S) 390
8 *R. Muthukrishnan* v. *High Court of Madras*. 2017 SCC OnLine SC 1791
9 *R. Muthukrishnan* v. *High Court of Madras*. 2018 SCC OnLine SC 3167

system and judiciary itself. There cannot be existence of a strong judicial system without an independent Bar.

17. It cannot be gainsaid that lawyers have contributed in the struggle for independence of the nation. They have helped in the framing of the Constitution of India and have helped the courts in evolving jurisprudence by doing hard labour and research work. The nobility of the legal system is to be ensured at all costs so that the Constitution remains vibrant and to expand its interpretation so as to meet new challenges.

18. It is basically the lawyers who bring the cause to the Court are supposed to protect the rights of individuals of equality and freedom as constitutionally envisaged and to ensure the country is governed by the rule of law. Considering the significance of the Bar in maintaining the rule of law, right to be treated equally and enforcement of various other fundamental rights, and to ensure that various institutions work within their parameters, its independence becomes imperative and cannot be compromised. The lawyers are supposed to be fearless and independent in the protection of rights of litigants. What lawyers are supposed to protect, is the legal system and procedure of law of deciding the cases.

19. Role of the Bar in the legal system is significant. The Bar is supposed to be the spokesperson for the judiciary as Judges do not speak. People listen to the great lawyers and people are inspired by their thoughts. They are remembered and quoted with reverence. It is the duty of the Bar to protect honest Judges and not to ruin their reputation and at the same time to ensure that corrupt Judges are not spared. However, lawyers cannot go to the streets or go on strike except when democracy itself is in danger and the entire judicial system is at stake. In order to improve the system, they have to take recourse to the legally available methods by lodging complaint against corrupt Judges to the appropriate administrative authorities and not to level such allegation in the public. Corruption is intolerable in the judiciary.

20. The Bar is an integral part of the judicial administration. In order to ensure that judiciary remains an effective tool, it is absolutely necessary that the Bar and the Bench maintain dignity and decorum of each other. The mutual reverence is absolutely necessary. The Judges are to be respected by the Bar, they have in turn equally to respect the Bar, observance of mutual dignity, decorum of both is necessary and above all they have to maintain self-respect too.

21. It is the joint responsibility of the Bar and the Bench to ensure that equal justice is imparted to all and that nobody is deprived of justice due to economic reasons or social backwardness. The judgment rendered by a Judge is based upon the dint of hard work and quality of the arguments that are advanced before him by the lawyers. There is no room for arrogance either for a lawyer or for a Judge.

22. There is a fine balance between the Bar and the Bench that has to be maintained as the independence of the Judges and judiciary is supreme.

The independence of the Bar is on equal footing, it cannot be ignored and compromised and if lawyers have the fear of the judiciary or from elsewhere, that is not conducive to the effectiveness of the judiciary itself, that would be self-destructive.

23. Independent Bar and independent Bench form the backbone of the democracy. In order to preserve the very independence, the observance of constitutional values, mutual reverence and self-respect are absolutely necessary. The Bar and Bench are complementary to each other. Without active cooperation of the Bar and the Bench, it is not possible to preserve the rule of law and its dignity. Equal and even-handed justice is the hallmark of the judicial system. The protection of the basic structure of the Constitution and of rights is possible by the firmness of the Bar and the Bench and by proper discharge of their duties and responsibilities. We cannot live in a jungle raj.

24. The Bar is the mother of the judiciary and consists of great jurists. The Bar has produced great Judges, they have adorned the judiciary and rendered the real justice, which is essential for the society.

25. The role of a lawyer is indispensable in the system of delivery of justice. He is bound by the professional ethics and to maintain the high standard. His duty is to the court, to his own client, to the opposite side, and to maintain the respect of opposite party counsel also. What may be proper to others in the society, may be improper for him to do as he belongs to a respected intellectual class of the society and a member of the noble profession, the expectation from him is higher. Advocates are treated with respect in society. People repose immense faith in the judiciary and judicial system and the first person who deals with them is a lawyer. Litigants repose faith in a lawyer and share with them privileged information. They put their signatures wherever asked by a lawyer. An advocate is supposed to protect their rights and to ensure that untainted justice is delivered to his cause.

26. The high values of the noble profession have to be protected by all concerned at all costs and in all the circumstances cannot be forgotten even by the youngsters in the fight of survival in formative years. The nobility of the legal profession requires an advocate to remember that he is not over attached to any case as advocate does not win or lose a case, real recipient of justice is behind the curtain, who is at the receiving end. As a matter of fact, we do not give to a litigant anything except recognising his rights. A litigant has a right to be impartially advised by a lawyer. Advocates are not supposed to be money guzzlers or ambulance chasers. A lawyer should not expect any favour from the Judge and should not involve by any means in influencing the fair decision-making process. It is his duty to master the facts and the law and submit the same precisely in the court, his duty is not to waste the courts' time.

27. It is said by Alexander Cockburn that "the weapon of the advocate is the sword of a soldier, not the dagger of the assassin". It is the ethical duty of lawyers not to expect any favour from a Judge. He must rely on the precedents, read them carefully and avoid corruption and collusion of any kind, not to make false pleadings and avoid twisting of facts. In a profession, everything

cannot be said to be fair even in the struggle for survival. The ethical standard is uncompromisable. Honesty, dedication and hard work is the only source towards perfection. An advocate's conduct is supposed to be exemplary. In case an advocate causes disrepute of the Judges or his colleagues or involves himself in misconduct, that is the most sinister and damaging act which can be done to the entire legal system. Such a person is definitely deadwood and deserves to be chopped off.

28. Francis Bacon has said about the Judges that Judges ought to be more learned than witty, more reverend than plausible, and more advised than confident. Above all things, integrity is their portion and proper virtue. Patience and gravity of hearing is an essential part of justice, and an overspeaking Judge is no well-tuned cymbal.

29. The balancing of values, reverence between the Bar and the Bench is the edifice of the independent judicial system. Time has come to restore the glory and cherish the time-tested enduring ideals and principles. For a value-driven framework, it is necessary that perspective is corrected in an ethical and morally sound perspective. The perception of ambulance chasers, money guzzlers and black sheep should not be presumptive. Such public perception as to lawyers undermines the credibility of the legal profession, all the evils from the system have to be totally weeded out. No human institution is ever perfect. In order to drive towards more perfection, one has to just learn from the mistakes of the past and build upon the present days' good work so as to make out a better tomorrow.

30. The background as to what has happened in the High Court at Madras as projected in reply of the High Court, has prompted us to make the aforesaid observations. While deciding the case, we have pointed out the importance of the Bar just to remind it of its responsibilities and significance in a democratic setup. The atmosphere that had been created in Madras as projected in the counter-affidavit filed by the High Court, would have prompted us also to take a stern view of the matter by invoking the Contempt of Courts Act, but for the time gap and things have settled by now due to Herculean effort of the High Court. It is not for this Court much less for the High Court to tolerate such intemperate behaviour of the lawyers as projected in the counter-affidavit of the High Court. The acts complained of are not only contemptuous but also tantamount to gross professional misconduct.

31. There is no room for taking out the procession in the court premises, slogan raising in the courts, use of loudspeakers, use of intemperate language with the Judges or to create any kind of disturbance in the peaceful, respectful and dignified functioning of the court. Its sanctity is not less than that of a holy place reserved for noble souls. We are shocked to note that the instances of abject misbehaviour of the advocates in the premises of the High Court of Madras resulting into requisitioning of CISF to maintain safety and majesty of the Court and rule of law. It has been observed by this Court in *Mahipal Singh*

Rana[7] that the Bar Council has failed to discharge its duties on the disciplinary side. In our opinion, in case such state of affairs continues and the Bar Council fails to discharge duties the Court shall have to supervise its functioning and to pass appropriate permissible orders. Independence of the Bar and the Bench both are supreme, there has to be balance inter se.

32. We now advert to the main question whether disciplinary power vested in the Bar Council can be taken away by the Court and the international scenario in this regard.

33. The legislature has reposed faith in the autonomy of the Bar while enacting the Advocates Act and it provides for autonomous Bar Councils at the State and Central level. The ethical standard of the legal profession and legal education has been assigned to the Bar Council. It has to maintain the dignity of the legal profession and independence of the Bar. The disciplinary control has been assigned to the Disciplinary Committees of the Bar Councils of various States and the Bar Council of India and an appeal lies to this Court under Section 38 of the Act.

34. The Bar Association must be self-governing is globally recognised. Same is a resolution of the United Nations also. Even Special Rapporteur on the Independence of Judges and Lawyers* finds that Bar Associations play a vital role in safeguarding the independence and integrity of the legal profession and its members. The UN's Basic Principles on the Role of Lawyers published in 1990 noted that such institutions must possess independence and its self-governing nature. The Bar Association has a crucial role to play in a democratic society to ensure the protection of human rights in particular due process and fair-trial guarantees. The following is the extract of the report of the United Nations:

> "***Mandate***
>
> In the report, Special Rapporteur Diego García-Sayán finds that *associations should be independent and self-governing because they hold a general mandate to protect the independence of the legal profession and the interests of its members.*
>
> They should also be recognised under the law, the UN says. "Bar Associations have a crucial role to play in a democratic society to enable the free and independent exercise of the legal profession, and to ensure access to justice and the protection of human rights, in particular, due process and fair trial guarantees", UN Secretary-General António Guterres says.
>
> ***Self-governing***
>
> The UN's Basic Principles on the Role of Lawyers (published in 1990) *recognise that lawyers, like other citizens, have the right to freedom of association and assembly, which includes the right to form and join self-governing professional associations to represent their interests.* Since

7 *Mahipal Singh Rana* v. *State of U.P.*, (2016) 8 SCC 335 : (2016) 4 SCC (Civ) 1 : (2016) 3 SCC (Cri) 476 : (2016) 2 SCC (L&S) 390

* **Ed.:** Report of the Special Rapporteur on the Independence of Judges and Lawyers, A/73/365

its publication, this universal document has been referenced in wrangles between lawyers and governments.

Requirements

Existing legal standards do not provide a definition of what constitutes a professional association of lawyers. They simply focus on the necessary requirements that such institutions must possess, such as independence and a self-governing nature.

The report recommends that: "In order to ensure the integrity of the entire profession and the quality of legal services, it is preferable to *establish a single professional association regulating the legal profession*."

Elected by peers

Another principle of the UN report is that: "In order to guarantee the independence of the legal profession, the majority of members of the executive body of the Bar Association should be lawyers elected by their peers."

It says that State control of Bar Associations or governing bodies is "incompatible with the principle of the independence of the legal profession"." (emphasis supplied)

35. In the conference of Presidents of Law Association in Asia, Law Council of Australia held on 20-3-2005 at Queensland, Australia, Justice Michael Kirby AC CMG presented his papers on "Independence of the Legal Profession: Global and Regional Challenges" and pointed out the importance of the independence of the Bar in his papers thus:

"One of the features of the law that tends to irritate other sources of power is the demand of the law's practitioners — Judges and lawyers for independence. The irritation is often true of politicians, wealthy and powerful people, government officials and media editors and their columnists. *Those who are used to being obeyed and feared commonly find it intensely annoying that there is a source of power that they cannot control or buy the law and the courts*. Yet the essence of a modern democracy is observance of the rule of law. The rule of law will not prevail without assuring the law's principal actors Judges and practising lawyers and also legal academics — a very high measure of independence of mind and action.

An independent legal profession also requires that lawyers be free to carry out their work without interference or fear of reprisal. Lawyers have a duty, within the law, to advance the interests of their clients fearlessly and to assist the courts in upholding the law. *To enable them to perform these duties it is necessary that lawyers enjoy professional independence. Challenges to such independence may arise where lawyers are not able to form independent professional organisations; are limited in the clients whom they may represent; are threatened with disciplinary action, prosecution or sanctions for undertaking their professional duties*;

are in any other way intimidated or harassed because of their clients or the work that they undertake; or are subjected to unreasonable interference in the way they perform their duties.

Independence is not provided for the benefit or protection of Judges or lawyers as such. Nor is it intended to shield them from being held accountable in the performance of their professional duties and to the general law. Instead, *its purpose is the protection of the people*, affording them an independent legal profession as "... the bulwark of a free and democratic society"." (emphasis supplied)

36. Justice Kirby also pointed out in his papers that the principle of independence of the legal profession is recognised internationally. The pursuit of the independence of the Judges and the lawyers are not, therefore, merely an aspirational principle. It is a central tenet of international human rights law of great practical importance. He has further observed thus:

"... If all people are entitled to equal protection under the law, without exception, *lawyers must be able to represent unpopular clients fearlessly* and to advocate on behalf of unpopular causes, so as to uphold legal rights. *To ensure the supremacy of the law over the arbitrary exercise of power a strong and independent legal profession is therefore essential.*

In this way, an independent *legal profession is an essential guardian of human and other rights*. By ensuring that no person is beyond the reach of the law, the legal profession can operate as a check upon the arbitrary or excessive exercise of power by the government and its agents or by other powerful parties." (emphasis supplied)

He also emphasised in his papers to promote access to law, reform of the law and its rules and the engagement of lawyers with ordinary people and litigants to whom, ultimately, the law clearly belongs.

37. The independence of the Bar came to be discussed in 28th Annual Convention Banquet of the National Lawyers Guild held at San Francisco, California on 13-11-1965 in which Robert F. Drinan, S.J., Dean, Boston College Law School, Brighton, Massachusetts pointed out the independence of the Bar and its facets. He has pointed out that lawyers have to be loyal to their client's interests and faithful to the maintenance of the integrity and independence of the courts. It requires a commitment to many moral and spiritual values. Lawyers boldly challenge the inequality in every form. He also pointed out that independence of mind and heart is necessary. The Bar cannot be a prisoner of passions and prejudices and independence of judgment need to be construed and from an unreasonable fear of the power of the judiciary is necessary and has observed that a lawyer should feel free to criticise judicial decisions of every tribunal. At the same time, he said, to impugn the motives to Judges undermines the very essence of every civilised society. A lawyer has to be detached from financial considerations. If lawyers are appreciated and embraced with these sentiments, we would witness the full flowering of the indispensable element of a truly free society – an independent Bench and an independent Bar. He has observed:

"Members of the legal profession under the Anglo-American system of justice have been entrusted with dual and conflicting loyalties. They must
a be simultaneously both loyal to their client's interests and faithful to the maintenance of the integrity and independence of the courts of which they are officers. The complex dualism inherent in being both an advocate and an officer of the Court requires that the lawyer have a unique independence, — a detachment from any excessive adherence to his client's interests as well as a freedom from being inordinately attached to the rulings and
b interests of the judicial system.

The independence of the Bar does not mean, let us make it clear immediately, a state of non-commitment to truths or values. Indeed the independence of the Bar presupposes and requires a commitment to many moral and spiritual values which must be served in whole or in part by America's legal institutions. The spiritual value indispensable for an
c independent Bar to which the National Lawyers' Guild in a particular way has lent its power and prestige is the basic injustice of permitting false accusations to be made by public bodies in the name of patriotism or loyalty to the nation.

The lawyer whose mind is independent of the passions and prejudices
d of his own generation or his own century transcends the collective compromises of his own age and boldly challenges inequality in every form. *The lawyers who formed and fashioned the American Republic had the independence of mind and heart unparalleled by any subsequent generation of attorneys in America; their vision and their courage are the legacies of every lawyer in America. So few members of the Bar recognise*
e *that legacy because, being the prisoners of the passions and prejudices of their own age, they have lost that independence of judgment without which a lawyer cannot really identify himself or the noble profession of which he is a member.*

II. THE INDEPENDENCE OF THE BAR FROM JUDICIAL PRECEDENT AND FROM FEAR OF THE JUDICIARY

f If a lawyer cannot really fulfil his self-identity or carry out his moral mission unless he is independent of the prejudices and passions of his age he is similarly impeded unless he can discover and maintain an attitude of respectful independence from the judiciary. This independence from the judiciary should prompt lawyers to feel free to criticise judicial decisions consistently and courageously. This criticism should not be confined to the
g higher courts but should be applicable to every tribunal whose opinions are deficient in inherent logic and a clear consistency.

Does constitutionally protected freedom of speech or freedom of the press give immunity for slander and public defamation of the nation's highest tribunal? *And by what principle can an independent Bar justify its*
h *inaction towards those who, by calumny and libel, impugn the motives of*

Judges and undermine the very essence of every civilised society the rule of law?

The Bench generally speaking cannot be expected to rise above the level of the bar. *A Bar that is subservient and servile to the Bench will tend to corrupt both the Bench and the Bar.*

The independence of the legal profession, therefore, requires that lawyers attain such an attitude of detachment both from their duties as advocates and their role as officers of the court that they can act objectively and dispassionately, — as *neither solely the servants of their clients nor as exclusively the ministers of the courts.*" (emphasis supplied)

38. In an article "The Importance of an Independent Bar" by Stephen A. Saltzburg* published in *Scholarly Commons*, GW Law Faculty Publications and Other Works, referring to Shakespeare it was pointed out that when Dick the Butcher met to discuss the plan of attack and how they should go about gaining the political control of England. It is during this meeting that the sentence involving "kill all the lawyers" occurred. The exact sentence in the play was "The first thing we do, let's kill all the lawyers". Governments need fear lawyers and Judges only when they fear the truth. This is true here and it is true throughout the world. The relevant portion of the article is extracted hereunder:

"*Attack on lawyers*

It is from this perspective that I wish to express my concern as to recent attacks on the legal profession that have occurred here in the United States and elsewhere in the world. Attacks on the private Bar often are accompanied by attacks on the independence of the judiciary, and these attacks are a frontal assault on the very notion of the rule of law.

One law journal that views the play as I do concisely summarise it as follows:

> ... Before the plan was executed, Cade and his followers, among whom was Dick the Butcher, met to discuss the plan of attack and *how they should go about gaining the political control of England.* It is during this meeting that the sentence involving "kill all the lawyers" occurs. The exact sentence in the play was, "*The first thing we do, let's kill all the lawyers.*" We see, then, that this sentence was uttered by a riotous anarchist whose intent was to overthrow the lawful government of England. Shakespeare knew that lawyers were the primary guardians of individual liberty in democratic England. Shakespeare also knew that an anarchical uprising from within was doomed to fail unless the country's lawyers were killed.

The government has strained to keep lawyers away from Guantanamo as much as possible because it knows that their presence means challenges to unfair proceedings, to secret evidence, and to prolonged detentions. Lawyers have volunteered to represent the detainees, but their ability to do so is greatly restricted by the congressional elimination of both

* **Ed.:** Stephen A. Saltzburg, The Importance of an Independent Bar, 22 Crim. Just. (2008)

habeas corpus and the right of detainees to bring actions challenging their detentions or the conditions of their detentions.

I regret deeply what has happened in Guantanamo. After all, governments need fear lawyers and Judges only when they fear the truth. This is true here and it is true throughout the world.

... These lawyers and Judges remind us that preserving the rule of law is something never to be taken for granted. It often is a challenge requiring self-sacrifice and risk-taking.

The Supreme Court of Canada wrote eloquently in *Attorney General of Canada* v. *Law Society of British Columbia*[10], SCR at pp. 335-36: (SCC OnLine Can SC)

> '... The independence of the Bar from the State in all its pervasive manifestations is one of the hallmarks of a free society. Consequently, regulation of these members of the law profession by the State must, so far as by human ingenuity it can be so designed, be free from State interference, in the political sense, with the delivery of services to the individual citizens in the State, particularly in fields of public and criminal law. The public interest in a free society knows no area more sensitive than the independence, impartiality and availability to the general public of the members of the Bar and through those members, legal advice and services generally.'

In another Canadian case, *Andrews* v. *Law Society of British Columbia*[11], SCR at pp. 187-88, McIntyre, J. wrote: (SCC OnLine Can SC)

> '... I would observe that in the absence of an independent legal profession, skilled and qualified to play its part in the administration of justice and the judicial process, the whole legal system would be in a parlous state. In the performance of what may be called his private function, that is, in advising on legal matters and in representing clients before the courts and other tribunals, *the lawyer is accorded great powers not permitted to other professionals. ... By any standard, these powers and duties are vital to the maintenance of order in our society and the due administration of the law in the interest of the whole community*.' " (emphasis supplied)

39. The International Bar Association's Presidential Task Force was constituted to examine the question of independence of the legal profession. In the report* while discussing the indicators of independence, it has been pointed out that a Bar Association is generally deemed to be independent when it is mostly free from external influence and can withstand pressure from external sources on matters such as the regulation of the profession, disbarment proceedings and the right of lawyers to join the association. Judicial independence ensures that lawyers are able to carry out their duties in a free

10 1982 SCC OnLine Can SC 80 : (1982) 2 SCR 307

11 1989 SCC OnLine Can SC 8 : (1989) 1 SCR 143

* **Ed.**: IBA Presidential Task Force, Report on the Independence of the Legal Profession, September 2016

and secure environment and an independent judiciary also acts as a check on the independence of lawyers and vice versa. The relevant portion of the report of Task Force is extracted hereunder:

> "Judicial independence ensures that lawyers are able to carry out their duties in a free and secure environment, where they are able to ensure access to justice and provide their clients with intelligent, impartial and objective advice. An impartial and independent judiciary is more likely to be tolerant and responsive to criticism, which means that lawyers are able to freely criticise the judiciary, without fear of retaliation, whether in the form of prosecution by the government or unfavourable judicial decisions. An independent judiciary also acts as a check on the independence of lawyers and vice versa. Thus, the relationship between judicial independence and the independence of lawyers is one of mutual reliance and co-dependence."

40. There have to be clear and transparent rules on admission to the Bar, disciplinary proceedings and disbarment. In this regard, the following observation has been made by the IBA Task Force:

> "4.2.2.2. *Clear and transparent rules on admission to the Bar, disciplinary proceedings and disbarment. Clear and transparent rules on admission, disciplinary proceedings and disbarment refers to rules that are comprehensible and accessible*, so that those who are subject to the rules are able to easily access them, understand their meaning and appreciate the implications of violating them. The existence of comprehensible, clear and transparent rules on admission to the Bar ensures that those seeking admission are well-informed of the requirements and are assessed on the basis of objective criteria that apply equally to all candidates. *Clear and transparent rules reduce the risk of arbitrary disciplinary proceedings and disbarment and also guarantee that lawyers are held accountable and responsible for their actions.* Lawyers, those they represent and the general public should have access to efficient, fair and functional mechanisms that allow for the resolution of disputes between the profession and the public, an imposition of disciplinary measures (where appropriate) and an effective appeals system. This ensures that the rights of all parties are protected in accordance with the rule of law." (emphasis supplied)

41. Complete lack of self-regulation can have a negative effect on the independence of the lawyers and lawyers have to be free from fear of prosecution in controversial or unpopular cases. Political, societal and, in some circumstances, media pressure in times of war, terror, and emergency can have a profound impact on the independence of the profession. They can be attacked by unscrupulous persons for discharging their duties in a fearless manner. That is why independence of the Bar is imperative. There is a need to organise seminars, training sessions on the current development of law so as to maintain independence. It has also been observed in the report of IBA Task Force that the public often associates lawyers with corruption, lying, deceit, excessive wealth and a lavish lifestyle. The report has concluded thus:

"There is no greater issue affecting the legal profession worldwide than the manifold threats to its independence. Without independence, lawyers are left exposed to disciplinary proceedings, arbitrary disbarment, physical violence, persecution, and even death. Lawyers around the world have been targeted by Governments and by private actors simply for acting in the public interest or for undertaking cases or causes that some, including the Government, find objectionable."

42. The emphasis is on the disciplinary control by the independent bodies so as to maintain the purity, efficacy, and intellect of the judicial system itself. The resolution of IBA standards for the independence of the legal profession with respect to disciplinary proceedings is extracted hereunder:

"Disciplinary proceedings

21. *Lawyers' associations shall adopt and enforce a code of professional conduct of lawyers.*

22. *There shall be established rules for the commencement and conduct of disciplinary proceedings that incorporate the rules of natural justice.*

23. *The appropriate lawyers' association will be responsible for or be entitled to participate in the conduct of disciplinary proceedings.*

24. *Disciplinary proceedings shall be conducted in the first instance before a Disciplinary Committee of the appropriate lawyers' association.* The lawyer shall have the right to appeal from the Disciplinary Committee to an appropriate and independent appellate body." (emphasis supplied)

The IBA resolution emphasises on the Disciplinary Committee of the Bar which is necessary so as to maintain the independence of the Bar.

43. The members of the Bar are recognised as intellectuals of the society. They enjoy respect in the society being the protector of law as they fight for equality. The advocate has to fearlessly uphold the interests of his clients by all fair and honourable means without regard to any unpleasant consequences to himself or any other. An advocate is supposed to find a solution to the very real problem as "justice hurried is justice buried" and "slow justice is no justice". It has become professionally embarrassing and personally demoralising for an advocate to give an answer to his client as to the outcome of the matter and why it is pending and when it is to come up for hearing. When a member of the Bar is elevated to the Bench first relief which is felt is of answerability to the client on the aforesaid aspects which is in fact too inconvenient and embarrassing but still problem subsists and is writ large, it has to be solved every day. In such circumstances too, the tool of adjournment is used to kill justice. Adjournment poses a question mark on whether such kind of advocacy is acceptable?

44. The Bar Council has the power to discipline lawyers and maintain nobility of profession and that power imposes great responsibility. The court has the power of contempt and that lethal power too accompanies with greater responsibility. Contempt is a weapon like *Brahmastra* to be used sparingly to remain effective. At the same time, a Judge has to guard the dignity of

the court and take action in contempt and in case of necessity to impose appropriate exemplary punishment too. A lawyer is supposed to be governed by professional ethics, professional etiquette and professional ethos which are a habitual mode of conduct. He has to perform himself with elegance, dignity, and decency. He has to bear himself at all times and observe himself in a manner befitting as an officer of the court. He is a privileged member of the community and a gentleman. He has to mainsail with honesty and sail with the oar of hard work, then his boat is bound to reach to the bank. He has to be honest, courageous, eloquent, industrious, witty and judgmental.

45. In a keynote address to the 1992 Conference of the English, Scottish and Australian Bar Association held in London on 4-7-1992 on the "Independence of the Bench; the Independence of the Bar and the Bar's Role in the Judicial System"*, Sir Anthony Mason, AC, KBE, Chief Justice of Australia has pointed out that for its independence the Court should be responsible for its own administration and the expenditure of funds appropriated to it by Parliament. He has also referred to one of the recommendations made by an economist that financial incentives should be offered to Judges to expedite the disposition of cases, in that regard he has observed that incentive-based remuneration, no matter how well adapted it is to the football stadium and the production line has no place in the courtroom. Judicial independence is a privilege of and protection for the people. The appointment of the Judges should be from the dedicated advocates. With respect to the independence of the Bar, he has mentioned that lawyers stand between the subject and the Crown, and between the rich and the poor, the powerful and the weak. It is necessary that while the Bar occupies an essential part in the administration of justice, the lawyer should be completely independent and work entirely as an individual, drawing on his own resources of learning, ability, and intelligence. Next, he has referred to Sir Owen Dixon when he became the Chief Justice of Australia, said:

> "*Because it is the duty of the Barrister to stand between the subject and the Crown, and between the rich and the poor, the powerful and the weak*, it is necessary that, while the Bar occupies an essential part in the administration of justice, the Barrister should be completely independent and work entirely as an individual, drawing on his own resources of learning, ability, and intelligence." (emphasis supplied)

46. A lawyer has to balance between the duty to the court and interests of his clients. A lawyer has to be independent. He has observed thus:

> "An important element in the relationship between the court and the Barrister is the special duty which the Barrister owes to the court over and above the duty which the Barrister owes to the client. The performance of that duty contributes to the efficient disposition of litigation. In the performance of that duty the independence of the Barrister, allied to his familiarity with the judicial process, gives him a particular advantage. In balancing his duty to the court and that owed to the client, the Barrister

* **Ed.:** (1992) 10 Australian Bar Review 1-10; (1993) 19 Commonwealth Law Bulletin 753-760

is free from the allegiances and interests and the closer and continuing association which the solicitor has with the client. The significance of the Barrister's special duty to the court and the expectation that it will be performed played a part in the recognition of the common law's immunity of the Barrister from in-court liability for negligence. That immunity is founded partly on the existence of the duty and its performance with beneficial consequences for the curial process. So much is clear from the speeches in the House of Lords in *Rondel* v. *Worsley*[12] and *Saif Ali* v. *Sydney Mitchell & Co.*[13] and the majority judgments in the High Court of Australia in *Giannarelli* v. *Wraith*[14].

The Bar's best response to the new challenge which confronts it is to re-affirm its traditional professional ideals and aspire to excellence. The professional ideal is not the pursuit of wealth but public service. That is the vital difference between professionalism and commercialism.

It is timely to repeat what O'Connor, J. (with whom Rehnquist, C.J. and Scalia, J. agreed) said in *Shapero* v. *Kentucky Bar Assn.*[15]: (SCC OnLine US SC para 43)

> '*43.* One distinguishing feature of any profession, unlike other occupations that may be equally respectable, is that membership entails an ethical obligation to temper one's selfish pursuit of economic success by adhering to standards of conduct that could not be enforced either by legal fiat or through the discipline of the market. There are sound reasons to continue pursuing the goal that is implicit in the traditional view of processional life. Both the special privileges incident to membership in the professional and the advantages those privileges give in the necessary task of earning a living are means to a goal that transcends the accumulation of wealth.
>
> Unless the Bar dedicates itself to the ideal of public service, it forfeits its claim to treatment as a profession in the true sense of the term. Dedication to public service demands not only attainment of a high standard of professional skill but also faithful performance of duty to client and court and a willingness to make the professional service available to the public.' "

47. Before dilating further on the issue, we take note of the provisions contained in the Advocates Act. Section 9 provides for the constitution of Disciplinary Committee by the Bar Council. A Disciplinary Committee consists of three members, two of them are elected members of the Bar Council and the third member has to be co-opted by the Council amongst advocates. Section 9 is reproduced hereunder:

12 (1969) 1 AC 191 : (1967) 3 WLR 1666 (HL)
13 1980 AC 198 : (1978) 3 WLR 849 (HL)
14 (1988) 165 CLR 543 : (1988) 81 ALR 417
15 1988 SCC OnLine US SC 112 : 100 L Ed 2d 475 : 486 US 466 (1988)

"**9.** ***Disciplinary Committees.*** (1) A Bar Council shall constitute one or more Disciplinary Committees, each of which shall consist of three persons of whom two shall be persons elected by the Council from amongst its members and the other shall be person co-opted by the Council from amongst advocates who possess the qualifications specified in the proviso to sub-section (2) of Section 3 and who are not members of the Council, and the seniormost advocate amongst the members of a Disciplinary Committee shall be the Chairman thereof.

(2) Notwithstanding anything contained in sub-section (1), any Disciplinary Committee constituted prior to the commencement of the Advocates (Amendment) Act, 1964 (21 of 1964), may dispose of the proceedings pending before it as if this section had not been amended by the said Act."

48. Section 15 confers the power on the Bar Council to make rules for carrying out the purposes of Chapter II inter alia relating to Disciplinary Committees. Chapter III deals with the provisions regarding enrolment of advocates contained in Sections 16 to 28. Right to practice is conferred in Section 29, which provides that advocates be the only recognised class of persons entitled to practice law. Section 30 of the Advocates Act gives right of advocates to practice throughout the territory in all courts including the Supreme Court before any tribunal or person legally authorised to take evidence and before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practice. Now with the enforcement of Section 30 on 15-6-2011, after five decades, right to practice is available as provided under Section 30. Section 32 contains a non obstante clause that any court, authority or person may permit any person, not enrolled as an advocate to appear before it or him in any particular case. The advocate has to enrol himself with the State Bar Council in order to practice law as provided in Section 33 of the Advocates Act.

49. Section 34 empowers the High Court to frame rules and provide conditions subject to which an advocate shall be permitted to practice in the High Court and the courts subordinate thereto. Section 34 is extracted hereunder:

"**34.** ***Power of High Courts to make rules.***—(1) The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practice in the High Court and the courts subordinate thereto.

(1-A) The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all proceedings in the High Court or in any court subordinate thereto.

(2) Without prejudice to the provisions contained in sub-section (1), the High Court at Calcutta may make rules providing for the holding of the Intermediate and the Final examinations for articled clerks to be passed by the persons referred to in Section 58-AG for the purpose of being admitted as advocates on the State roll and any other matter connected therewith."

Section 34 clearly enables the High Courts to prescribe conditions to practice. The provisions contained in Section 34(1-A) empower the High Court to make rules regarding the fees payable as costs.

50. There can be certain conditions on right to practice and appear in a case which can be imposed by the High Court under Section 34 such as filing fresh vakalatnama, superseding the previous one that has to be done as per the High Court Rules, if any such provision has been made by the High Court. Section 34 contained in Chapter IV of the Act intends to regulate the practice of the advocate in the High Court and subordinate courts. It does not empower it to frame the rules for disciplinary control. Within the purview of Section 34 of the Act, a dress can also be prescribed for an appearance in the Court. The High Court is free to frame the rules for designation of the Senior Advocates and also the rules on similar pattern as framed by this Court for Advocates-on-Record.

51. Chapter V deals with the conduct of advocates and disciplinary control. Section 35 deals with the punishment of advocates for misconduct. Section 35 is extracted hereunder:

> "**35.** ***Punishment of advocates for misconduct.***—(1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee.
>
> (1-A) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its Disciplinary Committee and direct the inquiry to be made by any other Disciplinary Committee of that State Bar Council.
>
> (2) The Disciplinary Committee of a State Bar Council shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and the Advocate General of the State.
>
> (3) The Disciplinary Committee of a State Bar Council after giving the advocate concerned and the Advocate General an opportunity of being heard, may make any of the following orders, namely—
>
> (*a*) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;
>
> (*b*) reprimand the advocate;
>
> (*c*) suspend the advocate from practice for such period as it may deem fit;
>
> (*d*) remove the name of the advocate from the State roll of advocates.
>
> (4) Where an advocate is suspended from practice under clause (*c*) of sub-section (3), he shall, during the period of suspension, be debarred from practising in any court or before any authority or person in India.
>
> (5) Where any notice is issued to the Advocate General under sub-section (2), the Advocate General may appear before the Disciplinary Committee of the State Bar Council either in person or through any advocate appearing on his behalf.

Explanation.—In this section, [Section 37 and Section 38], the expressions "Advocate General" and "Advocate General of the State" shall, in relation to the Union Territory of Delhi, mean the Additional Solicitor General of India."

52. Section 36 deals with disciplinary powers of the Bar Council of India. Where a lawyer whose name is not on any State roll and a complaint is received that he is guilty of professional misconduct, the Bar Council of India shall refer the case for disposal to its Disciplinary Committee. The Bar Council of India can withdraw any pending inquiry before itself and decide it. Section 36 is extracted hereunder:

"**36.** ***Disciplinary powers of Bar Council of India.*** (1) Where on receipt of a complaint or otherwise the Bar Council of India has reason to believe that any advocate whose name is not entered on any State roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee.

(2) Notwithstanding anything contained in this Chapter, the Disciplinary Committee of the Bar Council of India may, either of its own motion or on a report by any State Bar Council or on an application made to it by any person interested, withdraw for inquiry before itself any proceedings for disciplinary action against any advocate pending before the Disciplinary Committee of any State Bar Council and dispose of the same.

(3) The Disciplinary Committee of the Bar Council of India, in disposing of any case under this section, shall observe, so far as may be, the procedure laid down in Section 35, the references to the Advocate General in that section being construed as references to the Attorney General of India.

(4) In disposing of any proceedings under this section the Disciplinary Committee of the Bar Council of India may make any order which the Disciplinary Committee of a State Bar Council can make under sub-section (3) of Section 35, and where any proceedings have been withdrawn for inquiry before the Disciplinary Committee of the Bar Council of India, the State Bar Council concerned shall give effect to any such order."

53. Section 36-A provides for the procedure on the change in the constitution of Disciplinary Committees. In case of change, the succeeding committee may continue the proceedings from the stage at which the proceedings were so left by its predecessor committee. Section 36-B of the Advocates Act deals with disposal of the Disciplinary Committee. A Disciplinary Committee of the State Bar Council has to decide the case within a period of one year from the date of the receipt of the complaint or the date of institution of proceedings failing which the proceedings shall stand transferred to the Bar Council of India. Section 37 of the Act provides that any person aggrieved by an order of the Disciplinary Committee of the State Bar Council may prefer an appeal to the Bar Council of India. Section 38 provides for an appeal to the Supreme Court against the order made by the Disciplinary Committee of the Bar Council of India.

54. Section 42 deals with powers of the Disciplinary Committee. The Presiding Officer of the court can be summoned with permission of the High

Court to prove misconduct against an advocate and proceedings are deemed to be judicial one as provided in Section 42(2), which is extracted hereunder:

"**42.** ***Powers of Disciplinary Committee.***—(1) The Disciplinary Committee of a Bar Council shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely—

(*a*) summoning and enforcing the attendance of any person and examining him on oath;

(*b*) requiring discovery and production of any documents;

(*c*) receiving evidence on affidavits;

(*d*) requisitioning any public record or copies thereof from any court or office;

(*e*) issuing commissions for the examination of witnesses or documents;

(*f*) any other matter which may be prescribed:

Provided that no such Disciplinary Committee shall have the right to require the attendance of

(*a*) any Presiding Officer of a court except with the previous sanction of the High Court to which such court is subordinate;

(*b*) any officer of a Revenue Court except with the previous sanction of the State Government.

(2) All proceedings before a Disciplinary Committee of a Bar Council shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code, 1860 (45 of 1860), and every such Disciplinary Committee shall be deemed to be a civil court for the purposes of Sections 480, 482 and 485 of the Code of Criminal Procedure, 1898 (5 of 1898).

(3) For the purposes of exercising any of the powers conferred by sub-section (1), a Disciplinary Committee may send to any civil court in the territories to which this Act extends, any summons or other process, for … the committee or any commission which it desires to issue, and the civil court shall cause such process to be served or such commission to be issued, as the case may be, and may enforce any such process as if it were a process for attendance or production before itself.

(4) Notwithstanding the absence of the Chairman or any member of a Disciplinary Committee on a date fixed for the hearing of a case before it, the Disciplinary Committee may, if it so thinks fit, hold or continue the proceedings on the date so fixed and no such proceedings and no order made by the Disciplinary Committee in any such proceedings shall be invalid merely by reason of the absence of the Chairman or member thereof on any such date:

Provided that no final orders of the nature referred to in sub-section (3) of Section 35 shall be made in any proceeding unless the Chairman and other members of the Disciplinary Committee are present.

(5) Where no final orders of the nature referred to in sub-section (3) of Section 35 can be made in any proceedings in accordance with the opinion of the Chairman and the members of a Disciplinary Committee either for want of majority opinion amongst themselves or otherwise, the case, with their opinion thereon, shall be laid before the Chairman of the Bar Council concerned or if the Chairman of the Bar Council is acting as the Chairman or a member of the Disciplinary Committee, before the Vice-Chairman of the Bar Council, ... as the case may be, after such hearing as he thinks fit, shall deliver his opinion and the final order of the Disciplinary Committee shall follow such opinion."

55. The order of the cost of proceedings before the Disciplinary Committee is executable as provided in Section 43. Section 44 deals with the review of orders of the Disciplinary Committee. Sections 43 and 44 are extracted hereunder:

"**43.** ***Cost of proceedings before a Disciplinary Committee.*** The Disciplinary Committee of a Bar Council may make such order as to the costs of any proceedings before it as it may deem fit and any such order shall be executable as if it were an order

(*a*) in the case of an order of the Disciplinary Committee of the Bar Council of India, of the Supreme Court;

(*b*) in the case of an order of the Disciplinary Committee of a State Bar Council, of the High Court.

44. ***Review of orders of Disciplinary Committee.*** The Disciplinary Committee of a Bar Council may of its own motion or otherwise review any order within sixty days of the date of that order passed by it under this Chapter:

Provided that no such order of review of the Disciplinary Committee of a State Bar Council shall have effect unless it has been approved by the Bar Council of India."

56. It is apparent from the aforesaid provisions and scheme of the Act that the Advocates Act has never intended to confer the disciplinary powers upon the High Court or upon this Court except to the extent dealing with an appeal under Section 38.

57. By amending the High Court Rules in 1970, the High Court of Madras has inserted impugned Rules 14-A to 14-D. The Rules have been framed in exercise of the power conferred under Section 34 of the Advocates Act. Section 34 of the Act does not confer such a power to frame rules to debar a lawyer for professional misconduct. The amendment made by providing Rules 14-A(*vii*) to (*xii*) is not authorised under the Advocates Act. The High Court has no power to exercise the disciplinary control. It would amount to usurpation of the power of the Bar Council conferred under the Advocates Act. However, the High Court may punish an advocate for contempt and then debar him from practising for such specified period as may be permissible in accordance with law, but without exercising contempt jurisdiction by way of disciplinary control no punishment can be imposed. As such the impugned Rules could not have been framed within the purview of Section 34. Provisions clearly impinge upon

the independence of the Bar and encroach upon the exclusive power conferred upon the Bar Council of the State and the Bar Council of India under the Advocates Act. The amendment made to Rules 14-A to 14-D have to be held to be ultra vires of the power of the High Court.

58. We now analyse the proposition laid down by this Court in various decisions relating to the aforesaid aspect. In *Vinay Chandra Mishra, In re*[16], this Court rejected the argument that the powers of suspending and removing the advocate from practice is vested exclusively in the Disciplinary Committee of the State Bar Council and the Bar Council of India and the Supreme Court is denuded of its power to impose such punishment both under Articles 129 and 142. The Court observed that the power of the Supreme Court under Article 129 cannot be trammelled in any way by any statutory provision including the provisions of the Advocates Act or the Contempt of Courts Act. This Court imposed the punishment on the then Chairman of the Bar Council suspended sentence of imprisonment for a period of six weeks. The sentence was suspended for four years which may be activated in case the contemnor is convicted for any other offence of contempt of court within the said period. The contemnor was also suspended from practising as an advocate for a period of three years with the consequence that all elective and nominated offices/posts held by him in his capacity as an advocate, shall stand vacated by him forthwith.

59. However, the decision was held not to be laying down a good law in a writ petition filed by *Supreme Court Bar Assn.* v. *Union of India*[1]. The Supreme Court Bar Association filed a petition under Article 32 of the Constitution of India aggrieved by the direction in *Vinay Chandra Mishra case*[16] that the contemnor shall stand suspended from practising as an advocate for a period of three years issued by this Court while invoking powers under Articles 129 and 142 of the Constitution. A prayer was made to hold that the Disciplinary Committee of the Bar Councils set up under the Advocates Act alone have exclusive jurisdiction to inquire into and suspend or debar an advocate from practising law for professional or other misconduct. The question posed for consideration in *Supreme Court Bar Assn.* v. *Union of India*[1] before this Court is extracted hereunder: (SCC p. 418, para 5)

> "5. The only question which we are called upon to decide in this petition is whether the punishment for established contempt of court committed by an advocate can include punishment to debar the advocates concerned from practice by suspending his license (sanad) for a specified period, in exercise of its powers under Article 129 read with Article 142 of the Constitution of India."

16 (1995) 2 SCC 584
1 (1998) 4 SCC 409

The Constitution Bench of Court has observed: (*Supreme Court Bar Assn. case*[1], SCC pp. 428-31, 438 & 441-46, paras 37, 39-46, 57-58, 70-72 & 76-80)

"*37.* The nature and types of punishment which a court of record can impose in a case of established contempt under the common law have now been specifically incorporated in the Contempt of Courts Act, 1971 insofar as the High Courts are concerned and therefore to the extent the Contempt of Courts Act, 1971 identifies the nature or types of punishments which can be awarded in the case of established contempt, it does not impinge upon the inherent powers of the High Court under Article 215 either. No new type of punishment can be created or assumed.

* * *

39. Suspending the licence to practise of any professional like a lawyer, doctor, chartered accountant, etc. when such a professional is found guilty of committing contempt of court, for any specified period, is not a recognised or accepted punishment which a court of record either under the common law or under the statutory law can impose on a contemnor in addition to any of the other recognised punishments.

40. The suspension of an advocate from practise and his removal from the State roll of advocates are both punishments specifically provided for under the Advocates Act, 1961, for proven "professional misconduct" of an advocate. While exercising its contempt jurisdiction under Article 129, the only *cause* or matter before this Court is regarding commission of contempt of court. There is no cause of professional misconduct, properly so called, pending before the Court. *This Court, therefore, in exercise of its jurisdiction under Article 129 cannot take over the jurisdiction of the Disciplinary Committee of the Bar Council of the State or the Bar Council of India to punish an advocate by suspending his licence, which punishment can only be imposed after a finding of "professional misconduct" is recorded in the manner prescribed under the Advocates Act and the Rules framed thereunder.*

41. When this Court is seized of a matter of contempt of court by an advocate, there is no "case, cause or matter" before the Supreme Court regarding his "professional misconduct" even though, in a given case, the contempt committed by an advocate may also amount to an abuse of the privilege granted to an advocate by virtue of the licence to practice law but no issue relating to his suspension from practise is the subject-matter of the case. The powers of this Court, under Article 129 read with Article 142 of the Constitution, being supplementary powers have "*to be used in exercise of its jurisdiction*" *in the case* under consideration by this Court. Moreover, a case of contempt of court is not stricto sensu a cause or a matter between the parties inter se. It is a matter between the court and the contemnor. It is not, strictly speaking, tried as an adversarial litigation. The party, which brings the contumacious conduct of the contemnor to the

1 *Supreme Court Bar Assn. v. Union of India*, (1998) 4 SCC 409

notice of the court, whether a private person or the subordinate court, is only an *informant* and does not have the status of a *litigant* in the contempt of court case.

42. The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the Majesty of Law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It is an unusual type of jurisdiction combining "the jury, the Judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual Judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemnor and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice.

43. The power of the Supreme Court to punish for contempt of court, though quite wide, is yet limited and cannot be expanded to include the power to determine whether an advocate is also guilty of "professional misconduct" in a summary manner, giving a go-by to the procedure prescribed under the Advocates Act. The power to do complete justice under Article 142 is in a way, corrective power, which gives preference to equity over law but it cannot be used to deprive a professional lawyer of the due process contained in the Advocates Act, 1961 by suspending his licence to practice in a summary manner while dealing with a case of contempt of court.

44. In *Vinay Chandra Mishra, In re case*[16], while imposing the punishment of suspended simple imprisonment, the Bench, as already noticed, punished the contemnor also by *suspending* his licence to practise as an advocate for a specified period. The Bench dealing with that aspect opined: (SCC p. 624, para 51)

> *'51. ... It is not disputed that suspension of the advocate from practice and his removal from the State roll of advocates are both punishments. There is no restriction or limitation on the nature of punishment that this Court may award while exercising its contempt jurisdiction and the said punishments can be the punishments the Court may impose while exercising the said jurisdiction.'*

16 *Vinay Chandra Mishra, In re*, (1995) 2 SCC 584

45. In taking this view, the Bench relied upon Articles 129 and 142 of the Constitution besides Section 38 of the Advocates Act, 1961. The Bench observed: (SCC p. 624, paras 49-50)

> '49. ... Secondly, it would also mean that for any act of contempt of court, if it also happens to be an act of professional misconduct under the Bar Council of India Rules, the courts including this Court, will have no power to take action *since the Advocates Act confers exclusive power for taking action* for such conduct on the Disciplinary Committees of the State Bar Councils and the Bar Council of India, as the case may be. Such a proposition of law on the face of it deserves rejection for the simple reason that *the disciplinary jurisdiction of the State Bar Councils and the Bar Council of India to take action for professional misconduct is different from the jurisdiction of the courts to take action against the advocates for the contempt of court. The said jurisdiction co-exist independently of each other. The action taken under one jurisdiction does not bar an action under the other jurisdiction.*
>
> 50. The contention is also misplaced for yet another and equally, if not more, important reason. In the matter of disciplinary jurisdiction under the Advocates Act, this Court is constituted as the final appellate authority *under Section 38 of the Act as pointed out earlier. In that capacity this Court can impose any of the punishments mentioned in Section 35(3) of the Act including that of removal of the name of the advocate from the State roll and of suspending him from practice.* If that be so, there is no reason why this Court while exercising its contempt jurisdiction under Article 129 read with Article 142 cannot impose any of the said punishments. The punishment so imposed will not only be not against the provisions of any statute, but in conformity with the substantive provisions of the Advocates Act and for conduct which is both a professional misconduct as well as the contempt of court. The argument has, therefore, to be rejected.'

46. These observations, as we shall presently demonstrate and we say so with utmost respect, are too widely stated and do not bear closer scrutiny. After recognising that the disciplinary jurisdiction of the State Bar Council and the Bar Council of India to take action for professional misconduct is different from the jurisdiction of the courts to take action against the advocates for the contempt of court, how could the court invest itself with the jurisdiction of the Disciplinary Committee of the Bar Council to *punish* the advocate concerned for "professional misconduct" in addition to imposing the punishment of suspended sentence of imprisonment for committing contempt of court.

* * *

57. In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing "professional misconduct", depending upon the gravity or nature of his contumacious conduct, but

the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an advocate by suspending his licence or by removal of his name from the roll of the State Bar Council for proven professional misconduct vests exclusively in the statutory authorities created under the Advocates Act, 1961, while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts.

*58. After the coming into force of the Advocates Act, 1961, exclusive power for punishing an advocate for "professional misconduct" has been conferred on the State Bar Council concerned and the Bar Council of India. That Act contains a detailed and complete mechanism for suspending or revoking the licence of an advocate for his "professional misconduct". Since the suspension or revocation of licence of an advocate has not only civil consequences but also penal consequences, the punishment being in the nature of penalty, the provisions have to be strictly construed. Punishment by way of suspending the licence of an advocate can only be imposed by the competent statutory body after the *charge* is established against the advocate in a manner prescribed by the Act and the Rules framed thereunder.*

* * *

70. In *Bar Council of Maharashtra* v. *M.V. Dabholkar*[17], a seven-Judge Bench of this Court analysed the scheme of the Advocates Act, 1961 and, inter alia, observed: (SCC p. 709, para 24)

> '*24.* The scheme and the provisions of the Act indicate that the constitution of State Bar Councils and Bar Council of India *is for one of the principal purposes* to see that the standards of professional conduct and etiquette laid down by the Bar Council of India are observed and preserved. The Bar Councils therefore entertain cases of misconduct against advocates. The Bar Councils are to safeguard the rights, privilege and interests of advocates. The Bar Council is a body corporate. The Disciplinary Committees are constituted by the Bar Council. The Bar Council is not the same body as its Disciplinary Committee. *One of the principal functions of the Bar Council in regard to standards of professional conduct and etiquette of advocates is to receive complaints against advocates and if the Bar Council has reason to believe that any advocate has been guilty of professional or other misconduct it shall refer the case for disposal to its Disciplinary Committee.* The Bar Council of a State may also of its own motion if it has reason to believe that any advocate has been guilty of professional or other misconduct it shall refer the case for disposal to its Disciplinary Committee. It is apparent that a State Bar Council not only receives a complaint but is required to apply its mind to find out whether there is

* **Ed.**: The words between two asterisks have been emphasised in original as well.
17 (1975) 2 SCC 702

any reason to believe that any advocate has been guilty of professional or other misconduct. The Bar Council of a State acts on that reasoned belief. *The Bar Council has a very important part to play, first in the reception of complaints, second, informing reasonable belief of guilt of professional or other misconduct and finally in making reference of the case to its Disciplinary Committee. The initiation of the proceeding before the Disciplinary Committee is by the Bar Council of a State. A most significant feature is that no litigant and no member of the public can straightway commence disciplinary proceedings against an advocate. It is the Bar Council of a State which initiates the disciplinary proceedings.*

71. Thus, after the coming into force of the Advocates Act, 1961 with effect from 19-5-1961, matters connected with the *enrolment* of advocates as also their punishment for professional misconduct is governed by the provisions of that Act only. Since, the jurisdiction to grant licence to a law graduate to practice as an advocate vest exclusively in the Bar Council of the State concerned, the jurisdiction to suspend his licence for a specified term or to revoke it also vests in the same body.

*72. The letters patent of the Chartered High Courts as well as of the other High Courts earlier did vest power in those High Courts to *admit* an advocate to practice.* The power of suspending from practice being incidental to that of admitting to practise also vested in the High Courts. However, by virtue of Section 50 of the Advocates Act, with effect from the date when a State Bar Council is constituted under the Act, the provisions of the letters patent of any High Court and "of any other law" insofar as they relate to the admission and enrolment of a legal practitioner or confer on the legal practitioner the right to practice in any court or before any authority or a person as also the provisions relating to the "suspension or removal" of legal practitioners, whether under the letters patent of any High Court or of any other law, have been repealed. *These powers *now* vest exclusively, under the Advocates Act, in the Bar Council of the State concerned.* Even in England the courts of justice are now relieved from disbarring advocates from practice after the power of calling to the Bar has been delegated to the Inns of Court. The power to disbar the advocate also now vests exclusively in the Inns of Court and a detailed procedure has been laid therefor.

* * *

76. This Court is indeed the final appellate authority under Section 38 of the Act but we are not persuaded to agree with the view that this Court can in exercise of its appellate jurisdiction under Section 38 of the Act impose one of the punishments prescribed under that Act while punishing a contemnor advocate in a contempt case. "Professional misconduct" of the advocate concerned is not a matter directly in issue in the contempt

* **Ed.:** The words between two asterisks have been emphasised in original as well.

of court case. While dealing with the contempt of court case, this Court is obliged to examine whether the conduct complained of amounts to contempt of court and if the answer is in the affirmative, then to sentence the contemnor for contempt of court by imposing any of the recognised and accepted punishments for committing contempt of court. Keeping in view the elaborate procedure prescribed under the Advocates Act, 1961 and the Rules framed thereunder it follows that a complaint of professional misconduct is required to be *tried* by the Disciplinary Committee of the Bar Council, like the trial of a criminal case by a court of law and an advocate may be punished on the basis of evidence led before the Disciplinary Committee of the Bar Council after being afforded an opportunity of hearing. The delinquent advocate may be suspended from practice for a specified period or even removed from the rolls of the advocates or imposed any other punishment as provided under the Act. The enquiry is a detailed and elaborate one and is not of a *summary nature*. It is therefore, not permissible for this Court to punish an advocate for "professional misconduct" in exercise of the appellate jurisdiction by converting itself as the statutory body exercising "original jurisdiction". Indeed, if in a given case the Bar Council concerned on being apprised of the contumacious and blameworthy conduct of the advocate by the High Court or this Court does not take any action against the said advocate, this Court may well have the jurisdiction in exercise of its appellate powers under Section 38 of the Act read with Article 142 of the Constitution to proceed suo motu and send for the records from the Bar Council and pass appropriate orders against the advocate concerned. In an appropriate case, this Court may consider the exercise of appellate jurisdiction even suo motu provided there is some cause pending before the Bar Council concerned, and the Bar Council does "not act" or fails to act, by sending for the record of that cause and pass appropriate orders.

77. However, the exercise of powers under the contempt jurisdiction cannot be confused with the appellate jurisdiction under Section 38 of the Act. The two jurisdictions are separate and distinct. We are, therefore, unable to persuade ourselves to subscribe to the contrary view expressed by the Bench in *Vinay Chandra Mishra case*[16] because in that case the Bar Council had not declined to deal with the matter and take appropriate action against the advocate concerned. Since there was no cause pending before the Bar Council, this Court could not exercise its appellate jurisdiction in respect of a matter which was never under consideration of the Bar Council.

78. Thus, to conclude we are of the opinion that this Court cannot in exercise of its jurisdiction under Article 142 read with Article 129 of the Constitution, while punishing a contemnor for committing contempt of court, also impose a punishment of suspending his licence to practice, where the contemnor happens to be an advocate. Such a punishment cannot even be imposed by taking recourse to the appellate powers under

16 *Vinay Chandra Mishra, In re*, (1995) 2 SCC 584

Section 38 of the Act while dealing with a case of contempt of court (and not an appeal relating to professional misconduct as such). To that extent, the law laid down in Vinay Chandra Mishra, In re[16] *is not good law and we overrule it.*

79. An advocate who is found guilty of contempt of court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case. The learned Solicitor General informed us that there have been cases where the Bar Council of India taking note of the contumacious and objectionable conduct of an advocate, had initiated disciplinary proceedings against him and even punished him for "professional misconduct", on the basis of his having been found guilty of committing contempt of court. We do not entertain any doubt that the Bar Council of the State or Bar Council of India, as the case may be, when apprised of the established contumacious conduct of an advocate by the High Court or by this Court, would rise to the occasion, and take appropriate action against such an advocate. Under Article 144 of the Constitution "all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court". The Bar Council which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette is also obliged to act "in aid of the Supreme Court". It must, whenever, facts warrant, rise to the occasion and discharge its duties uninfluenced by the position of the contemnor advocate. It must act in accordance with the prescribed procedure, whenever its attention is drawn by this Court to the contumacious and unbecoming conduct of an advocate which has the tendency to interfere with due administration of justice. It is possible for the High Courts also to draw the attention of the Bar Council of the State to a case of professional misconduct of a contemnor advocate to enable the State Bar Council to proceed in the manner prescribed by the Act and the rules framed thereunder. There is no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the courts and the majesty of law and prevent any interference in the administration of justice. The learned counsel for the parties present before us do not dispute and rightly so that whenever a court of record, records its findings about the conduct of an advocate while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the Bar Council concerned, appropriate action should be initiated by the Bar Council concerned in accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette. Nothing is more destructive of public confidence in the administration of justice than incivility, rudeness or disrespectful conduct on the part of a counsel towards

16 (1995) 2 SCC 584

the court or disregard by the court of the privileges of the Bar. In case the Bar Council, even after receiving "reference" from the court, fails to take action against the advocate concerned, this Court might consider invoking its powers under Section 38 of the Act by sending for the record of the proceedings from the Bar Council and passing apropriate orders. Of course, the appellate powers under Section 38 would be available to this Court only and not to the High Courts. We, however, hope that such a situation would not arise.

80. In a given case it may be possible, for this Court or the High Court, to prevent the contemnor advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practice as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practice as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practice as an advocate in other courts or tribunals." (emphasis supplied)

60. The Court has observed that in a given case an advocate found guilty of committing contempt of court may at the same time be guilty of committing "professional misconduct" but the two jurisdictions are separate, distinct and exercisable by different forums by following different procedures. Exclusive power for punishing an advocate for professional misconduct is with Bar Councils. Punishment for suspending the licence of an advocate can only be imposed by a competent statutory body. Relying upon the seven-Judge Bench decision in *Bar Council of Maharashtra* v. *M.V. Dabholkar*[17] that under the Advocates Act the power to grant licences is with the Bar Council, the jurisdiction to suspend the licence or to debar him vests in the same body. Though appeal lies to this Court under Section 38, it cannot convert it to statutory body exercising "original jurisdiction". This Court, in the exercise of jurisdiction under Articles 142 and 129 while punishing in the contempt of court, cannot suspend a licence to practice. The Court further held that it is possible for this Court or the High Court to prevent contemnor advocate to appear before it till he purges himself of contempt but that is different from suspending or revoking his licence to practice or debarring him from practice for misconduct. This Court also held in case of Advocate-on-Record that the Supreme Court possesses jurisdiction under its rules to withdraw the privilege to practice as Advocate-on-Record as that privilege is conferred by this Court. The withdrawal of that privilege does not tantamount to suspending or revoking the licence.

17 (1975) 2 SCC 702

61. Shri Mohan Parasaran learned Senior Counsel has relied on the matter of *Pravin C. Shah* v. *K.A. Mohd. Ali*[3] in which the question was whether an advocate found guilty of contempt of Court can appear in court until and unless he purges himself of contempt, the Court held that an advocate found guilty of contempt of court must purge himself before being permitted to appear. Rule 11 of the Rules framed by the High Court of Kerala under Section 34(1) of the Advocates Act reads thus:

> "**11.** No advocate who has been found guilty of contempt of court shall be permitted to appear, act or plead in any court unless he has purged himself of the contempt."

62. This Court has relied upon *Supreme Court Bar Assn.* v. *Union of India*[1] in *Pravin C. Shah* v. *K.A. Mohd. Ali*[3] and observed thus: (*Pravin C. Shah case*[3], SCC pp. 658-60, 663, paras 16-21, 35)

> "*16.* Rule 11 of the Rules is not a provision intended for the Disciplinary Committee of the Bar Council of the State or the Bar Council of India. It is a matter entirely concerning the dignity and the orderly functioning of the courts. The right of the advocate to practise envelopes a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, etc. *Rule 11 has nothing to do with all the acts done by an advocate during his practice except his performance insides the court. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by the Bar Council in exercise of its disciplinary powers.* The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must have the major supervisory power. Hence the court cannot be divested of the control or supervision of the court merely because it may involve the right of an advocate.
>
> *17. When the rules stipulate that a person who committed contempt of court cannot have the unreserved right to continue to appear and plead and conduct cases in the courts without any qualm or remorse, the Bar Council cannot overrule such a regulation concerning the orderly conduct of court proceedings.* Courts of law are structured in such a design as to evoke respect and reverence for the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who was found guilty of contempt of court on the previous hour, standing in the

3 (2001) 8 SCC 650
1 (1998) 4 SCC 409

court and arguing a case or cross-examining a witness on the same day, unaffected by the contemptuous behaviour he hurled at the court, would erode the dignity of the court and even corrode the majesty of it besides impairing the confidence of the public in the efficacy of the institution of the courts. This necessitates vesting of power with the High Court to formulate rules for regulating the proceeding inside the court including the conduct of advocates during such proceedings. That power should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the High Court should be in control of the former.

18. In the above context, it is useful to quote the following observations made by a Division Bench of the Allahabad High Court in *Prayag Das* v. *Civil Judge, Bulandshahr*[18]: (SCC OnLine All para 10)

> '*[T]he High Court has a power to regulate the appearance of advocates in courts*. The right to practise and the right to appear in courts are not synonymous. An advocate may carry on chamber practice or even practise in court in various other ways e.g. drafting and filing of pleadings and vakalatnama for performing those acts. For that purpose his physical appearance in court may not at all be necessary. For the purpose of regulating his appearance in court the High Court should be the appropriate authority to make *rules and on a proper construction of Section 34(1) of the Advocates Act it must be inferred that the High Court has the power to make rules for regulating the appearance of advocates and proceedings inside the courts. Obviously the High Court is the only appropriate authority to be entrusted with this responsibility.*'

19. In our view, the legal position has been correctly delineated in the above statements made by the Allahabad High Court. *The context for making those statements was that an advocate questioned the powers of the High Court in making dress regulations for the advocates while appearing in courts.*

20. Lord Denning had observed as follows in *Hadkinson* v. *Hadkinson*[19]: (All ER p. 575 B-C)

> '... I am of the opinion that the fact that a *party to a cause has disobeyed an order of the court* is not of itself a bar to his being heard, but if his disobedience is such that, so long as it continues, it impedes the course of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it may make, then *the court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed.*'

18 1973 SCC OnLine All 333 : AIR 1974 All 133
19 1952 P 285 : (1952) 2 All ER 567 (CA)

21. The observations can apply to the courts in India without any doubt and at the same time without impeding the disciplinary powers vested in the Bar Councils under the Advocates Act.

* * *

35. It is still open to the respondent advocate to purge himself of the contempt in the manner indicated above. But until that process is completed the respondent advocate cannot act or plead in any court situated within the domain of the Kerala High Court, including the subordinate courts thereunder. The Registrar of the High Court of Kerala shall intimate all the courts about this interdict as against the respondent advocates." (emphasis supplied)

63. The decision in *Pravin C. Shah*[3] operates when an advocate is found guilty of committing contempt of court and then he can be debarred from appearing in court until he purges himself of contempt as per guidelines laid down therein, however, the power to suspend enrolment and debarring from appearance are different from each other. In case of debarment, enrolment continues but a person cannot appear in court once he is guilty of contempt of court until he purges himself as provided in the rule. Debarment due to having been found guilty of contempt of court is not punishment of suspending the licence for a specified period or permanently removing him from the roll of advocates. While guilty of contempt his name still continues on the roll of the Bar Council concerned unless removed or suspended by the Bar Council by taking appropriate disciplinary proceedings. The observations made by Lord Denning in *Hadkinson* v. *Hadkinson*[19], which was also a case of disobedience of court order, and the Court may refuse to hear him until impediment is removed or good reason to remove impediment exists.

64. In *Harish Uppal* v. *Union of India*[4] while holding that advocates have no right to go on "strike", the Court observed: (SCC pp. 64-65, 71-73 & 75, paras 20, 22, 33-34 & 45)

"*20.* Thus the law is already well settled. It is the duty of every advocate who has accepted a brief to attend the trial, even though it may go on day to day and for a prolonged period. It is also settled law that a lawyer who has accepted a brief cannot refuse to attend court because a boycott call is given by the Bar Association. It is settled law that it is unprofessional as well as unbecoming for a lawyer who has accepted a brief to refuse to attend court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council. It is settled law that courts are under an obligation to hear and decide cases brought before them and cannot adjourn matters merely because lawyers are on strike. The law is that it is the duty and obligation of courts to go on with matters or otherwise it would tantamount to becoming a privy to the strike. It is also settled law that if a resolution is passed by Bar

3 *Pravin C. Shah* v. *K.A. Mohd. Ali*, (2001) 8 SCC 650
19 1952 P 285 : (1952) 2 All ER 567 (CA)
4 (2003) 2 SCC 45

Associations expressing want of confidence in judicial officers, it would amount to scandalising the courts to undermine its authority and thereby the advocates will have committed contempt of court. Lawyers have known, at least since *Mahabir Singh case*[20] that if they participate in a boycott or a strike, their action is ex facie bad in view of the declaration of law by this Court. A lawyer's duty is to boldly ignore a call for strike or boycott of court/s. Lawyers have also known, at least since *Ramon Services case*[21], that the advocates would be answerable for the consequences suffered by their clients if the non-appearance was solely on grounds of a strike call.

* * *

22. It was expected that having known the well-settled law and having seen that repeated strikes and boycotts have shaken the confidence of the public in the legal profession and affected the administration of justice, there would be self-regulation. The abovementioned interim order[22] was passed in the hope that with self-restraint and self-regulation the lawyers would retrieve their profession from lost social respect. The hope has not fructified. *Unfortunately strikes and boycott calls are becoming a frequent spectacle. Strikes, boycott calls and even unruly and unbecoming conduct are becoming a frequent spectacle.* On the slightest pretence strikes and/or boycott calls are resorted to. *The judicial system is being held to ransom. Administration of law and justice is threatened. The rule of law is undermined.*

* * *

33. The only exception to the general rule set out above appears to be Item (III). We accept that in such cases a strong protest must be lodged. We remain of the view that strikes are illegal and that courts must now take a very serious view of strikes and calls for boycott. However, as stated above, lawyers are part and parcel of the system of administration of justice. A protest on an issue involving dignity, integrity and independence of the Bar and the judiciary, provided it does not exceed one day, may be overlooked by courts, who may turn a blind eye for that one day.

34. One last thing which must be mentioned is that the right of appearance in courts is still within the control and jurisdiction of courts. Section 30 of the Advocates Act has not been brought into force and rightly so. Control of conduct in court can only be within the domain of courts. *Thus Article 145 of the Constitution of India gives to the Supreme Court and Section 34 of the Advocates Act gives to the High Court power to frame rules including rules regarding condition on which a person (including an advocate) can practise in the Supreme Court and/or in the High Court and courts subordinate thereto. Many courts have framed rules*

20 *Mahabir Prasad Singh* v. *Jacks Aviation (P) Ltd.*, (1999) 1 SCC 37

21 *Ramon Services (P) Ltd.* v. *Subhash Kapoor*, (2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152

22 *Common Cause* v. *Union of India*, (2006) 9 SCC 304 : (2006) 2 SCC (Cri) 501

in this behalf. Such a rule would be valid and binding on all. *Let the Bar take note that unless self-restraint is exercised, courts may now have to consider framing specific rules debarring advocates, guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the courts. Such a rule if framed would not have anything to do with the disciplinary jurisdiction of the Bar Councils. It would be concerning the dignity and orderly functioning of the courts.* The right of the advocate to practise envelopes a lot of acts to be performed by him in the discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for clients before an arbitrator or arbitrators, etc. Such a rule would have nothing to do with all the acts done by an advocate during his practice. He may even file *vakalat* on behalf of a client even though his appearance inside the court is not permitted. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by them in the exercise of their disciplinary powers. The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must and does have major supervisory and controlling power. Hence courts cannot be and are not divested of control or supervision of conduct in court merely because it may involve the right of an advocate. *A rule can stipulate that a person who has committed contempt of court or has behaved unprofessionally and in an unbecoming manner will not have the right to continue to appear and plead and conduct cases in courts. The Bar Councils cannot overrule such a regulation concerning the orderly conduct of court proceedings.* On the contrary, it will be their duty to see that such a rule is strictly abided by. Courts of law are structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to the law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. *The very sight of an advocate, who is guilty of contempt of court or of unbecoming or unprofessional conduct, standing in the court would erode the dignity of the court and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the courts. The power to frame such rules should not be confused with the right to practice law. While the Bar Council can exercise control over the latter, the courts are in control of the former.* This distinction is clearly brought out by the difference in language in Section 49 of the Advocates Act on the one hand and Article 145 of the Constitution of India and Section 34(1) of the Advocates Act on the other. Section 49 merely empowers the Bar Council to frame rules laying down conditions subject to which an advocate shall have a right to practise i.e. do all the

other acts set out above. However, Article 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the court including inter alia rules as to persons practising before this Court. Similarly, Section 34 of the Advocates Act empowers High Courts to frame rules, inter alia to lay down conditions on which an advocate shall be permitted to practice in courts. Article 145 of the Constitution of India and Section 34 of the Advocates Act clearly show that there is no absolute right to an advocate to appear in a court. An advocate appears in a court subject to such conditions as are laid down by the court. *It must be remembered that Section 30 has not been brought into force and this also shows that there is no absolute right to appear in a court. Even if Section 30 were to be brought into force control of proceedings in court will always remain with the court. Thus even then the right to appear in court will be subject to complying with conditions laid down by courts just as practice outside courts would be subject to conditions laid down by the Bar Council of India. There is thus no conflict or clash between other provisions of the Advocates Act on the one hand and Section 34 or Article 145 of the Constitution of India on the other.*

* * *

45. Further, appropriate rules are required to be framed by the High Courts under Section 34 of the Advocates Act by making it clear that strike by advocate/advocates would be considered interference with the administration of justice and advocate/advocates concerned may be barred from practising before courts in a district or in the High Court." (emphasis supplied)

65. The question involved in the aforesaid case was as to strike and boycott of courts by lawyers. In that context argument was raised that such an act tantamounts to contempt of court and the court must punish the party coercing others also to desist from appearance. The Court cannot be privy to boycott or strike. The decision in *Supreme Court Bar Assn.* v. *Union of India*[1] has been reiterated. The Court pointed out that let the Bar take notice of the fact that unless self-restraint is exercised, the court may have to frame rules under Section 34 of the Advocates Act debarring advocates guilty of contempt of court/unprofessional or unbecoming conduct from appearing in courts. The Court observed that in case the Bar Council fails to act, the Court may be compelled to frame appropriate Rules under Section 34 of the Act. The Court has observed about the rules that may be framed but not on the validity of the rules that actually have been framed and takes away disciplinary control of the Bar Council. The power to debar due to contempt of court is a different aspect than suspension of enrolment or debarment by way of disciplinary measure. This Court did not observe that the decision in *Supreme Court Bar Assn.* v. *Union of India*[1] is bad in law for any reason at the same time the Court has

1 (1998) 4 SCC 409

relied upon the same in *Harish Uppal*[1], and laid down that the Bar Council can exercise control on right to practice. The Court also observed that the power to control proceedings within the Court cannot be affected by enforcement of Section 30.

66. In our opinion, the decision in *Harish Uppal* v. *Union of India*[4] does not lend support to vires of Rules 14-A to 14-D as amended by the High Court of Madras. The decision follows the logic of the *Supreme Court Bar Assn.* v. *Union of India*[1] as contempt of court may involve professional misconduct if committed inside court room and takes it further with respect to the debarring of appearance in Court, which power is distinct from suspending enrolment that lies with the Bar Council as observed in *Harish Uppal*[4] also in aforesaid para 34, the decision is of no utility to sustain the vires of the impugned Rules.

67. In *Bar Council of India* v. *High Court of Kerala*[5] vires of Rule 11 of the Rules framed by the High Court of Kerala under Section 34(1) of Advocates Act came to be impinged which debarred an advocate found guilty of contempt of court from appearing, acting or pleading in court till he got purged himself of the contempt. The Court considered the Contempt of Courts Act, the Advocates Act, the Code of Criminal Procedure, and significantly distinction between contempt of court and misconduct by an advocate and observed: (SCC pp. 318-19, paras 29-34)

"29. *Punishment for commission of contempt and punishment for misconduct, professional or other misconduct, stand on different footings.* A person does not have a fundamental right to practice in any court. Such a right is conferred upon him under the provisions of the Advocates Act which necessarily would mean that the conditions laid down therein would be applicable in relation thereto. Section 30 of the Act uses the expressions "subject to" which would include Section 34 of the Act.

30. In *Ashok Leyland Ltd.* v. *State of T.N.*[23] this Court noticed: (SCC p. 36, para 79)

'*79.* ... "Subject to" is an expression whereby limitation is expressed. The order is conclusive for all purposes.'

31. This Court further noticed the dictionary meaning of "subject to" stating: (SCC p. 38, paras 92-93)

'92. Furthermore, the expression "subject to" must be given effect to.

93. In *Black's Law Dictionary*, 5th Edn., at p. 1278, the expression "subject to" has been defined as under:

4 *Harish Uppal* v. *Union of India*, (2003) 2 SCC 45
1 (1998) 4 SCC 409
5 (2004) 6 SCC 311
23 (2004) 3 SCC 1

"Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided, answerable for. (*Homan* v. *Employers Reinsurance Corpn.*[24])" '

Case law

32. A Constitution Bench of this Court in *Supreme Court Bar Assn.*[1] no doubt overruled its earlier decision in *Vinay Chandra Mishra, In re*[16] so as to hold that this Court in exercise of its jurisdiction under Article 142 of the Constitution of India is only empowered to proceed suo motu against an advocate for his misconduct and send for the records and pass an appropriate orders against the advocate concerned.

33. But it is one thing to say that the court can take suo motu cognizance of professional or other misconduct and direct the Bar Council of India to proceed against the advocate but it is another thing to say that it may not allow an advocate to practice in his court unless he purges himself of contempt.

34. Although in a case of professional misconduct, this Court cannot punish an advocate in exercise of its jurisdiction under Article 129 of the Constitution of India which can be imposed on a finding of professional misconduct recorded in the manner prescribed under the Advocates Act and the Rules framed thereunder but as has been noticed in Supreme Court Bar Assn.[1] *professional misconduct of the advocate concerned is not a matter directly in issue in the matter of contempt case.*"

(emphasis supplied)

68. The Court referred to the observation in *Supreme Court Bar Assn.* v. *Union of India*[1], *Harish Uppal*[4] and held that in a case of professional misconduct the Court cannot punish an advocate under Article 129 which has to be done under the Advocates Act by the Bar Council. In the Contempt of Courts Act, misconduct is directly not in issue. After considering the principles of natural justice the Court observed that it cannot be stretched too far and Rule 11 cannot be said to be violative of the provisions contained in Article 14 of the Constitution of India.

69. In *R.K. Anand* v. *High Court of Delhi*[2] relied on by the respondents, the witnesses were tampered with by the appellant. A sting operation was conducted by the TV Channel in connection with BMW hit and run case. Advocate R.K. Anand was found to be guilty of contempt of court. He was debarred from appearing in court for a certain period. The Court also dealt with a motivated application filed for recusal. The Court expressed concern and sharp deprecation of such tendencies and practices of members of the Bar and held that such prayer for recusal ordinarily should be viewed as interference

24 345 Mo 650 : 136 SW 2d 289, 302 (1939)
1 *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409
16 *Vinay Chandra Mishra, In re*, (1995) 2 SCC 584
4 *Harish Uppal* v. *Union of India*, (2003) 2 SCC 45
2 (2009) 8 SCC 106 : (2010) 2 SCC (Cri) 563

in the due course of justice leading to penal consequences. The submission was raised that professional misconduct is dealt with under the Advocates Act. The Delhi High Court Rules do not provide that an advocate on conviction for contempt of court would be barred from appearing in court. This Court noted the decisions in *Supreme Court Bar Assn.* v. *Union of India*[1], upheld the order[25] of the High Court and directed the High Courts to frame the Rules under Section 34 without further delay. This Court has observed: (SCC pp. 186-88, paras 237-40 & 242-43)

> "*237.* In both *Pravin C. Shah* v. *K.A. Mohd. Ali*[3] and *Harish Uppal* v. *Union of India*[4], the earlier Constitution Bench decision in *Supreme Court Bar Assn.* v. *Union of India*[1] was extensively considered. The decision in *Harish Uppal*[4] was later followed in a three-Judge Bench decision in *Bar Council of India* v. *High Court of Kerala*[5].
>
> *238.* In *Supreme Court Bar Assn.*[1] the direction prohibiting an advocate from appearing in court for a specified period was viewed as a total and complete denial of his right to practice law and the Bar was considered as a punishment inflicted on him. In *Harish Uppal*[4] it was seen not as punishment for professional misconduct but as a measure necessary to regulate the court's proceedings and to maintain the dignity and orderly functioning of the courts. *We may respectfully add that in a given case a direction disallowing an advocate who is convicted of criminal contempt from appearing in court may not only be a measure to maintain the dignity and* orderly functioning of the courts but may become necessary for the self-protection of the court and for preservation of the purity of court proceedings. Let us, for example, take the case where an advocate is shown to have accepted money in the name of a Judge or on the pretext of influencing him; or where an advocate is found tampering with the court's record; or where an advocate is found actively taking part in faking court orders (fake bail orders are not unknown in several High Courts!); or where an advocate has made it into a practice to browbeat and abuse Judges and on that basis has earned the reputation to get a case transferred from an "inconvenient" court; or where an advocate is found to be in the habit of sending unfounded and unsubstantiated allegation petitions against judicial officers and Judges to the superior courts. Unfortunately, these examples are not from imagination. These things are happening more frequently than we care to acknowledge.
>
> *239.* We may also add that these illustrations are not exhaustive *but there may be other ways in which a malefactor's conduct and actions may pose a real and imminent threat to the purity of court proceedings, cardinal to any court's functioning, apart from constituting a substantive offence*

1 (1998) 4 SCC 409
25 *Court on its Own Motion* v. *State*, 2008 SCC OnLine Del 965 : (2008) 151 DLT 695
3 (2001) 8 SCC 650
4 (2003) 2 SCC 45
5 (2004) 6 SCC 311

and contempt of court and professional misconduct. In such a situation the court does not only have the right but it also has the obligation cast upon it to protect itself and save the purity of its proceedings from being polluted in any way and to that end bar the malefactor from appearing before the courts for an appropriate period of time.

240. It is already explained in *Harish Uppal*[1] that a direction of this kind by the court cannot be equated with punishment for professional misconduct. *Further, the prohibition against appearance in courts does not affect the right of the lawyer concerned to carry on his legal practice in other ways as indicated in the decision*. We respectfully submit that the decision in *Harish Uppal* v. *Union of India*[1] places the issue in correct perspective and must be followed to answer the question at issue before us.

* * *

242. Ideally every High Court should have rules framed under Section 34 of the Advocates Act in order to meet with such eventualities but even in the absence of the rules the High Court cannot be held to be helpless against such threats. In a matter as fundamental and grave as preserving the purity of judicial proceedings, the High Court would be free to exercise the powers vested in it under Section 34 of the Advocates Act notwithstanding the fact that rules prescribing the manner of exercise of power have not been framed. But in the absence of statutory rules providing for such a course an advocate facing the charge of contempt would normally think of only the punishments specified under Section 12 of the Contempt of Courts Act. He may not even imagine that at the end of the proceeding he might end up being debarred from appearing before the court. The rules of natural justice, therefore, demand that before passing an order debarring an advocate from appearing in courts he must be clearly told that his alleged conduct or actions are such that if found guilty he might be debarred from appearing in courts for a specific period. The warning may be given in the initial notice of contempt issued under Section 14 or Section 17 (as the case may be) of the Contempt of Courts Act. Or such a notice may be given after the proceedee is held guilty of criminal contempt before dealing with the question of punishment.

243. In order to avoid any such controversies in future, all the High Courts that have so far not framed rules under Section 34 of the Advocates Act are directed to frame the rules without any further delay. It is earnestly hoped that all the High Courts shall frame the rules within four months from today. The High Courts may also consider framing rules for having Advocates-on-Record on the pattern of the Supreme Court of India." (emphasis supplied)

70. The decision in *R.K. Anand*[2] is not a departure from aforesaid other decisions but rather affirms them. It was a case of debarring the advocate for a

1 *Harish Uppal* v. *Union of India*, (2003) 2 SCC 45

2 *R.K. Anand* v. *High Court of Delhi*, (2009) 8 SCC 106 : (2010) 2 SCC (Cri) 563

particular period from appearance on being found guilty of contempt of court, not a case of suspension of enrolment by way of disciplinary proceedings which power lies with the Bar Council.

71. The provisions contained in Order 4 Rule 10 of the Supreme Court Rules have been pressed into service so as to sustain the amended Rules. Rule 10 reads as follows:

> "**10.** When, on the complaint of any person or otherwise, the Court is of the opinion that an Advocate-on-Record has been guilty of misconduct or of conduct unbecoming of an Advocate-on-Record, the Court may make an order removing his name from the register of Advocates-on-Record either permanently or for such period as the Court may think fit and the Registrar shall thereupon report the said fact to the Bar Council of India and to State Bar Council concerned:
>
> Provided that the Court shall, before making such order, issue to such Advocate-on-Record a summons returnable before the Court or before a Special Bench to be constituted by the Chief Justice, requiring the Advocate-on-Record to show cause against the matters alleged in the summons, and the summons shall, if practicable, be served personally upon him with copies of any affidavit or statement before the Court at the time of the issue of the summons.
>
> *Explanation.* For the purpose of these Rules, misconduct or conduct unbecoming of an Advocate-on-Record shall include
>
> (*a*) mere name lending by an Advocate-on-Record without any further participation in the proceedings of the case;
>
> (*b*) absence of the Advocate-on-Record from the Court without any justifiable cause when the case is taken up for hearing; and
>
> (*c*) failure to submit appearance slip duly signed by the Advocate-on-Record of actual appearances in the Court."

The aforesaid rule has been considered in *Supreme Court Bar Assn.* v. *Union of India*[1] and it is observed that as this Court enrols Advocate-on-Record it has the power to remove his name from the register of Advocate-on-Record either permanently or for a specific period. That does not tantamount to the suspension of enrolment made by the Bar Council under the Advocates Act which can be ordered by the Bar Council only.

72. The decision in *Mohit Chaudhary, In re*[6] has also been relied upon in which this Court considered Rule 10 and debarred an advocate to practice as Advocate-on-Record for a period of one month from the date of order. At the same time, this Court has observed that a lawyer is under obligation to do nothing that shall detract from the dignity of the Court. Contempt jurisdiction is for the purpose of upholding honour or dignity of the court, to avoid sharp or unfair practices. An advocate shall not to be immersed in a blind quest of relief for his client. "Law is not trade, briefs no merchandise". His duty is

1 (1998) 4 SCC 409

6 *Mohit Chaudhary, In re*, (2017) 16 SCC 78

to legitimately present his side of the case to assist in the administration of justice. The Judges are selected from the Bar and purity of the Bench depends on the purity of the Bar. Degraded Bar results in degraded Bench. The Court has referred to articles and standard of processional conduct and etiquettes thus: (SCC pp. 88-92, paras 20-28, 30 & 32)

> "*20. Warvelle's Legal Ethics*, 2nd Edn. at p. 182 sets out the obligation of a lawyer as:
>
> 'A lawyer is under obligation to do nothing that shall detract from the dignity of the court, of which he is himself a sworn officer and assistant. He should at all times pay deferential respect to the Judge, and scrupulously observe the decorum of the courtroom.'
>
> *21.* The contempt jurisdiction is not only to protect the reputation of the Judge concerned so that he can administer justice fearlessly and fairly, but also to protect "the fair name of the judiciary". The protection in a manner of speaking, extends even to the Registry in the performance of its task and false and unfair allegations which seek to impede the working of the Registry and thus the administration of justice, made with oblique motives cannot be tolerated. In such a situation in order to uphold the honour and dignity of the institution, the Court has to perform the painful duties which we are faced with in the present proceedings. Not to do so in the words of P.B. Sawant, J. in *Ministry of Information & Broadcasting, In re*[26] would: (SCC p. 635, para 20)
>
> '*20.* ... The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty. We say no more.'
>
> *22.* Now turning to the "Standards of Professional Conduct and Etiquette" of the Bar Council of India Rules contained in Section I of Chapter II, Part VI, the duties of an advocate towards the court have been specified. We extract the 4th duty set out as under:
>
> '**4.** An advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the court, opposing counsel or parties which the advocate himself ought not to do. An advocate shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouthpiece of the client, and shall exercise his own judgment in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in court.'

26 (1995) 3 SCC 619

23. In the aforesaid context the aforesaid principle in different words was set out by Crampton, J. in *R.* v. *O' Connell*[27] as under:

> 'The advocate is a representative but not a delegate. He gives to his client the benefit of his learning, his talents and his judgment; but all through he never forgets what he owes to himself and to others. He will not knowingly misstate the law, he will not wilfully misstate the facts, though it be to gain the case for his client. He will ever bear in mind that if he be an advocate of an individual and retained and remunerated often inadequately, for valuable services, yet he has a prior and perpetual retainer on behalf of truth and justice and there is no Crown or other licence which in any case or for any party or purpose can discharge him from that primary and paramount retainer.'

24. The fundamentals of the profession thus require an advocate not to be immersed in a blind quest of relief for his client. The dignity of the institution cannot be violated in this quest as "law is no trade, briefs no merchandise" as per Krishna Iyer, J. in *Bar Council of Maharashtra* v. *M.V. Dabholkar*[28] (SCC p. 301, para 23).

25. It is also pertinent to note at this point, the illuminating words of Vivian Bose, J. in *'G', a Senior Advocate of the Supreme Court, In re*[29], who elucidated: (AIR p. 558, para 10)

> '*10.* ... To use the language of the army, an advocate of this Court is expected at all times to comport himself in a manner befitting his status as an "officer and a gentleman".'

26. It is as far back as in 1925 that an article titled "The Lawyer as an Officer of the Court"[30] published in the *Virginia Law Review*, lucidly set down what is expected from the lawyer which is best set out in its own words:

> 'The duties of the lawyer to the court spring directly from the relation that he sustains to the court as an officer in the administration of justice. The law is not a mere private calling, but is a profession which has the distinction of being an integral part of the State's judicial system. As an officer of the court the lawyer is, therefore, bound to uphold the dignity and integrity of the court; to exercise at all times respect for the court in both words and actions; to present all matters relating to his client's case openly, being careful to avoid any attempt to exert private influence upon either the Judge or the jury; and to be frank and candid in all dealings with the court, "using no deceit, imposition or evasion", as by misreciting witnesses or misquoting precedents. "It must always be understood", says Mr Christian Doerfler, in an address before the Milwaukee County Bar Association, in December 1911,

27 (1844) 7 Irish Law Reports 313
28 (1976) 2 SCC 291
29 AIR 1954 SC 557 : 1954 Cri LJ 1410
30 *Virginia Law Review*, Vol. 11, No. 4 (Feb 1925) pp. 263-77.

"that the profession of law is instituted among men for the purpose of aiding the administration of justice. A proper administration of justice does not mean that a lawyer should succeed in winning a lawsuit. It means that he should properly bring to the attention of the court everything by way of fact and law that is available and legitimate for the purpose of properly presenting his client's case.

His duty as far as his client is concerned is simply to legitimately present his side of the case. His duty as far as the public is concerned and as far as he is an officer of the Court is to aid and assist in the administration of justice." '

In this connection, the timely words of Mr Warvelle may also well be remembered:

'But the lawyer is not alone a gentleman; he is a sworn minister of justice. His office imposes high moral duties and grave responsibilities, and he is held to a strict fulfilment of all that these matters imply. Interests of vast magnitude are entrusted to him; confidence is imposed in him; life, liberty and property are committed to his care. He must be equal to the responsibilities which they create, and if he betrays his trust, neglects his duties, practices deceit, or panders to vice, then the most severe penalty should be inflicted and his name stricken from the roll.'

That the lawyer owes a high duty to his profession and to his fellow members of the Bar is an obvious truth. His profession should be his pride, and to preserve its honour pure and unsullied should be among his chief concerns. "Nothing should be higher in the estimation of the advocate", declares Mr Alexander H. Robbins, "next after those sacred relations of home and country than his profession. She should be to him the "fairest of ten thousand" among the institutions of the earth. He must stand for her in all places and resent any attack on her honour — as he would if the same attack were to be made against his own fair name and reputation. He should enthrone her in the sacred places of his heart, and to her, he should offer the incense of constant devotion. For she is a jealous mistress.

Again, it is to be borne in mind that the Judges are selected from the ranks of lawyers. The purity of the Bench depends upon the purity of the Bar.

'The very fact, then, that one of the coordinate departments of the Government is administered by men selected only from one profession gives to that profession a certain pre-eminence which calls for a high standard of morals as well as intellectual attainments. The integrity of the judiciary is the safeguard of the nation, but the character of the Judges is practically but the character of the lawyers. Like begets like. A degraded Bar will inevitably produce a degraded Bench, and just as certainly may we expect to find the highest excellence in a judiciary drawn from the ranks of an enlightened, learned and moral Bar.'

27. He ends his article in the following words:

> 'No client, corporate or individual, however powerful, nor any cause civil or political, however important, is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honour of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But, above all, a lawyer will find his highest honour in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.'

28. On examination of the legal principles an important issue emerges: what should be the end of what the contemnor had started but has culminated in an impassioned plea of Mr K.K. Venugopal, learned Senior Advocate supported by the representatives of the Bar present in court, marking their appearance for the contemnor. We are inclined to give due consideration to such a plea but are unable to persuade ourselves to let the contemnor go scot-free, without any consequences. We are thus not inclined to proceed further in the contempt jurisdiction except to caution the contemnor that this should be the first and the last time of such a misadventure. But the matter cannot rest only at that.

* * *

30. We are of the view that the privilege of being an Advocate-on-Record under the rules has clearly been abused by the contemnor. The conduct was not becoming of an advocate much less an Advocate-on-Record in the Supreme Court.

* * *

32. The aforesaid rule makes it clear that whether on the complaint of any person or otherwise, in case of misconduct or a conduct unbecoming of an Advocate-on-Record, the court may make an order removing his name from the register of Advocate-on-Record permanently, or for a specified period. We are not referring to the right to practice as an advocate, and the name entered on the rolls of any State Bar Council, which is a necessary requirement, before a person takes the examination of Advocate-on-Record. The present case is clearly one where this Court is of the opinion that the conduct of the contemnor is unbecoming of an Advocate-

on-Record. The prerequisites of the proviso are met by the reason of the Bench being constituted itself by the Chief Justice, and the contemnor being aware of the far more serious consequences, which could have flowed to him. The learned Senior Counsel representing the petitioner has thrown him at the mercy of the court. We have substantively accepted the request but lesser consequences have been imposed on the contemnor."

73. Reliance was placed on the decision in *Mahipal Singh Rana* v. *State of U.P.*[7] by the respondents. This Court dealt with the question when an advocate has been convicted for criminal contempt as to the sanctions/punishment that may be imposed in addition to punishments that may be imposed for criminal contempt under the Contempt of Courts Act, 1971. This Court held that regulation of right of appearance in courts is within jurisdiction of courts and not the Bar Councils, thus, the court can bar an advocate convicted for contempt from appearing/pleading before any court for an appropriate period of time, till convicted advocate purges himself of the contempt, even in the absence of suspension or termination of enrolment/right to practice/licence to practice. Secondly, this Court also held that bar on appearance/pleadings in any court till contempt is purged can be imposed by the Court in terms of the High Court Rules framed under Section 34 of the Advocates Act, if such Rules exist. However, even if there is no such rule framed under said Section 34, unless convicted advocate purges himself of contempt or is permitted by court, court may debar an advocate as conviction results in debarring such advocate from appearing/pleading in court, even in the absence of suspension or termination of enrolment/right to practise/licence to practise. This Court held thus: (SCC pp. 344, 356-58, 360, 364 & 368, paras 4.1-4.2, 32-33, 35, 42 & 54)

> "*4.1.* (*i*) Whether a case has been made out for interference with the order[31] passed by the High Court convicting the appellant for criminal contempt and sentencing him to simple imprisonment for two months with a fine of Rs 2000 and further imprisonment for two weeks in default and debarring him from appearing in courts in Judgeship at Etah; and
>
> *4.2.* (*ii*) Whether on conviction for criminal contempt, the appellant can be allowed to practice.
>
> * * *
>
> *32.* In *Pravin C. Shah* v. *K.A. Mohd. Ali*[3], this Court held that an advocate found guilty of contempt cannot be allowed to act or plead in any court until he purges himself of contempt. This direction was issued having regard to Rule 11 of the Rules framed by the High Court of Kerala under Section 34(1) of the Advocates Act and also referring to the observations in para 80 of the judgment of this Court in *Supreme Court Bar Assn.* v. *Union of India*[1]. It was explained that debarring a person from appearing

7 (2016) 8 SCC 335 : (2016) 4 SCC (Civ) 1 : (2016) 3 SCC (Cri) 476 : (2016) 2 SCC (L&S) 390
31 *State of U.P.* v. *Mahipal Singh Rana*, 2005 SCC OnLine All 1256 : (2006) 1 All LJ 162
3 (2001) 8 SCC 650
1 (1998) 4 SCC 409

in court was within the purview of the jurisdiction of the Court and was different from suspending or terminating the licence which could be done by the Bar Council and on the failure of the Bar Council, in exercise of appellate jurisdiction of this Court. The observations are: (*Pravin C. Shah case*[3], SCC pp. 658-62, paras 16-18, 24 & 27-28)

> '*16.* Rule 11 of the Rules is not a provision intended for the Disciplinary Committee of the Bar Council of the State or the Bar Council of India. It is a matter entirely concerning the dignity and the orderly functioning of the courts. The right of the advocate to practise envelops a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, etc. Rule 11 has nothing to do with all the acts done by an advocate during his practice except his performance inside the court. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by the Bar Council in exercise of its disciplinary powers. The right to practice, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must have the major supervisory power. Hence the court cannot be divested of the control or supervision of the court merely because it may involve the right of an advocate.
>
> *17. When the Rules stipulate that a person who committed contempt of court cannot have the unreserved right to continue to appear and plead and conduct cases in the courts without any qualm or remorse, the Bar Council cannot overrule such a regulation concerning the orderly conduct of court proceedings.* Courts of law are structured in such a design as to evoke respect and reverence for the majesty of law and justice. The machinery for the dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who was found guilty of contempt of court on the previous hour, standing in the court and arguing a case or cross-examining a witness on the same day, unaffected by the contemptuous behaviour he hurled at the court, would erode the dignity of the court and even corrode the majesty of it besides impairing the confidence of the public in the efficacy of the institution of the courts. This necessitates vesting of power with the High Court to formulate rules for regulating the proceedings inside the court including the conduct of advocates during such proceedings. That power should not be confused with the right to

3 *Pravin C. Shah* v. *K.A. Mohd. Ali*, (2001) 8 SCC 650

practice law. While the Bar Council can exercise control over the latter, the High Court should be in control of the former.

18. In the above context it is useful to quote the following observations made by a Division Bench of the Allahabad High Court in *Prayag Das* v. *Civil Judge, Bulandshahr*[18] (AIR p. 136, para 9)

> "[T]he High Court has the power to regulate the appearance of advocates in courts. The right to practice and the right to appear in courts are not synonymous. An advocate may carry on chamber practice or even practice in courts in various other ways e.g. drafting and filing of pleadings and vakalatnama for performing those acts. For that purpose his physical appearance in courts may not at all be necessary. For the purpose of regulating his appearance in courts the High Court should be the appropriate authority to make rules and on a proper construction of Section 34(1) of the Advocates Act it must be inferred that the High Court has the power to make rules for regulating the appearance of advocates and proceedings inside the courts. Obviously, the High Court is the only appropriate authority to be entrusted with this responsibility."

* * *

24. Purging is a process by which an undesirable element is expelled either from one's own self or from society. It is a cleaning process. Purge is a word which acquired implications first in theological connotations. *In the case of a sin, purging of such sin is made through the expression of sincere remorse coupled with doing the penance required.* In the case of a guilt, purging means to get himself cleared of the guilt. The concept of purgatory was evolved from the word "purge", which is a state of suffering after this life in which those souls, who depart this life with their deadly sins, are purified and rendered fit to enter into heaven where nothing defiled enters (vide *Words and Phrases*, Permanent Edn., Vol. 35-A, p. 307). In *Black's Law Dictionary* the word "purge" is given the following meaning: 'To cleanse; to clear. To clear or exonerate from some charge or imputation of guilt, or from a contempt.' It is preposterous to suggest that if the convicted person undergoes punishment or if he tenders the fine amount imposed on him the purge would be completed.

* * *

27. We cannot therefore approve the view that merely undergoing the penalty imposed on a contemnor is sufficient to complete the process of purging himself of the contempt, particularly in a case where the contemnor is convicted of criminal contempt. The danger in giving accord to the said view[32] of the learned Single Judge in the

18 1973 SCC OnLine All 333 : AIR 1974 All 133

32 *Madan Gopal Gupta* v. *Agra University*, 1972 SCC OnLine All 386 : AIR 1974 All 39

aforecited decision is that if a contemnor is sentenced to a fine he can immediately pay it and continue to commit contempt in the same court, and then again pay the fine and persist with his contemptuous conduct. There must be something more to be done to get oneself purged of the contempt when it is a case of criminal contempt.

28. The Disciplinary Committee of the Bar Council of India highlighted the absence of any mode of purging oneself of the guilt in any of the Rules as a reason for not following the interdict contained in Rule 11. Merely because the Rules did not prescribe the mode of purging oneself of the guilt it does not mean that one cannot purge the guilt at all. The first thing to be done in that direction when a contemnor is found guilty of criminal contempt is to implant or infuse in his own mind real remorse about his conduct which the court found to have amounted to contempt of court. Next step is to seek pardon from the court concerned for what he did on the ground that he really and genuinely repented and that he has resolved not to commit any such act in future. It is not enough that he tenders an apology. The apology tendered should impress the court to be genuine and sincere. If the court, on being impressed of his genuineness, accepts the apology then it could be said that the contemnor has purged himself of the guilt.'

* * *

33. In *Bar Council of India* v. *High Court of Kerala*[5], constitutionality of Rule 11 of the Rules framed by the High Court of Kerala for barring a lawyer from appearing in any court till he got himself purged of contempt by an appropriate order of the court, was examined. This Court held that the rule did not violate Articles 14 and 19(1)(*g*) of the Constitution nor amounted to usurpation of power of adjudication and punishment conferred on the Bar Councils and the result intended by the application of the Rule was automatic. It was further held that the rule was not in conflict with the law laid down in *Supreme Court Bar Assn.*[1] judgment. Referring to the Constitution Bench judgment in *Harish Uppal* v. *Union of India*[4], it was held that regulation of right of appearance in courts was within the jurisdiction of the courts. It was observed, following *Pravin C. Shah*[3], that the Court must have major supervisory power on the right to appear and conduct in the court. The observations are: (*Bar Council of India case*[5], SCC p. 323, para 46)

'*46.* Before a contemnor is punished for contempt, the court is bound to give an opportunity of hearing to him. Even such an opportunity of hearing is necessary in a proceeding under Section 345 of the Code of Criminal Procedure. But if a law which is otherwise valid provides for the consequences of such a finding, the same by

5 (2004) 6 SCC 311
1 *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409
4 (2003) 2 SCC 45
3 *Pravin C. Shah* v. *K.A. Mohd. Ali*, (2001) 8 SCC 650

itself would not be violative of Article 14 of the Constitution of India inasmuch as only because another opportunity of hearing to a person, where a penalty is provided for as a logical consequence thereof, has been provided for. Even under the penal laws some offences carry minimum sentence. The gravity of such offences, thus, is recognised by the legislature. The courts do not have any role to play in such a matter.'

* * *

35. In *R.K. Anand* v. *High Court of Delhi*[2] it was held that even if there was no rule framed under Section 34 of the Advocates Act disallowing an advocate who is convicted of criminal contempt, is not only a measure to maintain dignity and orderly function of courts, it may become necessary for the protection of the court and for preservation of the purity of court proceedings. Thus, the court not only has a right but also an obligation to protect itself and save the purity of its proceedings from being polluted, by barring the advocate concerned from appearing before the courts for an appropriate period of time[33]. This Court noticed the observations about the decline of ethical and professional standards of the Bar, and the need to arrest such trend in the interests of administration of justice. It was observed that in the absence of unqualified trust and confidence of people in the Bar, the judicial system could not work satisfactorily. Further observations are that the performance of the Bar Councils in maintaining professional standards and enforcing discipline did not match its achievements in other areas. This Court expressed hope and expected that the Bar Council will take appropriate action for the restoration of high professional standards among the lawyers, working of their position in the judicial system and the society.

* * *

42. We may also refer to certain articles on the subject. In "*Raising the Bar for the Legal Profession*", published in *The Hindu* newspaper dated 15-9-2012, Dr N.R. Madhava Menon wrote:

> '... Being a private monopoly, the profession is organised like a pyramid in which the top 20 per cent command 80 per cent of paying work, the middle 30 per cent managing to survive by catering to the needs of the middle class and government litigation, while the bottom 50 per cent barely survive with legal aid cases and cases managed through undesirable and exploitative methods! Given the poor quality of legal education in the majority of the so-called law colleges (over a thousand of them working in small towns and panchayats without infrastructure and competent faculty), what happened with uncontrolled expansion was the overcrowding of ill-equipped lawyers in the bottom 50 per cent of the profession fighting for a piece of

2 (2009) 8 SCC 106 : (2010) 2 SCC (Cri) 563
33 *Ibid.*, paras 238, 239, 242

the cake. In the process, being too numerous, the middle and the bottom segments got elected to professional bodies which controlled the management of the entire profession. The so-called leaders of the profession who have abundant work, unlimited money, respect and influence did not bother to look into what was happening to the profession and allowed it to go its way—of inefficiency, strikes, boycotts and public ridicule. This is the tragedy of the Indian Bar today which had otherwise a noble tradition of being in the forefront of the freedom struggle and maintaining the rule of law and civil liberties even in difficult times.'

* * *

54. Further, in exercise of appellate jurisdiction under Section 38 of the Advocates Act, we direct that the licence of the appellant will stand suspended for a further period of five years. He will also remain debarred from appearing in any court in District Etah even after five years unless he purges himself of contempt in the manner laid down by this Court in *Bar Council of India*[5] and *R.K. Anand*[2] and as directed by the High Court. Question (*ii*) stands decided accordingly." (emphasis supplied)

74. In *Mahipal Singh Rana*[7] the advocate was found guilty of criminal contempt as such punishment for debarring from the court was first passed and reliance has been placed for that purpose on the decision of the Constitution Bench of this Court in *Supreme Court Bar Assn.*[1] Thus, the decision has no application to sustain vires of Rules 14-A to 14-D as amended by the High Court of Madras.

75. Shri Mohan Parasaran, learned Senior Counsel supported the Rules pointing out that grave situation has been created in the High Court of Madras as well as at its Madurai Bench, which compelled the Court to take action on the judicial side to ensure the modicum of security. The High Court had to order the security of the Court to be undertaken by CISF. In this regard, orders were passed in Suo Motu Writ Petition No. 29197 of 2015 by the High Court of Madras on 14-9-2015, 12-10-2015 and 30-10-2015. The following incidents were noticed in the judicial orders:

(*i*) Holding protests and waving placards within the Court premises;

(*ii*) Raising slogans and marching down the corridors of the Court.

(*iii*) The use of hand-held microphones to disrupt Court proceedings.

(*iv*) Attempting to and in some cases successfully entering the Chambers of the puisne Judges of the Madurai Bench of the High Court.

5 *Bar Council of India* v. *High Court of Kerala*, (2004) 6 SCC 311

2 *R.K. Anand* v. *High Court of Delhi*, (2009) 8 SCC 106 : (2010) 2 SCC (Cri) 563

7 *Mahipal Singh Rana* v. *State of U.P.*, (2016) 8 SCC 335 : (2016) 4 SCC (Civ) 1 : (2016) 3 SCC (Cri) 476 : (2016) 2 SCC (L&S) 390

1 *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409

(*v*) Two instances of hoax bombs in the form of broken mechanical clocks being placed at areas in the Court to ensure disruptions.

The High Court, in our opinion, could have taken action under the Contempt of Courts Act for the aforesaid misconduct.

76. Rule 14-A provides for power to debar an advocate from appearing before the High Court and the subordinate courts in case an advocate who is found to have accepted money in the name of a Judge or on the pretext of influencing him; or an advocate who is found to have tampered with the court record or court order; or an advocate who browbeats and/or abuses a Judge or judicial officer; or an advocate who is found to have sent or spread unfounded and unsubstantiated allegations/petitions against a judicial officer or a Judge to the Superior Court; or an advocate who actively participates in a procession inside the court campus and/or involves in gherao inside the court hall or holds placard inside the court hall; or an advocate who appears in the court under the influence of liquor may be debarred by the court. However, it is not provided that the court would do so in exercising contempt jurisdiction. The debarment is sought to be done by way of disciplinary control, which is not permissible.

77. Rule 14-B as amended provides for power to take action. Rule 14-B(*iv*) states that where any such misconduct referred to under Rule 14-A is committed by an advocate before the High Court, the High Court shall have the power to initiate action against the advocate concerned and debar him from appearing before the High Court and all subordinate courts; or where any such misconduct is committed before the Court of Principal District Judge, the Principal District Judge shall have the power to initiate action against the advocate concerned and debar him from appearing before any court within such district; or where any such misconduct referred to under Rule 14-A is committed before any subordinate court, the court concerned shall submit a report to the Principal District Court and the Principal District Judge shall have the power to initiate action against the advocate concerned and debar him from appearing before any court within such district. Rule 14-C prescribes the procedure to be followed and Rule 14-D authorises the High Court or Principal District Judge to pass an interim order prohibiting the advocate concerned from appearing before the High Court or subordinate courts, as the case may be, pending inquiry.

78. The High Court is not authorised by the provisions of the Advocates Act to frame such rules. Section 34 does not confer such power of debarment by way of disciplinary methods or disciplinary inquiry as against an advocate as that has to be dealt with by the Bar Council as provided in other sections in a different chapter of the Act. It is only when the advocate is found guilty of contempt of court, as provided in Rule 14 as existed in the Madras High Court Rules, 1970 takes care of the situation until and unless an advocate who has committed contempt of court purges himself of contempt shall not be entitled to appear or act or plead in the Court. Rule 14 is extracted hereunder:

"**14.** No advocate who has been found guilty of contempt of court shall be permitted to appear, act or plead in any court unless he has purged himself of contempt."

79. The debarment cannot be ordered by the High Court until and unless the advocate is prosecuted under the Contempt of Courts Act. It cannot be resorted to by undertaking disciplinary proceedings as contemplated under Rules 14-A to 14-D as amended in 2016. That is a clear usurpation of the power of the Bar Council and is wholly impermissible in view of the decision of this Court in *Supreme Court Bar Assn.* v. *Union of India*[1] that has been followed in all the subsequent decisions as already discussed. There is no doubt about it that the incidents pointed out were grim and stern action was required against the erring advocates as they belied the entire nobility of the lawyer's profession.

80. It is also true that the Disciplinary Committee of the Bar Councils, as observed by this Court in *Mahipal Singh Rana*[7] and *Mohit Chaudhary*[6], has failed to deliver the goods. It is seen that the disciplinary control of the Bar Council is not as effective as it should be. The cases are kept pending for a long time, then after one year they stand transferred to the Bar Council of India, as provided under the Advocates Act and thereafter again the matters are kept pending for years together. It is high time that the Bar Council, as well as the various State Bar Councils, should take stock of the situation and improve the functioning of the disciplinary side. It is absolutely necessary to maintain the independence of the Bar and if the cleaning process is not done by the Bar itself, its independence is in danger. The corrupt, unwanted, unethical element has no place in the Bar. If nobility of the profession is destroyed, the Bar can never remain independent. Independence is constituted by the observance of certain ideals and if those ideals are lost, the independence would only remain on paper, not in real sense.

81. The situation is really frustrating if the repository of the faith in the Bar fails to discharge their statutory duties effectively, no doubt about it that the same can be and has to be supervised by the courts. The obligatory duties of the Bar Council have found statutory expression in the Advocates Act and the Rules framed thereunder with respect to disciplinary control and cannot be permitted to become statutory mockery, such non-performance or delayed performance of such duties is impermissible. The Bar Council is duty-bound to protect the Bar itself by taking steps against black sheep and cannot bely expectation of the Bar in general and spoil its image. The very purpose of disciplinary control by the Bar Council cannot be permitted to be frustrated. In such an exigency, in a case where the Bar Council is not taking appropriate action against the advocate, it would be open to the High Court to entertain the writ petition and to issue appropriate directions to the Bar Council to take action in accordance

1 (1998) 4 SCC 409

7 *Mahipal Singh Rana* v. *State of U.P.*, (2016) 8 SCC 335 : (2016) 4 SCC (Civ) 1 : (2016) 3 SCC (Cri) 476 : (2016) 2 SCC (L&S) 390

6 *Mohit Chaudhary, In re*, (2017) 16 SCC 78

with the law in the discharge of duties enjoined upon it. But at the same time, the High Court and even this Court cannot take upon itself the disciplinary control as envisaged under the Advocates Act. No doubt about it that the Court has the duty to maintain its decorum within the court premises, but that can be achieved by taking appropriate steps under the Contempt of Courts Act in accordance with law as permitted under the decisions of this Court and even by rule-making power under Section 34 of the Advocates Act. An advocate can be debarred from practising in the Court until and unless he purges himself of contempt.

82. It has been seen from time to time that various attacks have been made on the judicial system. It has become very common to the members of the Bar to go to the press/media to criticise the Judges in person and to commit sheer contempt by attributing political colours to the judgments. It is nothing less than an act of contempt of gravest form. Whenever any political matter comes to the Court and is decided, either way, political insinuations are attributed by unscrupulous persons/advocates. Such acts are nothing, but an act of denigrating the judiciary itself and destroys the faith of the common man which he reposes in the judicial system. In case of genuine grievance against any Judge, the appropriate process is to lodge a complaint to the higher authorities concerned who can take care of the situation and it is impermissible to malign the system itself by attributing political motives and by making false allegations against the judicial system and its functionaries. Judges who are attacked are not supposed to go to press or media to ventilate their point of view.

83. Contempt of court is a weapon which has to be used sparingly as more is power, same requires more responsibility but it does not mean that the court has fear of taking action and its repercussions. The hallmark of the court is to provide equal and even-handed justice and to give an opportunity to each of the system to ensure that it improves upon. Unfortunately, some advocates feel that they are above the Bar Council due to its inaction and they are the only champion of the causes. The hunger for cheap publicity is increasing which is not permitted by the noble ideals cherished by the great doyens of the Bar, they have set by their conduct what should be in fact the professional etiquettes and ethics which are not capable of being defined in a narrow compass. The statutory rules prohibit advocates from advertising and in fact to cater to the press/media, distorted versions of the court proceedings is sheer misconduct and contempt of court which has become very common. It is making it more difficult to render justice in a fair, impartial and fearless manner though the situation is demoralising that something has to be done by all concerned to revamp the image of the Bar. It is not open to wash dirty linen in public and enter in accusation/debates, which tactics are being adopted by unscrupulous elements to influence the judgments and even to deny justice with ulterior motives. It is for the Bar Council and the senior members of the Bar who have never forgotten their responsibility to rise to the occasion to maintain the

independence of the Bar which is so supreme and is absolutely necessary for the welfare of this country and the vibrant democracy.

84. The separation of powers made by the forefathers, who framed the Constitution, ensured independent functioning. It is unfortunate without any rational basis the independence of the system is being sought to be protected by those who should keep aloof from it. Independence of each system is to come from within. If things are permitted to be settled by resorting to unscrupulous means and the institution is maligned by creating pressure of any kind, the very independence of the system would be endangered. Cases cannot be decided by media trial. The Bar and the Bench in order to protect independence have their own inbuilt machinery for redressal of grievance if any and they are supposed to settle their grievances in accordance therewith only. No outside interference is permissible. Considering the nobility, independence, dignity which is enjoined and the faith which is reposed by the common man of the country in the judiciary, it is absolutely necessary that there is no maligning of the system. Mutual respect and reverence are the only way out. A lot of sacrifices are made to serve the judiciary for which one cannot regret as it is with a purpose and to serve judiciary is not less than call of military service. For the protection of democratic values and to ensure that the rule of law prevails in the country, no one can be permitted to destroy the independence of the system from within or from outside. We have to watch on Bar independence. Let each of us ensure our own institution is not jeopardised by the blame game and make an endeavour to improve upon its own functioning and independence and how individually and collectively we can deliver the good to the citizens of this great country and deal with every tear in the eye of poor and down-trodden as per constitutional obligation enjoined on us.

85. Soul searching is absolutely necessary and the blame game and maligning must stop forthwith. Confidence and reverence and positive thinking is the only way. It is pious hope that the Bar Council would improve upon the function of its Disciplinary Committees so as to make the system more accountable, publish performance audit on the disciplinary side of various Bar Councils. The same should be made public. The Bar Council of India under its supervisory control can implement good ideas as always done by it and would not lag behind in cleaning process so badly required. It is to make the profession more noble and it is absolutely necessary to remove the black sheep from the profession to preserve the rich ideals of the Bar and on which it struggled for the values of freedom. It is basically not for the Court to control the Bar. It is the statutory duty of the Bar to make it more noble and also to protect the Judges and the legal system, not to destroy the Bar itself by inaction and the system which is an important pillar of democracy.

86. We have no hesitation to hold that the High Court has overstretched and exceeded its power even in the situation which was so grim which appears to have compelled it to take such a measure. In fact, its powers are much more in

the Contempt of Courts Act to deal with such situation court need not look for the Bar Council to act. It can take action, punish for the Contempt of Courts Act in case it involves misconduct done in court/proceedings. Circumstances may be grim, but the autonomy of the Bar in the disciplinary matters cannot be taken over by the courts. It has other more efficient tools to maintain the decorum of court. In case power is given to the court even if complaints lodged by a lawyer to the higher administrative authorities as to the behaviour of the Judges may be correct then also he may be punished by initiating disciplinary proceedings as permitted to be done in impugned Rules 14-A to 14-D that would be making the Bar too sycophant and fearful which would not be conducive for fair administration of justice. Fair criticism of judgment and its analysis is permissible. Lawyers' fearlessness in court, independence, uprightness, honesty, equality are the virtues which cannot be sacrificed. It is duty of the lawyer to lodge appropriate complaint to the authorities concerned as observed by this Court in *Vinay Chandra Mishra*[16], which right cannot be totally curtailed, however, making such allegation publicly tantamounts to contempt of court and may also be a professional misconduct that can be taken care of either by the Bar Council under the Advocates Act and by the Court under the Contempt of Courts Act. The misconduct as specified in Rule 14-A may also in appropriate cases tantamount to contempt of court and can be taken care of by the High Court in its contempt jurisdiction.

87. Resultantly, we have no hesitation to strike down impugned Rules 14-A to 14-D as framed in May 2016 by the High Court of Madras as they are ultra vires Section 34 of the Advocates Act and are hereby quashed. The writ petition is allowed. No costs.

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16 *Vinay Chandra Mishra, In re*, (1995) 2 SCC 584

8. We, accordingly, do not find any force in these appeals, which are, therefore, dismissed but in the circumstances, there will be no order as to costs.

(1999) 1 Supreme Court Cases 37

(BEFORE S. SAGHIR AHMAD AND K.T. THOMAS, JJ.)

MAHABIR PRASAD SINGH .. Appellant;

Versus

JACKS AVIATION PVT. LTD. .. Respondents.

Civil Appeal No. 5710 of 1998†, decided on November 13, 1998

A. Civil Procedure Code, 1908 — S. 115(1) proviso clause (b) — Revision — Scope of High Court's jurisdiction — High Court not to interfere unless failure of justice or irreparable injury apprehended — Advocate of defendant boycotting trial court of a particular ADJ at the behest of Bar Association and filing application under S. 151 CPC seeking transfer of case — Trial court dismissing application on ground that there was no provision under S. 151 for transfer of cases — Advocate filing revision petition before High Court which entertaining petition and staying proceedings before trial court — Held, High Court committed jurisdictional error in entertaining the revision petition because on facts the order of trial court was covered by the specific interdict embodied in proviso to S. 115(1)

B. Judicial Process — Duty of High Court toward lower judiciary — High Court bound to insulate judicial functionaries within their territory from being demoralised by browbeating, stonewalling or bullying, whether by litigants or advocates — Constitution of India, Arts. 235, 227 & 225

C. Judicial Process — Duty of court in face of pressure tactics — Court should not yield to pressure tactics or boycott calls or any kind of browbeating — It is the solemn duty of every court to proceed with judicial business during court hours — Advocates Act, 1961, S. 35 — Strike or boycott by lawyers

D. Judicial Process — Efficient functioning of courts — Bench and Bar are two inextricable wings of the judicial forum and mutual respect is the *sine qua non* for the efficient functioning of the solemn work carried on in courts of law

E. Advocates — Advocates Act, 1961, S. 35 — Professional ethics — Conduct unbecoming and unprofessional — Retaining brief but abstaining from appearing in a court as a permanent feature rather than due to personal inconvenience on a particular day is unprofessional conduct unbecoming the status of an advocate — If an advocate wishes not to appear in a court for justifiable reasons professional decorum and etiquette require him to give up his engagement in that court — Legal ethics

F. Civil Procedure Code, 1908 — S. 24 — Transfer of cases — Transfer not allowable merely because opposite party has no objection

During the pendency in the court of the Additional District Judge (Shri S.N. Dhingra), of a civil suit for recovery of possession of a building, plaintiff/appellant filed an application under Order 12 Rule 6 CPC for pronouncing of judgment on the basis of certain admissions in the written statement. The defendant filed objections to

† From the Judgment and Order dated 10-9-1998 of the Delhi High Court in C.M. No. 3042 of 1998

the same. Meanwhile the Delhi Bar Association passed a resolution dated 15-5-1998 calling for the boycott, by all its members, of the Court of Shri S.N. Dhingra. When the application under Order 12 Rule 6 came up for arguments on 21-5-1998, the advocate for the defendant, without putting in an appearance, filed an unusual application under Section 151 CPC stating that due to the Bar Association resolution he was bound not to appear, and seeking transfer of the case "suo motu" by the Additional District Judge.

The Additional District Judge dismissed the advocate's application on the ground that there was no provision under Section 151 CPC for transfer of cases. The defendant then filed a revision petition before the High Court, which entertained the same and stayed proceedings before the trial court. The plaintiff also entered appearance and submitted that he had no objection to the case being transferred. The High Court however did not pass any order and adjourned the matter several times. On 10-9-1998 the defendant filed a civil miscellaneous petition again seeking transfer of the case from the court of Shri Dhingra, ADJ "in the event the honourable High Court is pleased to allow the revision". The basis for this new application was a newspaper description of a disgraceful scene in the court of Shri Dhingra, ADJ. The Secretary of the Delhi Bar Association had made a shouted demand that the Judge stop working. The Judge did not stop work and the Secretary then hurled abuse in filthy language at him. Litigants present had protested. The High Court responded merely by calling for the "comments" of the ADJ, Shri Dhingra about the transfer application and posted the revision petition to January 1999.

The plaintiff/appellant then filed the present SLP challenging the High Court's order entertaining the revision petition and also the last adjournment.

Allowing the appeal, the Supreme Court

Held :

The High Court committed a jurisdictional error in entertaining the revision petition filed by the defendant challenging the order dismissing the application for "suo motu" transfer of the case. That order is clearly not revisable by the High Court in view of the specific interdict embodied in the proviso to Section 115(1) CPC. Under the same sub-section, a High Court is empowered to call for the records of any case which has been decided by any court subordinate thereto, if it had exceeded or failed to exercise the jurisdiction vested in it, or had acted illegally or with material irregularity. In such cases, the High Court has power to make such order as it thinks fit. The restriction against exercise of such a general power has been incorporated in the proviso which was inserted in the sub-section by the CPC Amendment Act of 1976. (Para 10)

Out of the two clauses in the proviso, the latter clause could be resorted to only if that order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the respondent. Thus, even if such an order passed by the subordinate court has any illegality or is affected by material irregularity, the High Court will not interfere unless the said order, if allowed to stand, would occasion a failure of justice or its effect would be infliction of irreparable injury to any party. (Para 11)

Ramlal v. *Madan Gopal*, 1995 Supp (4) SCC 655, *distinguished*

Judicial function cannot and should not be permitted to be stonewalled by browbeating or bullying methodology, whether it is by litigants or by counsel. Judicial process must run its even course unbridled by any boycott call of the Bar, or tactics of filibuster adopted by any member thereof. High Courts are duty bound to insulate judicial functionaries within their territory from being demoralised due to

such onslaughts by giving full protection to them to discharge their duties without fear. (Para 2)

a No court is obliged to adjourn a cause because of the strike call given by any association of advocates or a decision to boycott the courts either in general or any particular court. It is the solemn duty of every court to proceed with the judicial business during court hours. No court should yield to pressure tactics or boycott calls or any kind of browbeating. (Para 16)

Both the Bench and the Bar are the two inextricable wings of the judicial forum and therefore the aforesaid mutual respect is the sine qua non for the efficient b functioning of the solemn work carried on in courts of law. (Para 18)

If any counsel does not want to appear in a particular court, that too for justifiable reasons, professional decorum and etiquette require him to give up his engagement in that court so that the party can engage another counsel. But retaining the brief of his client and at the same time abstaining from appearing in that court, that too not on any particular day on account of some personal inconvenience of the c counsel but as a permanent feature, is unprofessional as also unbecoming of the status of an advocate. (Para 16)

Lt. Col. S.J. Chaudhary v. *State (Delhi Admn.)*, (1984) 1 SCC 722 : 1984 SCC (Cri) 163, *followed*

Warvelle's Legal Ethics, p. 182, *relied on*

This is not a case where the respondent was prevented by the Additional District Judge from addressing oral arguments, but the respondent's counsel prevented the d Additional District Judge from hearing his oral arguments on the stated cause that he decided to boycott that Court for ever as the Delhi Bar Association took such a decision. Here the counsel did not want a case to be decided by that Court. By such conduct, the counsel prevented the judicial process to have flowed on its even course. The respondent has no justification to approach the High Court as it was the respondent who contributed to such a situation. (Para 15)

No advocate or a group of them can boycott the courts or any particular court e and ask the court to desist from discharging judicial functions. At any rate, no advocate can ask the court to avoid a case on the ground that he does not want to appear in that court. (Para 18)

A change of court is not allowable merely because the other side too has no objection for such change. Or else, it would mean that when both the parties combine together they can avoid a court and get a court of their own choice.

f (Para 21)

A-M/TZ/20416/C

Suggested Case Finder Search Text (*inter alia*) :

(advocate* or lawyer*) (strike or boycott)

Advocates who appeared in this case :

Naresh Kaushik and Ms Lalita Kaushik, Advocates, for the Appellant;

g Arun Jaitley, Senior Advocate [Krishna Kumar, Advocate (Caveator), with him] for the Respondents.

Chronological list of cases cited ***on page(s)***

1. 1995 Supp (4) SCC 655, *Ramlal* v. *Madan Gopal* 42*h*, 43*a-b*
2. (1984) 1 SCC 722 : 1984 SCC (Cri) 163, *Lt. Col. S.J. Chaudhary* v. *State (Delhi Admn.)* 43*h*

h

The Judgment of the Court was delivered by

THOMAS, J.— Leave granted.

2. Judicial function cannot and should not be permitted to be stonewalled by browbeating or bullying methodology, whether it is by litigants or by counsel. Judicial process must run its even course unbridled by any boycott call of the Bar, or tactics of filibuster adopted by any member thereof. High Courts are duty bound to insulate judicial functionaries within their territory from being demoralised due to such onslaughts by giving full protection to them to discharge their duties without fear. But unfortunately this case reflects apathy on the part of the High Court in affording such protection to a judicial functionary who resisted, through legal means, a pressure strategy slammed on him in open court.

3. It all happened in the following manner:

A civil suit for recovery of possession of a building was filed by the appellant in the Court of the Additional District Judge, Tis Hazari, Delhi (Shri S.N. Dhingra's Court). The respondent filed written statement in the suit. Taking advantage of certain admissions made in the written statement, the appellant preferred an application under Order 12 Rule 6 of the Code of Civil Procedure (for short "the Code") for pronouncing a judgment, having regard to such admissions and for passing a decree for recovery of possession of the suit premises. The respondent filed objections to the aforesaid application and prayed for its dismissal. When the application came up for argument on 21-5-1998, the respondent filed a strange petition seeking transfer of the case by the Judge suo motu. How strange was that petition can be shown by extracting the material portion of it hereunder:

> "That the counsel for the defendant is a member of the Delhi Bar Association and recently vide resolution dated 15-5-1998, the Delhi Bar Association has boycotted the appearance of its members in any case before this Hon'ble Court. That the counsel for the defendant being a member of the Delhi Bar Association is bound by all the resolutions passed by the Executive Committee of the Delhi Bar Association and in such circumstances, the counsel for the defendant is not in a position to appear in the said case before this Hon'ble Court. That due to the said boycott call, the defendant is taking necessary steps for moving an application under Section 24 CPC before the Hon'ble District Judge, Delhi for the transfer of the aforesaid case, in case the Hon'ble Court is not inclined to suo motu transfer the said case. That serious prejudice will be caused to the interest of the defendant if any adverse order is passed on account of non-appearance of the counsel for the defendant and/or the defendant. That the said boycott call by the Delhi Bar Association could not be conveyed to the defendant and in such circumstances, the defendant is also not in a position to cause personal appearance in the said matter.
>
> It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to suo motu transfer the aforesaid matter or in the alternative,

this Hon'ble Court may be pleased to adjourn the matter to some future date without passing any adverse order so as to enable the defendant to move necessary application before the Hon'ble District Judge, Delhi."

4. The counsel for the defendant who filed the said petition did not himself appear in the Court for addressing arguments on 21-5-1998 nor did he depute any other advocate on his behalf. Learned Additional District Judge then passed the following order:

> "This application under Section 151 for transfer of the case has been made. There is no provision under Section 151 for transfer of a case. Transfer application lies before learned District Judge under Section 24 CPC. The application is hereby dismissed. Written arguments have been filed on behalf of the plaintiff on application under Order 12 Rule 6. To come up for orders on 30-5-1998."

5. A revision petition was filed by the respondent before the Delhi High Court in challenge of the aforesaid order. A Single Judge of the High Court entertained the same on 29-5-1998 and ordered stay of proceedings before the trial court. The appellant who was innocent of the attitude of the counsel for the defendant towards the Additional District Judge, entered appearance in the High Court and submitted that he has no objection to have the case transferred to any other competent court and all that he needed was a decision on the application made by him under Order 12 Rule 6 of the Code.

6. The appellant being an octogenarian has seemingly felt that further delay in the trial proceedings would only result in procrastination of his suit. But, despite the aforesaid offer made by the appellant, learned Single Judge of the High Court adjourned the revision from time to time until it reached the date 10-9-1998 on which day the respondent filed a civil miscellaneous petition praying that "in the event the Hon'ble High Court is pleased to allow the revision and quash the impugned order, the suit presently pending before Shri S.N. Dhingra, learned Additional District Judge, Delhi may be transferred to some other court".

7. The ground for making such a prayer was a newspaper report that when the Secretary of the Delhi Bar Association shouted in open court in the presence of all the litigants asking Shri Dhingra to stop working, the Judge did not accede to it and then filthy language was hurled in the Court to which "other litigants present in the Court also raised their voice" against such invidious vituperations, and that the appellant was also one of such litigants.

8. Learned Single Judge of the High Court has noted in the proceedings what the appellant had stated before the Court that he has no objection in the case being transferred to another court as prayed for by the respondent. Still, learned Single Judge called for "the comments" of the Additional District Judge concerned regarding the transfer petition and posted the revision to a far-off date (in the month of January 1999) and stayed all further proceedings in the trial court. The appellant has filed this special leave petition at the above stage challenging the order entertaining the revision

and also the order by which the revision has been adjourned to such farther extent.

9. We heard Shri Naresh Kaushik, Advocate for the appellant and Shri Arun Jaitley, Senior Advocate for the respondent. Neither of them even attempted to justify the conduct of the counsel for the respondent in the trial court in not attending the Court on 21-5-1998. However, Shri Arun Jaitley made a plea that the suit may be sent to another court in view of all the aforesaid developments.

10. In our view, the High Court has committed a jurisdictional error in entertaining the revision petition filed by the respondent challenging the order dated 21-5-1998. That order is clearly not revisable by the High Court in view of the specific interdict embodied in the proviso to Section 115(1) of the Code. Under the same sub-section, a High Court is empowered to call for the records of any case which has been decided by any court subordinate thereto, if it had exceeded or failed to exercise the jurisdiction vested in it, or had acted illegally or with material irregularity. In such cases, the High Court has power to make such order as it thinks fit. The restriction against exercise of such a general power has been incorporated in the proviso which was inserted in the sub-section by the CPC Amendment Act of 1976. That proviso reads thus:

> "Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where—
>
> (*a*) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or
>
> (*b*) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made."

11. Out of the two clauses in the proviso, the former has no application to the order which has been challenged in the High Court because even if the application of the respondent filed on 21-5-1998 was granted, the suit would not have been finally disposed of. The latter clause could be resorted to only if that order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the respondent. Thus, even if such an order passed by the subordinate court has any illegality or is affected by material irregularity, the High Court will not interfere unless the said order, if allowed to stand, would occasion a failure of justice or its effect would be infliction of irreparable injury to any party.

12. While entertaining the revision petition, learned Single Judge has observed thus:

> "The learned counsel for the petitioner on instructions states that the petitioner in the present proceedings assails that part of the impugned order which relates to the respondent's application filed under Order 12 Rule 6 CPC. The learned counsel for the petitioner has placed reliance on a decision of the Supreme Court in the case *Ramlal* v. *Madan Gopal*[1].

1 1995 Supp (4) SCC 655

Issue notice to the respondent on the above limited question asking the respondent to show cause as to why the petition be not admitted returnable on 12-8-1998."

13. Further, learned Single Judge ordered notice to be issued returnable on 12-8-1998 and stayed the proceedings in the trial court in the meanwhile.

14. The decision cited before the learned Single Judge (*Ramlal* v. *Madan Gopal*[1]) is ostensibly inapplicable because in that case, the aggrieved party was denied the opportunity to address oral arguments through counsel and the decision was taken on the basis of written arguments. Their lordships observed: (SCC p. 656, para 3)

> "3. Having regard to the special facts and circumstances of the case we think it proper that the view of the Additional District Judge should be reobtained before his decision of fact becomes binding in second appeal before the High Court."

The case was thereafter remitted back to the lower court for rehearing the appeal to give opportunity to the parties' counsel to address their arguments but subject to payment of Rs 5000 as costs. The said decision cannot be regarded as a precedent particularly in view of what the learned Judge had cautioned that the particular course was adopted by the Court "having regard to the special facts and circumstances" of that case.

15. This is not a case where the respondent was prevented by the Additional District Judge from addressing oral arguments, but the respondent's counsel prevented the Additional District Judge from hearing his oral arguments on the stated cause that he decided to boycott that Court for ever as the Delhi Bar Association took such a decision. Here the counsel did not want a case to be decided by that Court. By such conduct, the counsel prevented the judicial process to have flowed on its even course. The respondent has no justification to approach the High Court as it was the respondent who contributed to such a situation.

16. If any counsel does not want to appear in a particular court, that too for justifiable reasons, professional decorum and etiquette require him to give up his engagement in that court so that the party can engage another counsel. But retaining the brief of his client and at the same time abstaining from appearing in that court, that too not on any particular day on account of some personal inconvenience of the counsel but as a permanent feature, is unprofessional as also unbecoming of the status of an advocate. No court is obliged to adjourn a cause because of the strike call given by any association of advocates or a decision to boycott the courts either in general or any particular court. It is the solemn duty of every court to proceed with the judicial business during court hours. No court should yield to pressure tactics or boycott calls or any kind of browbeating.

17. A three-Judge Bench of this Court has reminded members of the legal profession in *Lt. Col. S.J. Chaudhary* v. *State (Delhi Admn.)*[2] that it is

2 (1984) 1 SCC 722 : 1984 SCC (Cri) 163

the duty of every advocate who accepts a brief to attend the trial and such duty cannot be overstressed. It was further reminded that "having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend".

> "A lawyer is under obligation to do nothing that shall detract from the dignity of the court, of which he is himself a sworn officer and assistant. He should at all times pay deferential respect to the Judge, and scrupulously observe the decorum of the courtroom."
>
> (*Warvelle's Legal Ethics*, at p. 182)

18. Of course, it is not a unilateral affair. There is a reciprocal duty for the court also to be courteous to the members of the Bar and to make every endeavour for maintaining and protecting the respect which members of the Bar are entitled to have from their clients as well as from the litigant public. Both the Bench and the Bar are the two inextricable wings of the judicial forum and therefore the aforesaid mutual respect is the sine qua non for the efficient functioning of the solemn work carried on in courts of law. But that does not mean that any advocate or a group of them can boycott the courts or any particular court and ask the court to desist from discharging judicial functions. At any rate, no advocate can ask the court to avoid a case on the ground that he does not want to appear in that court.

19. Hence the order passed by the Additional District Judge on 21-5-1998 has no legal infirmity, much less any scope for occasioning failure of justice. Question of that order causing any irreparable injury does not arise particularly because the said order was a by-product of the unwholesome strategy adopted by the respondent's counsel in abstaining from the Court and reporting that he would not attend that Court in future. The party who brought about such a situation cannot be heard to complain that an order was passed consequently.

20. We unhesitatingly conclude that the High Court has committed grave error in entertaining the revision petition and passing the impugned order. Accordingly, we quash the aforesaid revisional proceedings.

21. Shri Arun Jaitley, learned Senior Counsel, made a plea before us that in view of all what happened and also in the light of the fact that the appellant too has no objection to change the court, the case may be allowed to be transferred to another court. We have considered the aforesaid plea in all seriousness. We do not come across any valid ground whatsoever for a change of court. A change of court is not allowable merely because the other side too has no objection for such change. Or else, it would mean that when both the parties combine together they can avoid a court and get a court of their own choice. We are not disposed to give such an option to the parties. We, therefore, refrain from acceding to the said plea made by Shri Jaitley.

22. We direct the Additional District Judge, Tis Hazari before whom the suit is pending, to proceed with it according to law. The appeal is allowed in the above terms.

who hold *vakalats* but still refrain from attending courts in pursuance of a strike call, with costs. Such costs would be in addition to the damages which the advocate may have to pay for the loss suffered by his client by reason of his non-appearance."

Apart from reiterating the above law, we do not propose to take any further action. The contempt notices stand discharged.

5. The contempt petitions and IA stand disposed of accordingly.

[CITED ORDER]

(2006) 9 Supreme Court Cases 304

(BEFORE A.M. AHMADI, C.J. AND R.M. SAHAI AND N. VENKATACHALA, JJ.)

COMMON CAUSE, A REGISTERED SOCIETY .. Petitioner;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petition (C) No. 821 of 1990 with IA No. 5 of 1994 in WP (C) No. 320 of 1993, decided on December 7, 1994

A. **Advocates — Strike/Boycott by Lawyers — Permissibility — Instead of going into the said wider question, interim directions [as set out in para 2 herein] as suggested by Bar Council of India, directed to be in operation for six months under oversight of Supreme Court — Suggestion of counsel for Bar Council of India that it incorporate said interim directions in the Bar Council of India (Conduct and Disciplinary) Rules, so that they may have statutory support, taken on board — Bar Councils and Associations directed to drop action already initiated against members who had defied strike/boycott calls on earlier occasions — Advocates Act, 1961 — Ss. 35, 36, 37 and 38**

B. **Advocates Act, 1961 — Ss. 6 and 7, 35, 36 and 37 — Duties of Bar Councils vis-à-vis courts and the law — Prevention of strikes/boycotts and taking of disciplinary action**

Disposing of the writ petition in the terms below, the Supreme Court

Held :

In response to the consensus emerged at the Bar at the hearing of the matter that instead of the Supreme Court going into the wider question whether or not the members of the legal profession can resort to strike or abstain from appearing in cases in court in which they are engaged, the Supreme Court shall defer the hearing and decision on the larger question and accept the suggestions made by the Bar Council of India as an interim arrangement. The said suggestions, clauses (1) to (4) [set out in para 2 herein] are made rule of Court and further action is directed in terms thereof. The same shall operate prospectively. Counsel representing the Bar Council of India undertakes that he will suggest to the Bar Council of India to incorporate the said clauses (1), (2), (3) and (4) in the Bar Council of India (Conduct and Disciplinary) Rules, so that it can have statutory support should there be any violation or contravention of the aforementioned four clauses. In the meantime, the Supreme Court shall see the working of the

suggestions in clauses (1) to (4) above for a period of at least six months. The matter will stand adjourned by six months to oversee the working of this interim order. (Paras 2 to 4)

It is also suggested to the Bar Councils and Bar Associations that in order to clear the pitch and to uphold the high traditions of the profession as well as to maintain the unity and integrity of the Bar, they consider dropping action already initiated against their members who had appeared in courts notwithstanding strike calls given by any Bar Council or Bar Association. Besides, members of the legal profession should be alive to the possibility of judges of different courts refusing adjournments merely on the ground of there being a strike call and insisting on proceeding with cases. (Para 3)

Common Cause, A Registered Society v. *Union of India*, (1994) 5 SCC 557, *referred to*

D-M/AZ/33831/SR

Chronological list of cases cited ***on page(s)***

1. (1994) 5 SCC 557, *Common Cause, A Registered Society* v. *Union of India* 305*c d*

ORDER

1. Pursuant to this Court's order of 11-1-1994[1], directing public notice to issue to the Bar Associations and State Bar Councils all over the country in the nature of a notice under Order 1 Rule 8, Civil Procedure Code, certain bodies of the Bar filed their responses. Thereafter, the matter came up before this Court on different dates, lastly on 27-10-1994 when this Court suggested that a meeting be called to consider the various suggestions made by the Bar Associations/State Bar Councils in their responses to this Court. Accordingly Shri Shankar Das acting as convenor called a meeting on 20-11-1994 in which besides the learned Attorney General, Mr F.S. Nariman, President, Bar Association of India, Mr K.K. Venugopal, President, Supreme Court Bar Association, Mr V.C. Misra, Chairman, Bar Council of India and Mr H.D. Shourie, the petitioner herein, were invited to attend. Mr V.C. Misra and Mr K.K. Venugopal were not able to attend for personal reasons. As per the discussions that took place at the meeting a consensus emerged to the effect that instead of the Court going into the wider question whether members of the legal profession can resort to the extreme step of abstaining from appearing in cases in which they are engaged and which are listed before the Court as a consequence of any strike call given by any body of members belonging to the legal profession, it would be desirable to work out an interim arrangement and see if the same operates satisfactorily.

2. The Officiating Secretary, Bar Council of India, Mr C.M. Balaraman filed an affidavit on behalf of the Bar Council of India wherein he states that a "National Conference" of members of the Bar Council of India and State Bar Councils was held on 10-9-1994 and 11-9-1994 and a working paper was circulated on behalf of the Bar Council of India by Mr V.C. Misra, Chairman, Bar Council of India, inter alia on the question of strike by lawyers. In that working paper a note was taken that Bar Associations had proceeded on strike on several occasions in the past, at times, Statewide or nationwide, and

1 *Common Cause, A Registered Society* v. *Union of India*, (1994) 5 SCC 557

"while the profession does not like it as members of the profession are themselves the losers in the process" and while it is not necessary to sit in judgment over the wider question whether members of the profession can at all go on strike or boycott courts, it was felt that even if it is assumed that such a right enures to the members of the profession, the circumstances in which such a step should be resorted to should be clearly indicated. Referring to an earlier case before the Delhi High Court it was stated that the Bar Council of India had made its position clear to the effect:

> "(*a*) Bar Council of India is against resorting to strike excepting in *rarest of rare* cases involving the dignity and independence of the judiciary as well as of the Bar; and (*b*) whenever strikes become inevitable, efforts shall be made to keep it short and *peaceful* to avoid causing hardship to the litigant public." (emphasis supplied)

It was in response to the above that a consensus emerged at the Bar at the hearing of the matter that instead of the Court going into the wider question whether or not the members of the legal profession can resort to strike or abstain from appearing in cases in court in which they are engaged, the Court may see the working of the interim arrangement and if that is found to be satisfactory it may perhaps not be required to go into the wider question at this stage. Pursuant to the discussion that took place at the last hearing on 30-11-1994, the following suggestions have emerged as an interim measure consistent with the Bar Council of India's thinking that except in the rarest of rare cases strike should not be resorted to and instead peaceful demonstration may be resorted to, to avoid causing hardship to the litigant public. The learned counsel suggested that to begin with the following interim measures may be sufficient for the present:

> "(*1*) In the rare instance where any association of lawyers (including statutory Bar Councils) considers it imperative to call upon and/or advise members of the legal profession to abstain from appearing in courts on any occasion, it must be left open to any individual member/members of that association to be free to appear without let, fear or hindrance or any other coercive step.
>
> (*2*) No such member who appears in court or otherwise practises his legal profession, shall be visited with any adverse or penal consequences, whatever, by any association of lawyers, and shall not suffer any expulsion or threat of expulsion therefrom.
>
> (*3*) The above will not preclude other forms of protest by practising lawyers in courts such as, for instance, wearing of armbands and other forms of protest which in no way interrupt or disrupt the court proceedings or adversely affect the interest of the litigant. Any such form of protest shall not however be derogatory to the court or to the profession.
>
> (*4*) Office-bearers of a Bar Association (including Bar Council) responsible for taking decisions mentioned in clause (1) above shall

ensure that such decisions are implemented in the spirit of what is stated in clauses (1), (2) and (3) above."

3. Mr P.N. Duda, Senior Advocate representing the Bar Council of India was good enough to state that he will suggest to the Bar Council of India to incorporate clauses (1), (2), (3) and (4) in the Bar Council of India (Conduct and Disciplinary) Rules, so that it can have statutory support should there be any violation or contravention of the aforementioned four clauses. The suggestion that we defer the hearing and decision on the larger question whether or not members of the profession can abstain from work commends to us. We also agree with the suggestion that we see the working of the suggestions in clauses (1) to (4) above for a period of at least six months by making the said clauses the rule of the Court. Accordingly we make clauses (1) to (4) mentioned above the order of this Court and direct further course of action in terms thereof. The same will operate prospectively. We also suggest to the Bar Councils and Bar Associations that in order to clear the pitch and to uphold the high traditions of the profession as well as to maintain the unity and integrity of the Bar they consider dropping action already initiated against their members who had appeared in courts notwithstanding strike calls given by any Bar Council or Bar Association. Besides, members of the legal profession should be alive to the possibility of judges of different courts refusing adjournments merely on the ground of there being a strike call and insisting on proceeding with cases.

4. The matter will stand adjourned by six months to oversee the working of this interim order. It is hoped that it will work out satisfactorily. Liberty to mention in the event of any difficulty.

5. We are grateful to Mr Shourie for highlighting the issue. We are grateful to the learned Attorney General and all the other learned counsel appearing before us for their positive contribution and broad outlook in solving the vexed problem of strikes. We do hope that we will not have an occasion to recall this matter on the ground that there has been any contravention of any of the above clauses. On this optimistic note we adjourn the matter for six months.

(2006) 9 Supreme Court Cases 307

(BEFORE S.B. SINHA AND P.P. NAOLEKAR, JJ.)

DHANESWAR MAHAKUD AND OTHERS . . Appellants;

Versus

STATE OF ORISSA . . Respondent.

Criminal Appeal No. 596 of 2005*, decided on April 5, 2006

A. Penal Code, 1860 — Ss. 34 or 149 and 302 — Even if accused not charged with the aid of S. 34 and instead charged with the aid of S. 149, he

* From the Judgment dated 2-7-2004 of the High Court of Orissa at Cuttack in Crl. A. No. 107 of 1995

20. For the reasons stated above, we are of the opinion that in the absence of a show-cause notice it is not open to the Revenue to make a demand on the appellants even assuming that the contention of the Revenue in regard to classification as held by the Tribunal is correct.

21. In view of our finding on this question of limitation which precludes the Revenue from making a demand on the appellants because of the bar of limitation, we think it unnecessary to go to the first question as to the correctness of the classification made by the Tribunal in the impugned order.

22. For the reasons stated above, these appeals succeed and the same are allowed. The impugned orders are set aside.

(2003) 2 Supreme Court Cases 45

(BEFORE G.B. PATTANAIK, C.J. AND M.B. SHAH, DORAISWAMY RAJU, S.N. VARIAVA AND D.M. DHARMADHIKARI, JJ.)

EX-CAPT. HARISH UPPAL . . Petitioner;

Versus

UNION OF INDIA AND ANOTHER . . Respondents.

Writ Petitions (C) No. 132 of 1988† with Nos. 394 of 1993, 821 of 1990, 320 of 1993 and 406 of 2000, decided on December 17, 2002

A. **Advocates — Strike/Boycott by lawyers — Legality — Powers of courts and duty of Bar Council or Bar Association in the matter of lawyers' strike — (Per majority, Shah, J., concurring) Lawyers, held, have no right to go on strike or even token strike or to give a call for boycott — Nor can they, while holding vakalat on behalf of clients, abstain from courts in pursuance of a call for strike or boycott — Lawyers refusing to respond to such a call cannot be visited with any adverse consequences by Bar Association or Bar Council — Moreover, no Bar Council or Bar Association can permit calling of a meeting to consider such a call — Permissible modes of protest against actions of police and other authorities stated — Further held, only in rarest of rare cases involving dignity, integrity and independence of the Bar or the Bench, courts may ignore a protest abstention from work not exceeding one day — However, it is for the court to decide whether the issue involves such aspects — Therefore, in such cases the President of the Bar must first consult the Chief Justice or District Judge whose decision would be final — The courts are not under any obligation to adjourn matters in case of lawyers' strike — They are rather duty-bound to proceed with the listed matters even in the absence of lawyers — The lawyer holding vakalat of a client and abstaining from court due to a strike call would be personally responsible for costs, in addition to liability to damages towards his client for loss suffered by the client — Constitution of India — Arts. 19(1)(g) and 21 — Civil Procedure Code, 1908, Or. 9 Rr. 7 & 13 and Or. 17 R. 1 — Lawyers' strike — If a sufficient cause for non-appearance**

† Under Article 32 of the Constitution of India

B. **Advocates — Conduct of advocates — Controlling power of courts vis-à-vis controlling power of Bar Council in respect of — (Per majority, Shah, J., concurring) Conduct of advocate in court, held, is subject to the rules framed by Supreme Court/High Court while Bar Council can exercise control over advocate's right to practise law — Such rules including rules debarring advocates guilty of contempt or unprofessional or unbecoming conduct, from appearing before courts would be valid and binding on all including Bar Councils — Moreover, such rules cannot be said to be in conflict with disciplinary jurisdiction of the Bar Councils — Final appellate authority in respect of disciplinary jurisdiction is the Supreme Court — Constitution of India — Art. 145 — Advocates Act, 1961, Ss. 7, 48-A, 38, 49, 34, 30 and 50**

C. **Administrative Law — Exercise of discretionary power — (Per majority, Shah, J., concurring) Held, obligatory when an occasion warranting such exercise arises — Advocates Act, 1961, S. 36 — Powers of Bar Council — Obligation to exercise**

D. **Advocates — Grievance Redressal Committees — (Per majority, Shah, J., concurring) Bar Council of India's suggestion for setting up, in respect of advocates' problems concerning courts — Propriety — Held, not bad but recommendations or suggestions of such Committees would not be binding but subject to the decision of the Chief Justice or the District Judge**

E. **Advocates — Generally — Right to practise — Acts of advocates covered by, restated per majority, Shah, J., concurring — Advocates Act, 1961, Ss. 29 and 30**

F. **Advocates — Strike/Boycott by lawyers — Corrective measures against — (Per majority) Resolutions dated 28-9-2002/29-9-2002 of Bar Council of India, held not enough — It must incorporate clauses (1) to (4), as suggested in Supreme Court's interim order in *Common Cause case* (1995) in Bar Council of India (Conduct and Disciplinary) Rules — Moreover, courts may frame specific rules debarring advocates guilty of contempt and or unprofessional or unbecoming conduct from appearing before courts — (Per Shah, J., concurring) Bar Council of India must implement its resolution dated 29-9-2002 and High Courts should frame necessary rules to enable the taking of action against defaulting advocates — Bar Council of India (Conduct and Disciplinary) Rules — Advocates Act, 1961, S. 34 — Constitution of India — Art. 145**

All the instant petitions involved the question whether lawyers had a right to strike and/or give a call for boycott of court(s). In *Common Cause case*, (1995) without deciding the said question, the Supreme Court had passed the interim order therein (quoted herein in para 2), in the hope that the lawyers would exercise self-restraint. However, at the present hearing the Supreme Court found that the Bar Council of India had failed to incorporate the interim measures stated in clauses (1) to (4) of para 2 of the said order and that the phenomenon of going on strike was on the increase paralysing the functioning of the courts for several days. Therefore, the Supreme Court found it necessary to decide the said question. Besides the parties, Bar Councils of various States and various Bar Associations made their submissions.

The U.P. Bar Council was the only party to contend that lawyers had such a right and that courts had no power of supervision over the conduct of lawyers. That Section 50 of the Advocates Act, 1961 repealed the earlier provisions which had permitted courts to control rights of advocates to practise in courts. That the Supreme Court's ruling that strike amounted to misconduct was of no consequence as the Bar Councils had been vested with the power to decide whether or not an advocate had committed misconduct. That the Supreme Court could not penalise any advocate for misconduct as the power to discipline was exclusively with the Bar Councils. That it was for the Bar Councils to decide whether strike should be resorted to or not.

The Bar Council of India submitted before the Supreme Court extracts of a joint meeting of the Chairmen of various State Bar Councils and members of the Bar Council of India, held on 28-9-2002 and 29-9-2002 which stated that some of the causes resulting in lawyers' abstention from work were: (*i*) local issues, (*ii*) issues relating to one section of the Bar and another, (*iii*) issues involving dignity, integrity, independence of the Bar and the judiciary, (*iv*) legislation without consultation with the Bar Councils, and (*v*) national issues and regional issues affecting the public at large/the insensitivity of all concerned. The said meeting resolved, inter alia, to constitute Grievance Redressal Committees at the taluk/sub-division or tehsil level, at the district level, High Court and Supreme Court levels.

Rejecting the U.P. Bar Council's contention and answering the question in the negative, the Supreme Court

Held :

Per curiam

The law is already well settled. It is the duty of every advocate who has accepted a brief to attend trial, even though it may go on day to day and for a prolonged period. He cannot refuse to attend court because a boycott call is given by the Bar Association. It is unprofessional as well as unbecoming for him to refuse to attend court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council. The courts are under an obligation to hear and decide cases brought before them and cannot adjourn matters merely because lawyers are on strike. It is the duty and obligation of courts to go on with matters or otherwise it would tantamount to becoming a privy to the strike. If a resolution is passed by Bar Associations expressing want of confidence in judicial officers, it would amount to scandalising the courts to undermine its authority and thereby the advocates would have committed contempt of court. If the lawyers participate in a boycott or a strike, their action is ex facie bad in view of the decision in *Mahabir Prasad Singh case*, (1999) 1 SCC 37. The advocates would be answerable for the consequences suffered by their clients if the non-appearance was solely on grounds of a strike call. (Para 20)

Lt. Col. S.J. Chaudhary v. *State (Delhi Admn.)*, (1984) 1 SCC 722 : 1984 SCC (Cri) 163; *K. John Koshy* v. *Dr Tarakeshwar Prasad Shaw*, (1998) 8 SCC 624; *Mahabir Prasad Singh* v. *Jacks Aviation (P) Ltd.*, (1999) 1 SCC 37; *Kolluttumottil Razak* v. *State of Kerala*, (2000) 4 SCC 465 : 2000 SCC (Cri) 829; *U.P. Sales Tax Service Assn.* v. *Taxation Bar Assn.*, (1995) 5 SCC 716; *Ramon Services (P) Ltd.* v. *Subhash Kapoor*, (2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152, *relied on*

B.L. Wadehra (Dr) v. *State (NCT of Delhi)*, AIR 2000 Del 266 : (2000) 85 DLT 114 : (2000) 2 KLT 295, *approved*

Indian Council of Legal Aid and Advice v. *Bar Council of India*, (1995) 1 SCC 732 : AIR 1995 SC 691; *Sanjeev Datta, In re*, (1995) 3 SCC 619 : 1995 AIR SCW 2203; *Hussainara Khatoon (I)* v. *Home Secy., State of Bihar*, (1980) 1 SCC 81 : 1980 SCC (Cri) 23 : AIR 1979 SC 1360, *referred to*

Moreover, an advocate is an officer of the court and enjoys special status in society. Advocates have obligations and duties to ensure smooth functioning of the court. They owe a duty to their clients. Strikes interfere with administration of justice. They cannot thus disrupt court proceedings and put interest of their clients in jeopardy. (Para 21)

Section 7 of the Advocates Act provides for the functions of the Bar Council of India. None of the functions mentioned therein authorise paralysing of the working of courts in any manner. On the contrary, the Bar Council of India is enjoined with the duty of laying down standards of professional conduct and etiquette for advocates. This would mean that the Bar Council of India ensures that advocates do not behave in an unprofessional and unbecoming manner. Section 48-A gives a right to the Bar Council of India to give directions to the State Bar Councils. The Bar Associations may be separate bodies but all advocates who are members of such Associations are under disciplinary jurisdiction of the Bar Councils and thus the Bar Councils can always control their conduct. Further, even in respect of disciplinary jurisdiction the final appellate authority is, by virtue of Section 38, the Supreme Court. (Para 23)

It is the duty of the Bar Councils to ensure that there is no unprofessional and/or unbecoming conduct. Therefore, no Bar Council can even consider giving a call for strike or a call for boycott. In case any Association calls for a strike or a call for boycott the State Bar Council concerned and on their failure the Bar Council of India must immediately take disciplinary action against the advocates who give a call for strike and if the Committee members permit calling of a meeting for such purpose, against the Committee members. Further, it is the duty of every advocate to boldly ignore a call for strike or boycott. (Para 25)

Even if the Bar Councils do not rise to the occasion and perform their duties by taking disciplinary action on a complaint from a client against an advocate for non-appearance by reason of a call for strike or boycott, on an appeal under Section 38 of the Advocates Act the Supreme Court can and will. Apart from this, every court now should and must mulct advocates who hold *vakalats* but still refrain from attending courts in pursuance of a strike call with costs. Such costs would be in addition to the damages which the advocate may have to pay for the loss suffered by his client by reason of his non-appearance. (Para 26)

Ramon Services (P) Ltd. v. *Subhash Kapoor*, (2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152, *followed*

Supreme Court Bar Assn. v. *Union of India*, (1998) 4 SCC 409, *relied on*

Abhay Prakash Sahay Lalan v. *High Court of Judicature at Patna*, AIR 1998 Pat 75 : (1998) 1 BLJR 182, *impliedly approved*

The resolutions of the joint meeting of the Chairman of various State Bar Councils and members of the Bar Council of India are not enough. It is the duty and obligation of the Bar Council of India to now incorporate the clauses as suggested in the interim order. No body or authority, statutory or not, vested with powers can abstain from exercising the powers when an occasion warranting such exercise arises. Every power vested in a public authority is coupled with a duty to exercise it, when a situation calls for such exercise. The authority cannot refuse to act at its will or pleasure. If such omission continues, particularly when

there is an apparent threat to the administration of justice and fundamental rights of citizens i.e. the litigating public, courts will always have authority to compel or enforce the exercise of the power by the statutory authority. (Paras 28 and 30)

A dispute between a lawyer/lawyers and police or other authorities can never justify giving a call for boycott. In such cases an adequate legal remedy is available and it must be resorted to. The other reasons given under the item "local issues" and even Items (*iv*) and (*v*) are all matters which are exclusive within the domain of courts and/or legislatures. Of course the Bar may be concerned about such things but there can be no justification to paralyse the administration of justice. In such cases representations can and should be made. It will be for the appropriate authority to consider those representations. However, the ultimate decision in such matters has to be that of the authority concerned. So far as problems concerning courts are concerned, there is no harm in setting up Grievance Redressal Committees as suggested. However, the purpose of such Committees would only be to set up a forum where grievance can be ventilated. The suggestions of such Committees can never be binding. So far as legislation, national and regional issues are concerned, the Bar always has recourse to legal remedies. (Para 32)

The only exception to the general rule set out herein is Item (*iii*). Although in such cases a strong protest must be lodged, it has to be held that strikes are illegal and that courts must now take a very serious view of strikes and calls for boycott. However, lawyers are part and parcel of the system of administration of justice. A protest on an issue involving dignity, integrity and independence of the Bar and the judiciary, provided it does not exceed one day, may be overlooked by courts, who may turn a blind eye for that one day. (Para 33)

The right of appearance in courts is still within the control and jurisdiction of courts. Section 30 of the Advocates Act has not been brought into force and rightly so. Control of conduct in court can only be within the domain of courts. Under Article 145 the Supreme Court and under Section 34 of the Advocates Act the High Court can frame rules including rules regarding condition on which a person (including an advocate) can practise in the Supreme Court and/or in the High Court and courts subordinate thereto. Many courts have framed rules in this behalf. Such a rule would be valid and binding on all. The Bar should take note that unless self-restraint is exercised, courts may now have to consider framing specific rules debarring advocates, guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the courts. Such a rule if framed would not have anything to do with the disciplinary jurisdiction of the Bar Councils. It would be concerning the dignity and orderly functioning of the courts. The right of the advocate to practise envelopes a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for clients before an arbitrator or arbitrators etc. Such a rule would have nothing to do with all the acts done by an advocate during his practice. He may even file a *vakalat* on behalf of a client even though his appearance inside the court is not permitted. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by them in exercise of their disciplinary powers. It will be the duty of Bar Councils

to see that such a rule is strictly abided by. The power to frame such rules should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the courts are in control of the former. This distinction is clearly brought out by the difference in language in Section 49 of the Advocates Act on the one hand and Article 145 of the Constitution of India and Section 34(1) of the Advocates Act on the other. Even if Section 30 were to be brought into force, control of proceedings in court will always remain with the court. There is thus no conflict or clash between other provisions of the Advocates Act on the one hand and Section 34 of the Advocates Act or Article 145 of the Constitution of India on the other. (Para 34)

Therefore, it is held that lawyers have no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any is required, can only be by giving press statements, TV interviews, carrying out of court premises banners and/or placards, wearing black or white or of any colour armbands, peaceful protest marches outside and away from court premises, going on *dharnas* or relay fasts etc. Lawyers holding *vakalats* on behalf of their clients cannot not attend courts in pursuance of a call for strike or boycott. All lawyers must boldly refuse to abide by any call for strike or boycott. No lawyer can be visited with any adverse consequences by the Association or the Council and no threat or coercion of any nature including that of expulsion can be held out. No Bar Council or Bar Association can permit calling of a meeting for purposes of considering a call for strike or boycott and requisition, if any, for such meeting must be ignored. Only in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, courts may ignore (turn a blind eye) to a protest abstention from work for not more than one day. However, it will be for the court to decide whether or not the issue involves dignity or integrity or independence of the Bar and/or the Bench. Therefore in such cases the President of the Bar must first consult the Chief Justice or the District Judge before advocates decide to absent themselves from court. The decision of the Chief Justice or the District Judge would be final and have to be abided by the Bar. The courts are under no obligation to adjourn matters because lawyers are on strike. On the contrary, it is the duty of all courts to go on with matters on their boards even in the absence of lawyers. In other words, courts must not be privy to strikes or calls for boycotts. If a lawyer, holding a *vakalat* of a client, abstains from attending court due to a strike call, he shall be personally liable to pay costs which shall be in addition to damages which he might have to pay his client for loss suffered by him. (Para 35)

Bharat Kumar K. Palicha v. *State of Kerala*, AIR 1997 Ker 291 ; (1997) 2 Ker LT 287 (FB); *Communist Party of India (M)* v. *Bharat Kumar*, (1998) 1 SCC 201, *referred to*

Per Shah and Dharmadhikari, JJ. *(concurring)*

Merely holding strikes as illegal would not be sufficient in the present-day situation nor would it serve any purpose. Some concrete joint action is required to be taken by the Bench and the Bar to see that there are no strikes any more. Hence, it is directed that (*a*) all the Bar Associations in the country shall implement the resolution dated 29-9-2002 passed by the Bar Council of India, and (*b*) under Section 34 of the Advocates Act, the High Courts would frame necessary rules so that appropriate action can be taken against defaulting advocate/advocates. (Paras 40, 42 and 46)

Advocates who appeared in this case :

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6. (1998) 4 SCC 409, *Supreme Court Bar Assn.* v. *Union of India* 66*a b*
7. (1998) 1 SCC 201, *Communist Party of India (M)* v. *Bharat Kumar* 57*c d*, 57*d*
8. AIR 1998 Pat 75 : (1998) 1 BLJR 182, *Abhay Prakash Sahay Lalan* v. *High Court of Judicature at Patna* 65*g h*
9. AIR 1997 Ker 291 : (1997) 2 Ker LT 287 (FB), *Bharat Kumar K. Palicha* v. *State of Kerala* 57*b*
10. (1995) 5 SCC 716, *U.P. Sales Tax Service Assn.* v. *Taxation Bar Assn.* 58*f*
11. (1995) 3 SCC 619 : 1995 AIR SCW 2203, *Sanjeev Datta, In re* 60*c*

12. (1995) 1 SCC 732 : AIR 1995 SC 691, *Indian Council of Legal Aid and Advice* v. *Bar Council of India* 60*a*
13. (1995) 1 Scale 6, *Common Cause, A Regd. Society* v. *Union of India* 52*d*, 62*c*–*d*
14. (1984) 1 SCC 722 : 1984 SCC (Cri) 163, *Lt. Col. S.J. Chaudhary* v. *State (Delhi Admn.)* 57*d*-*e*, 58*a*
15. (1980) 1 SCC 81 : 1980 SCC (Cri) 23 : AIR 1979 SC 1360, *Hussainara Khatoon (I)* v. *Home Secy., State of Bihar* 61*c*

The Judgments of the Court were delivered by

S.N. VARIAVA, J. (*on behalf of G.B. Pattanaik, C.J., Doraiswamy Raju, J., himself and D.M. Dharmadhikari, J.**) All these petitions raise the question whether lawyers have a right to strike and/or give a call for boycott of court/s. In all these petitions a declaration is sought that such strikes and/or calls for boycott are illegal. As the questions vitally concerned the legal profession, public notices were issued to Bar Associations and Bar Councils all over the country. Pursuant to those notices some Bar Associations and Bar Councils have filed their responses and have appeared and made submissions before us.

2. In Writ Petition (C) No. 821 of 1990, an interim order came to be passed. This order is reported in *Common Cause, A Regd. Society* v. *Union of India*[1]. The circumstances under which it is passed and the nature of the interim order are set out in the order. The relevant portion reads as under:

> "2. The Officiating Secretary, Bar Council of India, Mr C.R. Balaram filed an affidavit on behalf of the Bar Council of India wherein he states that a 'National Conference' of members of the Bar Council of India and State Bar Councils was held on 10-9-1994 and 11-9-1994 and a working paper was circulated on behalf of the Bar Council of India by Mr V.C. Misra, Chairman, Bar Council of India, inter alia on the question of strike by lawyers. In that working paper a note was taken that the Bar Associations had proceeded on strike on several occasions in the past, at times, State-wide or nationwide, and 'while the profession does not like it as members of the profession are themselves the losers in the process' and while it is not necessary to sit in judgment over the wider question whether members of the profession can at all go on strike or boycott of courts, it was felt that even if it is assumed that such a right enures to the members of the profession, the circumstances in which such a step should be resorted to should be clearly indicated. Referring to an earlier case before the Delhi High Court, it was stated that the Bar Council of India had made its position clear to the effect
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> > '(*a*) the Bar Council of India is against resorting to strike excepting in *rarest of rare* cases involving the dignity and independence of the judiciary as well as of the Bar; and (*b*) whenever strikes become inevitable, efforts shall be made to keep it short and *peaceful* to avoid causing hardship to the litigant public.'
> >
> > (emphasis supplied)

* **Ed.**: As per the certified copy Hon'ble Mr Justice D.M. Dharmadhikari, J. has also signed the concurring opinion of Hon'ble Mr Justice M.B. Shah, J. (below).

1 (1995) 1 Scale 6

It was in response to the above that a consensus emerged at the Bar at the hearing of the matter that instead of the court going into the wider question whether or not the members of the legal profession can resort to strike or abstain from appearing in cases in court in which they are engaged, the court may see the working of the interim arrangement and if that is found to be satisfactory it may perhaps not be required to go into the wider question at this stage. Pursuant to the discussion that took place at the last hearing on 30-11-1994, the following suggestions have emerged as an interim measure consistent with the Bar Council of India's thinking that except in the rarest of rare cases strike should not be resorted to and instead peaceful demonstration may be resorted to avoid causing hardship to the litigant public. The learned counsel suggested that to begin with, the following interim measures may be sufficient for the present:

(*1*) In the rare instance where any association of lawyers including statutory Bar Councils considers it imperative to call upon and/or advise members of the legal profession to abstain from appearing in courts on any occasion, it must be left open to any individual member/members of that association to be free to appear without let, fear or hindrance or any other coercive steps.

(*2*) No such member who appears in court or otherwise practises his legal profession, shall be visited with any adverse or penal consequences whatever, by any association of lawyers, and shall not suffer any expulsion or threat of expulsion therefrom.

(*3*) The above will not preclude other forms of protest by practising lawyers in court such as, for instance, wearing of armbands and other forms of protest which in no way interrupt or disrupt the court proceedings or adversely affect the interest of the litigant. Any such form of protest shall not however be derogatory to the court or to the profession.

(*4*) Office-bearers of a Bar Association (including Bar Council) responsible for taking decisions mentioned in clause (*1*) above shall ensure that such decisions are implemented in the spirit of what is stated in clauses (*1*), (*2*) and (*3*) above.

3. Mr P.N. Duda, Senior Advocate representing the Bar Council of India was good enough to state that he will suggest to the Bar Council of India to incorporate clauses (*1*), (*2*), (*3*) and (*4*) in the Bar Council of India (Conduct and Disciplinary) Rules, so that it can have statutory support should there be any violation or contravention of the aforementioned four clauses. The suggestion that we defer the hearing and decision on the larger question whether or not members of the profession can abstain from work commends to us. We also agree with the suggestion that we see the working of the suggestions in clauses (*1*) to (*4*) above for a period of at least six months by making the said clauses the rule of the court. Accordingly we make clauses (*1*) to (*4*) mentioned

above the order of this Court and direct further course of action in terms thereof. The same will operate prospectively. We also suggest to the Bar Councils and Bar Associations that in order to clear the pitch and to uphold the high traditions of the profession as well as to maintain the unity and integrity of the Bar they consider dropping action already initiated against their members who had appeared in court notwithstanding strike calls given by the Bar Council or Bar Association. Besides, members of the legal profession should be alive to the possibility of Judges of different courts refusing adjournments merely on the ground of there being a strike call and insisting on proceeding with cases."

The above interim order was passed in the hope that better sense could prevail and lawyers would exercise self-restraint. In spite of the above interim directions and the statement of Mr P.N. Duda, the Bar Council of India has not incorporated clauses (*1*) to (*4*) in the Bar Council of India (Conduct and Disciplinary) Rules. The phenomenon of going on strike at the slightest provocation is on the increase. Strikes and calls for boycott have paralysed the functioning of courts for a number of days. It is now necessary to decide whether lawyers have a right to strike and/or give a call for boycott of court/s.

3. We have heard Mr Dipankar Gupta, learned Amicus Curiae. We have heard the petitioner in person and advocates for the various writ petitioners. We have heard the Bar Councils and Bar Associations who desired to be heard.

4. Mr Dipankar Gupta referred to various authorities of this Court and submitted that the reasons why strikes have been called by the Bar Associations and/or Bar Councils are:

(*a*) confrontation with the police and/or the legal administration;

(*b*) grievances against the Presiding Officer;

(*c*) grievances against judgments of courts;

(*d*) clash of interest between groups of lawyers; and

(*e*) grievances against the legislature or a legislation.

Mr Gupta submitted that the law was well established. He pointed out that this Court has declared that strikes are illegal. He submitted that even a call for strike is bad. He submitted that it is time that the Bar Council of India as well as various State Bar Councils monitor strikes within their jurisdiction and ensure that there are no call for strikes and/or boycotts. He submitted that in all cases where redressal can be obtained by going to a court of law there should be no strike.

5. Mr Nigam, on behalf of the petitioner in Writ Petition (C) No. 406 of 2000, submitted that strike as a means for collective bargaining is recognised only in industrial disputes. He submitted that lawyers who are officers of the court cannot use strikes as a means to blackmail the courts or the clients. He submitted that the call for strike by lawyers is in effect a call to breach the contract which lawyers have with their clients. He submitted that it has

already been declared by courts that a strike is illegal. He submitted that it is now time that courts cast responsibility on the Bar Councils and the Bar Associations to see that there is no strike and/or call for boycott. He submitted that now the Executive Committee of any Bar Council or Bar Association which calls for a strike or boycott should be held responsible by the courts. He submitted that the courts must take action against the Committee members for giving such calls on the basis that they have committed contempt of court. He submitted that the law is that a lawyer who has accepted a *vakalat* on behalf of a client must attend court and if he does not attend court, it would amount to professional misconduct and also contempt of court. He submitted that the court should now frame rules whereby the courts regulate the right of lawyers to appear before the court. He submitted that courts should frame rules whereby any lawyer who misconducts himself and commits contempt of court by going on strike or boycotting a court will not be allowed to practise in that court. He submitted that it should now be held that even if a requisition for a meeting to consider a strike is received, the Committee members of a Bar Association or the Bar Council should refuse to call a meeting for that purpose. He submitted that no Association or Bar Council can have any legal or moral right to call a meeting to consider a call for an illegal act. He submitted that this Court should now issue a mandamus to the Bar Councils to frame rules in consonance with the interim directions which have been passed by this Court.

6. Mr Prashant Bhushan, for the petitioner in WP (C) No. 821 of 1990, supported Mr Dipankar Gupta and Mr Nigam. He further submitted that the court should also declare that lawyers who do not want to participate in a strike should not be coerced by other lawyers or Committee members. He submitted that such coercion amounts to interference with the administration of justice and is therefore clearly contempt of court. He submitted that this coercion need not necessarily be by physical prevention from appearance but could also be by a threat to withdraw facility or to terminate the membership of the Associations. He submitted that if any such threats are given or any such coercion is used then the court must punish for contempt the party so coercing.

7. Submissions were made before us by the Bar Councils of Delhi, U.P., Maharashtra, Goa, West Bengal, Andhra Pradesh and Tamil Nadu. Submissions were also made before us on behalf of the Bar Associations of Madras, Kerala, Calcutta, Nainital and the Supreme Court Bar Association. Counsel for the Bar Councils and Bar Associations submitted that they were not in favour of strikes and/or call for strikes. Many of them stated that their Associations had not gone on strike at all and/or only on token strikes of not more than one day. The consensus at the Bar was that lawyers cannot and should not resort to strike in order to vent their grievances where a legal remedy was available. The consensus at the Bar was that even where a legal remedy was not available strike should be resorted to in the rarest of rare cases like when the dignity of the court or the Bar was at stake. The consensus was that even in such cases only a token strike of one day may be

resorted to. The consensus was that other methods of protests must be resorted to viz. passing of resolutions, making representations, taking out silent processions without causing disturbance to court work, holding *dharnas* or relay fast and wearing white ribbons. The consensus of the Bar was that there must be a mechanism for redressing the grievances of the lawyers. It was suggested that committees be set up to whom grievances can be submitted.

8. It must however be mentioned that counsel on behalf of the U.P. Bar Council struck a discordant note. He submitted that lawyers had a right to go on strike or give a call for boycott. He submitted that courts had no power of supervision over the conduct of lawyers. He submitted that Section 50 of the Advocates Act, 1961 repealed the earlier provisions which had permitted courts to control rights of advocates to practise in courts. He submitted that there are many occasions when lawyers require to go on strike or give a call for boycott. He submitted that this Court laying down that going on strike amounts to misconduct is of no consequence as the Bar Councils have been vested with the power to decide whether or not an advocate has committed misconduct. He submitted that this Court cannot penalise any advocate for misconduct as the power to discipline is now exclusively with the Bar Councils. He submitted that it is for the Bar Councils to decide whether strike should be resorted to or not.

9. The learned Attorney-General submitted that strike by lawyers cannot be equated with strikes resorted to by other sections of the society. He submitted that the basic difference is that members of the legal profession are officers of the court. He submitted that they are obliged by the very nature of their calling to aid and assist in the dispensation of justice. He submitted that strike or abstention from work impaired the administration of justice and that the same was thus inconsistent with the calling and position of lawyers. He submitted that abstention from work, by lawyers, may be resorted to in the rarest of rare cases, namely, where the action protested against is detrimental to free and fair administration of justice such as there being a direct assault on the independence of the judiciary or a provision is enacted nullifying a judgment of a court by an executive order or in case of supersession of judges by departure from the settled policy and convention of seniority. He submitted that even in cases where the action eroded the autonomy of the legal profession e.g. dissolution of Bar Councils and recognized Bar Associations or packing them with government nominees, a token strike of one day may be resorted to. He submitted, even in the above situations the duration of abstention from work should be limited to a couple of hours or at the maximum one day. He submitted that the purpose should be to register a protest and not to paralyse the system. He suggested that alternative forms of protest can be explored e.g. giving press statements, TV interviews, carrying banners and/or placards, wearing black armbands, peaceful protest marches outside court premises etc. He submitted that abstention from work for the redressal of a grievance should never be resorted to where other remedies for seeking redressal are available. He submitted that all attempts should be

made to seek redressal from the authorities concerned. He submitted that where such redressal is not available or not forthcoming, the direction of the protest can be against that authority and should not be misdirected e.g. in cases of alleged police brutalities, courts and litigants should not be targeted in respect of actions for which they are in no way responsible. He agreed that no force or coercion should be employed against lawyers who are not in agreement with the "strike call" and want to discharge their professional duties. The learned Attorney-General relied upon the following observations of a Full Bench of the Kerala High Court in the case of *Bharat Kumar K. Palicha* v. *State of Kerala*[2] which are reproduced below:

> "*17.* No political party or organization can claim that it is entitled to paralyse the industry and commerce in the entire State or nation and is entitled to prevent the citizens not in sympathy with its viewpoint, from exercising their fundamental rights or *from performing their duties for their own benefit or for the benefit of the State or the nation.*" (See *Communist Party of India (M)* v. *Bharat Kumar*[3], SCC at p. 204, para 17.) (emphasis added)

10. He pointed out that the judgment of the Kerala High Court has been approved by this Hon'ble Court in the case of *Communist Party of India (M)* v. *Bharat Kumar*[3] SCC at p. 202.

11. Before considering the question raised it is necessary to keep in mind the role of lawyers in the administration of justice and also their duties and obligations as officers of this Court. In the case of *Lt. Col. S.J. Chaudhary* v. *State (Delhi Admn.)*[4] the High Court had directed that a criminal trial goes on from day to day. Before this Court it was urged that the advocates were not willing to attend day to day as the trial was likely to be prolonged. It was held that it is the duty of every advocate who accepts a brief in a criminal case to attend the trial day to day. It was held that a lawyer would be committing breach of professional duties if he fails to so attend.

12. In the case of *K. John Koshy* v. *Dr Tarakeshwar Prasad Shaw*[5] one of the questions was whether the court should refuse to hear a matter and pass an order when counsel for both the sides were absent because of a strike call by the Bar Association. This Court held that the court could not refuse to hear the matter as otherwise it would tantamount to the court becoming a privy to the strike.

13. In the case of *Mahabir Prasad Singh* v. *Jacks Aviation (P) Ltd.*[6] an application had been made to the trial court to suo motu transfer the case to some other court as the Bar Association had passed a resolution to boycott that court. It was stated that the lawyers could not thus appear before that court. The trial court rightly rejected the application. In a revision petition the

2 AIR 1997 Ker 291 : (1997) 2 Ker LT 287 (FB)
3 (1998) 1 SCC 201
4 (1984) 1 SCC 722 : 1984 SCC (Cri) 163
5 (1998) 8 SCC 624
6 (1999) 1 SCC 37

High Court stayed the proceedings before the trial court. This Court held that the High Court had committed grave error in entertaining the revision petition and passing an order of stay. Following the ratio laid down in *Lt. Col. S.J. Chaudhary case*[1] this Court held as follows: (SCC p. 43, paras 15-16)

> "*15.* This is not a case where the respondent was prevented by the Additional District Judge from addressing oral arguments, but the respondent's counsel prevented the Additional District Judge from hearing his oral arguments on the stated cause that he decided to boycott that Court forever as the Delhi Bar Association took such a decision. Here the counsel did not want a case to be decided by that Court. By such conduct, the counsel prevented the judicial process to have flowed on its even course. The respondent has no justification to approach the High Court as it was the respondent who contributed to such a situation.
>
> *16.* If any counsel does not want to appear in a particular court, that too for justifiable reasons, professional decorum and etiquette require him to give up his engagement in that court so that the party can engage another counsel. But retaining the brief of his client and at the same time abstaining from appearing in that court, that too not on any particular day on account of some personal inconvenience of the counsel but as a permanent feature, is unprofessional as also unbecoming of the status of an advocate. No court is obliged to adjourn a cause because of the strike call given by any association of advocates or a decision to boycott the courts either in general or any particular court. It is the solemn duty of every court to proceed with the judicial business during court hours. No court should yield to pressure tactics or boycott calls or any kind of browbeating."

14. In the case of *Koluttumottil Razak* v. *State of Kerala*[7] counsel did not appear in the court as advocates had called for a strike. As the appellant was languishing in jail this Court held that an adjournment would not be justified. This Court held that it is the duty of the court to look into the matter itself.

15. In the case of *U.P. Sales Tax Service Assn.* v. *Taxation Bar Assn.*[8] the question was whether the High Court could issue a writ or direction prohibiting a statutory authority from discharging quasi-judicial functions i.e. direct the State Government to withdraw all powers from it and transfer all pending cases before the officer to any other officer and whether advocates would be justified to go on strike as a pressure group. In that context this Court observed as follows: (SCC p. 723, para 11)

> "*11.* It is fundamental that if rule of law is to have any meaning and content, the authority of the court or a statutory authority and the confidence of the public in them should not be allowed to be shaken, diluted or undermined. The courts of justice and all tribunals exercising judicial functions from the highest to the lowest are by their constitution entrusted with functions directly connected with the administration of

7 (2000) 4 SCC 465 : 2000 SCC (Cri) 829

8 (1995) 5 SCC 716

justice. It is that expectation and confidence of all those, who have or are likely to have business in that court or tribunal, which should be maintained so that the court/tribunal perform all their functions on a higher level of rectitude without fear or favour, affection or ill will. Casting defamatory aspersions upon the character, ability or integrity of the Judge/judicial officer/authority undermines the dignity of the court/authority and tends to create distrust in the popular mind and impedes the confidence of the people in the courts/tribunals which is of prime importance to the litigants in the protection of their rights and liberties. The protection to the Judges/judicial officer/authority is not personal but accorded to protect the institution of the judiciary from undermining the public confidence in the efficacy of judicial process. The protection, therefore, is for fearless curial process. Any scurrilous, offensive, intimidatory or malicious attack on the judicial officer/authority beyond condonable limits, amounts to scandalising the court/tribunal amenable to not only conviction for its contempt but also liable to libel or defamation and damages personally or group libel. Maintenance of dignity of the court/judicial officer or quasi-judicial authority is, therefore, one of the cardinal principles of rule of law embedded in judicial review. Any uncalled for statement or allegation against the judicial officer/statutory authorities, casting aspersions of court's integrity or corruption would justify initiation of appropriate action for scandalising the court or tribunal or vindication of authority or majesty of the court/tribunal. The accusation of the judicial officer or authority of arbitrary and corrupt conduct undermines their authority and rudely shakes them and the public confidence in proper dispensation of justice. It is of necessity to protect dignity or authority of the judicial officer to maintain the stream of justice pure and unobstructed. The judicial officer/authority needs protection personally. Therefore, making wild allegations of corruption against the presiding officer amounts to scandalising the court/statutory authority. Imputation of motives of corruption to the judicial officer/authority by any person or group of persons is a serious inroad into the efficacy of judicial process and threat to judicial independence and needs to be dealt with the strong arm of law."

16. It was held that the High Court did not have power to issue a writ of direction prohibiting a statutory authority from discharging quasi-judicial functions. The question whether lawyers had a right to strike was not gone into.

17. In the case of *B.L. Wadehra (Dr)* v. *State (NCT of Delhi)*[9] one of the questions was whether a direction should be issued to the lawyers to call off a strike. The Delhi High Court noted certain observations of this Court which are worth reproducing: (AIR pp. 285-86, para 28)

9 AIR 2000 Del 266 : (2000) 85 DLT 114 : (2000) 2 KLT 295

"In *Indian Council of Legal Aid and Advice* v. *Bar Council of India*[10] the Supreme Court observed thus:

> 'It is generally believed that members of the legal profession have certain social obligations, e.g., to render 'pro bono publico' service to the poor and the underprivileged. Since the duty of a lawyer is to assist the court in the administration of justice, the practice of law has a public utility flavour and, therefore, he must strictly and scrupulously abide by the code of conduct behoving the noble profession and must not indulge in any activity which may tend to lower the image of the profession in society. That is why the functions of the Bar Council include the laying down of standards of professional conduct and etiquette which advocates must follow to maintain the dignity and purity of the profession.'

In *Sanjeev Datta, In re*[11] the Supreme Court has stated thus:

> '*20*. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the Court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behaviour. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practised it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible.' "

The Delhi High Court then considered various other authorities of this Court, including some set out above, and concluded as follows: (AIR pp. 287-88, paras 30-33)

> "*30*. In the light of the abovementioned views expressed by the Supreme Court, lawyers have no right to strike i.e. to abstain from appearing in Court in cases in which they hold vakalat for the parties, even if it is in response to or in compliance with a decision of any

10 (1995) 1 SCC 732 : AIR 1995 SC 691

11 (1995) 3 SCC 619 : 1995 AIR SCW 2203

association or body of lawyers. In our view, in exercise of the right to protest, a lawyer may refuse to accept new engagements and may even refuse to appear in a case in which he had already been engaged, if he has been duly discharged from the case. But so long as a lawyer holds the vakalat for his client and has not been duly discharged, he has no right to abstain from appearing in Court even on the ground of a strike called by the Bar Association or any other body of lawyers. If he so abstains, he commits a professional misconduct, a breach of professional duty, a breach of contract and also a breach of trust and he will be liable to suffer all the consequences thereof. There is no fundamental right, either under Article 19 or under Article 21 of the Constitution, which permits or authorises a lawyer to abstain from appearing in Court in a case in which he holds the vakalat for a party in that case. On the other hand a litigant has a fundamental right for speedy trial of his case, because, speedy trial, as held by the Supreme Court in *Hussainara Khatoon (I)* v. *Home Secy., State of Bihar*[12] is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution. Strike by lawyers will infringe the abovementioned fundamental right of the litigants and such infringement cannot be permitted. Assuming that the lawyers are trying to convey their feelings or sentiments and ideas through the strike in exercise of their fundamental right to freedom of speech and expression guaranteed by Article 19(1)(*a*) of the Constitution, we are of the view that the exercise of the right under Article 19(1)(*a*) will come to an end when such exercise threatens to infringe the fundamental right of another. Such a limitation is inherent in the exercise of the right under Article 19(1)(*a*). Hence the lawyers cannot go on strike infringing the fundamental right of the litigants for speedy trial. The right to practise any profession or to carry on any occupation guaranteed by Article 19(1)(*g*) may include the right to discontinue such profession or occupation but it will not include any right to abstain from appearing in Court while holding a vakalat in the case. Similarly, the exercise of the right to protest by the lawyers cannot be allowed to infract the litigant's fundamental right for speedy trial or to interfere with the administration of justice. The lawyer has a duty and obligation to cooperate with the Court in the orderly and pure administration of justice. Members of the legal profession have certain social obligations also and the practice of law has a public utility flavour. According to the Bar Council of India Rules, 1975 'an advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar or for a member of the Bar in his non-professional capacity, may still be improper for an advocate'. It is below the dignity, honour and status of the members of the noble profession of law to organize and participate in strike. It is unprofessional and unethical to do so. In view of the nobility and

12 (1980) 1 SCC 81 : 1980 SCC (Cri) 23 : AIR 1979 SC 1360

tradition of the legal profession, the status of the lawyer as an officer of the court and the fiduciary character of the relationship between a lawyer and his client and since strike interferes with the administration of justice and infringes the fundamental right of litigants for speedy trial of their cases, strike by lawyers cannot be approved as an acceptable mode of protest, irrespective of the gravity of the provocation and the genuineness of the cause. Lawyers should adopt other modes of protest which will not interrupt or disrupt court proceedings or adversely affect the interest of the litigant. Thereby lawyers can also set an example to other sections of the society in the matter of protest and agitations.

31. Every court has a solemn duty to proceed with the judicial business during court hours and the court is not obliged to adjourn a case because of a strike call. The court is under an obligation to hear and decide cases brought before it and it cannot shirk that obligation on the ground that the advocates are on strike. If the counsel or/and the party does not appear, the necessary consequences contemplated in law should follow. The court should not become privy to the strike by adjourning the case on the ground that lawyers are on strike. Even in *Common Cause case*[1] the Supreme Court had asked the members of the legal profession to be alive to the possibility of Judges refusing adjournments merely on the ground of there being a strike call and insisting on proceeding with the cases. Strike infringes the litigant's fundamental right for speedy trial and the court cannot remain a mute spectator or throw up its hands in helplessness on the face of such continued violation of the fundamental right.

32. Either in the name of a strike or otherwise, no lawyer has any right to obstruct or prevent another lawyer from discharging his professional duty of appearing in court. If anyone does it, he commits a criminal offence and interferes with the administration of justice and commits contempt of court and he is liable to be proceeded against on all these counts.

33. In the light of the above discussion we are of the view that the present strike by lawyers is illegal and unethical. Whatever might have been the compelling circumstances earlier, now there is absolutely no justification for the continuance of the strike in view of the appointment of the Commission of Inquiry and the directions being issued in this case."

18. In our view the conclusions reached are absolutely correct and the same need to be and are hereby approved.

19. Thereafter in the case of *Ramon Services (P) Ltd.* v. *Subhash Kapoor*[13] the question was whether a litigant should suffer a penalty because his advocate had boycotted the court pursuant to a strike call made by the Association of which the advocate was a member. In answer to this question it has been held that when an advocate engaged by a party is on strike there is

13 (2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152

no obligation on the part of the court to either wait or adjourn the case on that account. It was held that this Court has time and again set out that an advocate has no right to stall court proceedings on the ground that they have decided to go on a strike. In this case it was noted that in *Mahabir Prasad case*[6] it has been held that strikes and boycotts are illegal. That the lawyers and the Bar understood that they could not resort to strikes is clear from the statement of Senior Counsel Shri Krishnamani which this Court recorded. The statement is as follows: (SCC p. 125, para 13)

> "*13.* Shri Krishnamani, however, made the present position as unambiguously clear in the following words:
>
> > 'Today, if a lawyer participates in a Bar Association's boycott of a particular court that is ex facie bad in view of the clear declaration of law by this Hon'ble Court. Now, even if there is a boycott call, a lawyer can boldly ignore the same in view of the ruling of this Hon'ble Court in *Mahabir Prasad Singh*[6]."

This Court thereafter directed the advocate concerned to pay half the amount of the cost imposed on his client. The observations in this behalf are as follows: (SCC pp. 125-26, paras 15-17)

> "*15.* Therefore, we permit the appellant to realise half of the said amount of Rs 5000 from the firm of advocates M/s B.C. Das Gupta & Co. or from any one of its partners. Initially we thought that the appellant could be permitted to realise the whole amount from the said firm of advocates. However, we are inclined to save the firm from bearing the costs partially since the Supreme Court is adopting such a measure for the first time and the counsel would not have been conscious of such a consequence befalling them. *Nonetheless we put the profession to notice that in future the advocate would also be answerable for the consequence suffered by the party if the non-appearance was solely on the ground of a strike call.* It is unjust and inequitable to cause the party alone to suffer for the self-imposed dereliction of his advocate. We may further add that the litigant who suffers entirely on account of his advocate's non-appearance in court, has also the remedy to sue the advocate for damages but that remedy would remain unaffected by the course adopted in this case. Even so, in situations like this, when the court mulcts the party with costs for the failure of his advocate to appear, we make it clear that the same court has power to permit the party to realise the costs from the advocate concerned. However, such direction can be passed only after affording an opportunity to the advocate. If he has any justifiable cause the court can certainly absolve him from such a liability. But the advocate cannot get absolved merely on the ground that he did not attend the court as he or his association was on a strike. If any advocate claims that his right to strike must be without any loss to him but the loss must only be for his innocent client such a claim is repugnant to any principle of fair play and canons of ethics. So when he opts to strike work or boycott the court he must as well be prepared to bear at least the

pecuniary loss suffered by the litigant client who entrusted his brief to that advocate with all confidence that his cause would be safe in the hands of that advocate.

16. In all cases where the court is satisfied that the ex parte order (passed due to the absence of the advocate pursuant to any strike call) could be set aside on terms, the court can as well permit the party to realise the costs from the advocate concerned without driving such party to initiate another legal action against the advocate.

17. We may also observe that it is open to the court as an alternative course to permit the party (while setting aside the ex parte order or decree earlier passed in his favour) to realise the cost fixed by the court for that purpose, from the counsel of the other party whose absence caused the passing of such ex parte order, if the court is satisfied that such absence was due to that counsel boycotting the court or participating in a strike." (emphasis supplied)

20. Thus the law is already well settled. It is the duty of every advocate who has accepted a brief to attend trial, even though it may go on day to day and for a prolonged period. It is also settled law that a lawyer who has accepted a brief cannot refuse to attend court because a boycott call is given by the Bar Association. It is settled law that it is unprofessional as well as unbecoming for a lawyer who has accepted a brief to refuse to attend court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council. It is settled law that courts are under an obligation to hear and decide cases brought before them and cannot adjourn matters merely because lawyers are on strike. The law is that it is the duty and obligation of courts to go on with matters or otherwise it would tantamount to becoming a privy to the strike. It is also settled law that if a resolution is passed by Bar Associations expressing want of confidence in judicial officers, it would amount to scandalising the courts to undermine its authority and thereby the advocates will have committed contempt of court. Lawyers have known, at least since *Mahabir Singh case*[6] that if they participate in a boycott or a strike, their action is ex facie bad in view of the declaration of law by this Court. A lawyer's duty is to boldly ignore a call for strike or boycott of court/s. Lawyers have also known, at least since *Ramon Services case*[13] that the advocates would be answerable for the consequences suffered by their clients if the non-appearance was solely on grounds of a strike call.

21. It must also be remembered that an advocate is an officer of the court and enjoys special status in society. Advocates have obligations and duties to ensure smooth functioning of the court. They owe a duty to their clients. Strikes interfere with administration of justice. They cannot thus disrupt court proceedings and put interest of their clients in jeopardy. In the words of Mr H.M. Seervai, a distinguished jurist:

"Lawyers ought to know that at least as long as lawful redress is available to aggrieved lawyers, there is no justification for lawyers to join in an illegal conspiracy to commit a gross, criminal contempt of court,

thereby striking at the heart of the liberty conferred on every person by our Constitution. Strike is an attempt to interfere with the administration of justice. The principle is that those who have duties to discharge in a court of justice are protected by the law and are shielded by the law to discharge those duties, the advocates in return have duty to protect the courts. For, once conceded that lawyers are above the law and the law courts, there can be no limit to lawyers taking the law into their hands to paralyse the working of the courts. '*In my submission*', he said that 'it is high time that the Supreme Court and the High Courts make it clear beyond doubt that they will not tolerate any interference from any body or authority in the daily administration of justice. For in no other way can the Supreme Court and the High Courts maintain the high position and exercise the great powers conferred by the Constitution and the law to do justice without fear or favour, affection or ill will."

22. It was expected that having known the well-settled law and having seen that repeated strikes and boycotts have shaken the confidence of the public in the legal profession and affected administration of justice, there would be self-regulation. The abovementioned interim order was passed in the hope that with self-restraint and self-regulation the lawyers would retrieve their profession from lost social respect. The hope has not fructified. Unfortunately strikes and boycott calls are becoming a frequent spectacle. Strikes, boycott calls and even unruly and unbecoming conduct are becoming a frequent spectacle. On the slightest pretence strikes and/or boycott calls are resorted to. The judicial system is being held to ransom. Administration of law and justice is threatened. The rule of law is undermined.

23. It is held that submissions made on behalf of the Bar Council of U.P. merely need to be stated to be rejected. The submissions based on the Advocates Act are also without merit. Section 7 of the Advocates Act provides for the functions of the Bar Council of India. None of the functions mentioned therein authorise paralysing of the working of courts in any manner. On the contrary, the Bar Council of India is enjoined with the duty of laying down standards of professional conduct and etiquette for advocates. This would mean that the Bar Council of India ensures that advocates do not behave in an unprofessional and unbecoming manner. Section 48-A gives a right to the Bar Council of India to give directions to the State Bar Councils. The Bar Associations may be separate bodies but all advocates who are members of such Associations are under disciplinary jurisdiction of the Bar Councils and thus the Bar Councils can always control their conduct. Further, even in respect of disciplinary jurisdiction the final appellate authority is, by virtue of Section 38, the Supreme Court.

24. In the case of *Abhay Prakash Sahay Lalan* v. *High Court of Judicature at Patna*[14] it has been held that Section 34(1) of the Advocates Act empowers the High Courts to frame rules laying down conditions subject to

14 AIR 1998 Pat 75 : (1998) 1 BLJR 182

which an advocate shall be permitted to practise in the High Court and courts subordinate thereto. It has been held that the power under Section 34 of the Advocates Act is similar to the power under Article 145 of the Constitution of India. It is held that other sections of the Advocates Act cannot be read in a manner which would render Section 34 ineffective.

25. In the case of *Supreme Court Bar Assn.* v. *Union of India*[15] it has been held that professional misconduct may also amount to contempt of court (para 21). It has further been held as follows: (SCC pp. 444-46, paras 79-80)

> "*79.* An advocate who is found guilty of contempt of court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case. The learned Solicitor-General informed us that there have been cases where the Bar Council of India taking note of the contumacious and objectionable conduct of an advocate, had initiated disciplinary proceedings against him and even punished him for 'professional misconduct', on the basis of his having been found guilty of committing contempt of court. We do not entertain any doubt that the Bar Council of the State or Bar Council of India, as the case may be, when apprised of the established contumacious conduct of an advocate by the High Court or by this Court, would rise to the occasion, and take appropriate action against such an advocate. Under Article 144 of the Constitution 'all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court'. The Bar Council which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette is also obliged to act 'in aid of the Supreme Court'. It must, whenever facts warrant, rise to the occasion and discharge its duties uninfluenced by the position of the contemner advocate. It must act in accordance with the prescribed procedure, whenever its attention is drawn by this Court to the contumacious and unbecoming conduct of an advocate which has the tendency to interfere with due administration of justice. It is possible for the High Courts also to draw the attention of the Bar Council of the State to a case of professional misconduct of a contemner advocate to enable the State Bar Council to proceed in the manner prescribed by the Act and the Rules framed thereunder. There is no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the courts and the majesty of law and prevent any interference in the administration of justice. Learned counsel for the parties present before us do not dispute and rightly so that whenever a court of record records its findings about the conduct of an advocate while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the Bar Council

15 (1998) 4 SCC 409

concerned, appropriate action should be initiated by the Bar Council concerned in accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette. Nothing is more destructive of public confidence in the administration of justice than incivility, rudeness or disrespectful conduct on the part of a counsel towards the court or disregard by the court of the privileges of the Bar. In case the Bar Council, even after receiving 'reference' from the Court, fails to take action against the advocate concerned, this Court might consider invoking its powers under Section 38 of the Act by sending for the record of the proceedings from the Bar Council and passing appropriate orders. Of course, the appellate powers under Section 38 would be available to this Court only and not to the High Courts. We, however, hope that such a situation would not arise.

80. In a given case it may be possible, for this Court or the High Court, to prevent the contemner advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practise as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practise as an advocate in other courts or tribunals."

Thus a Constitution Bench of this Court has held that the Bar Councils are expected to rise to the occasion as they are responsible to uphold the dignity of courts and majesty of law and to prevent interference in administration of justice. In our view it is the duty of the Bar Councils to ensure that there is no unprofessional and/or unbecoming conduct. This being their duty no Bar Council can even consider giving a call for strike or a call for boycott. It follows that the Bar Councils and even Bar Associations can never consider or take seriously any requisition calling for a meeting to consider a call for a strike or a call for boycott. Such requisitions should be consigned to the place where they belong viz. the waste-paper basket. In case any Association calls for a strike or a call for boycott the State Bar Council concerned and on their failure the Bar Council of India must immediately take disciplinary action against the advocates who give a call for strike and if the Committee members permit calling of a meeting for such purpose, against the Committee members. Further, it is the duty of every advocate to boldly ignore a call for strike or boycott.

26. It must also be noted that courts are not powerless or helpless. Section 38 of the Advocates Act provides that even in disciplinary matters the final appellate authority is the Supreme Court. Thus even if the Bar Councils do not rise to the occasion and perform their duties by taking disciplinary

action on a complaint from a client against an advocate for non-appearance by reason of a call for strike or boycott, on an appeal the Supreme Court can and will. Apart from this, as set out in *Ramon Services case*[13] every court now should and must mulct advocates who hold *vakalats* but still refrain from attending courts in pursuance of a strike call with costs. Such costs would be in addition to the damages which the advocate may have to pay for the loss suffered by his client by reason of his non-appearance.

27. During hearing nobody, except on behalf of the U.P. Bar Council, could deny that the above legal position was well settled. On behalf of the Bar Council of India a request was made not to sign the judgment as a meeting had been called to formulate guidelines through consensual process. We had therefore deferred delivery of judgment.

28. The Bar Council of India has since filed an affidavit wherein extracts of a joint meeting of the Chairmen of various State Bar Councils and members of the Bar Council of India, held on 28-9-2002 and 29-9-2002, have been annexed. The minutes set out that some of the causes which result in lawyers abstaining from work are:

(*I*) *Local issues*

1. Disputes between lawyer/lawyers and the police and other authorities.

2. Issues regarding corruption/misbehaviour of judicial officers and other authorities.

3. Non-filling of vacancies arising in courts or non-appointment of judicial officers for a long period.

4. Absence of infrastructure in courts.

(*II*) *Issues relating to one section of the Bar and another section*

1. Withdrawal of jurisdiction and conferring it to other courts (both pecuniary and territorial).

2. Constitution of Benches of High Courts. Disputes between the competing District and other Bar Associations.

(*III*) *Issues involving dignity, integrity, independence of the Bar and judiciary*

(*IV*) *Legislation without consultation with the Bar Councils*

(*V*) *National issues and regional issues affecting the public at large/the insensitivity of all concerne.*

29. At the meeting it is then resolved as follows:

"RESOLVED to constitute Grievance Redressal Committees at the taluk/sub-division or tehsil level, at the district level, High Court and Supreme Court levels as follows:

(*I*)(*a*) A committee consisting of the Hon'ble Chief Justice of India or his nominee, Chairman, Bar Council of India, President, Supreme Court Bar Association, Attorney-General of India.

(*b*) At the High Court level a committee consisting of the Hon'ble Chief Justice of the State High Court or his nominee,

Chairman, Bar Council of the State, President or Presidents of the High Court Bar Association, Advocate-General, Member, Bar Council of India from the State.

(*c*) At the district level, District Judge, President or Presidents of the District Bar Association, District Government Pleader, member of the Bar Council from the district, if any, and if there are more than one, then senior out of the two.

(*d*) At taluk/tehsil/sub-division, seniormost Judge, President or Presidents of the Bar Association, Government Pleader, representative of the State Bar Council, if any.

(*II*) Another reason for abstention at the district and taluk level is arrest of an advocate or advocates by the police in matters in which the arrest is not justified. Practice may be adopted that before arrest of an advocate or advocates, President, Bar Association, the District Judge or the seniormost Judge at the place be consulted. This will avoid many instances or abstentions from court.

(*III*) IT IS FURTHER RESOLVED that in the past abstention of work by advocates for more than a day was due to inaction of the authorities to solve the problems that the advocates placed.

(*IV*) IT IS FURTHER RESOLVED that in all cases of legislation affecting the legal profession which includes enactment of new laws or amendments of existing laws, matters relating to jurisdiction and creation of tribunal, the Government both Central and State should initiate the consultative process with the representatives of the profession and take into consideration the views of the Bar and give utmost weight to the same and the State Government should instruct their officers to react positively to the issues involving the profession when they are raised and take all steps to avoid confrontation and inaction and in such an event of indifference, confrontation etc. to initiate appropriate disciplinary action against the erring officials and including but not limited to transfer.

(*V*) The Councils are of the view that abstentions of work in courts should not be resorted to except in exceptional circumstances. Even in exceptional circumstances, the abstention should not be resorted to normally for more than one day in the first instance. The decision for going on abstention will be taken by the General Body of the Bar Association by a majority of two-third members present.

(*VI*) It is further resolved that in all issues as far as possible legal and constitutional methods should be pursued such as representation to authorities, holding demonstrations and mobilising public opinion etc.

(*VII*) It is resolved further that in case the Bar Associations deviate from the above resolutions and proceed on cessation of work in spite or without the decision of the Grievance Redressal

Committee concerned except in the case of emergency the Bar Council of the State will take such action as it may deem fit and proper, the discretion being left to the Bar Council of the State concerned as to enforcement of such decisions and in the case of an emergency the Bar Association concerned will inform the State Bar Council.

The Bar Council of India resolves that this resolution will be implemented strictly and the Bar Associations and the individual members of the Bar Associations should take all steps to comply with the same and avoid cessation of the work except in the manner and to the extent indicated above."

30. Whilst we appreciate the efforts made, in view of the endemic situation prevailing in the country, in our view, the above resolutions are not enough. It was expected that the Bar Council of India would have incorporated clauses as those suggested in the interim order of this Court in their disciplinary rules. This they have failed to do even now. What is at stake is the administration of justice and the reputation of the legal profession. It is the duty and obligation of the Bar Council of India to now incorporate clauses as suggested in the interim order. No body or authority, statutory or not, vested with powers can abstain from exercising the powers when an occasion warranting such exercise arises. Every power vested in a public authority is coupled with a duty to exercise it, when a situation calls for such exercise. The authority cannot refuse to act at its will or pleasure. It must be remembered that if such omission continues, particularly when there is an apparent threat to the administration of justice and fundamental rights of citizens i.e. the litigating public, courts will always have authority to compel or enforce the exercise of the power by the statutory authority. The courts would then be compelled to issue directions as are necessary to compel the authority to do what it should have done on its own.

31. It must immediately be mentioned that one understands and sympathises with the Bar wanting to vent their grievances. But as has been pointed out there are other methods e.g. giving press statements, TV interviews, carrying out of court premises banners and/or placards, wearing black or white or any colour armbands, peaceful protest marches outside and away from court premises, going on *dharnas* or relay fasts etc. More importantly in many instances legal remedies are always available. A lawyer being part and parcel of the legal system is instrumental in upholding the rule of law. A person cast with the legal and moral obligation of upholding law can hardly be heard to say that he will take the law in his own hands. It is therefore time that self-restraint be exercised.

32. Now let us consider whether any of the reasons set out in the affidavit of the Bar Council of India justify a strike or call for boycott. The reasons given are:

(*I*) *Local issues.*—A dispute between a lawyer/lawyers and police or other authorities can never be a reason for going on even a token strike. It can never justify giving a call for boycott. In such cases an adequate legal remedy is available and it must be resorted to. The other reasons given under the item "local issues" and even Items (*IV*) and (*V*) are all matters which are exclusive within the domain of courts and/or legislatures. Of course the Bar may be concerned about such things but there can be no justification to paralyse the administration of justice. In such cases representations can and should be made. It will be for the appropriate authority to consider those representations. We are sure that a representation by the Bar will always be seriously considered. However, the ultimate decision in such matters has to be that of the authority concerned. Beyond making representations no illegal method can be adopted. At the most, provided it is permissible or feasible to do so, recourse can be had by way of legal remedy. So far as problems concerning courts are concerned, we see no harm in setting up Grievance Redressal Committees as suggested. However, it must be clear that the purpose of such Committees would only be to set up a forum where grievance can be ventilated. It must be clearly understood that recommendations or suggestions of such Committees can never be binding. The deliberations and/or suggestions and/or recommendations of such Committees will necessarily have to be placed before the appropriate authority viz. the Chief Justice or the District Judge concerned. The final decision can only be of the Chief Justice concerned or the District Judge concerned. Such final decision, whatever it be, would then have to be accepted by all and no question then arises of any further agitation. Lawyers must also accept the fact that one cannot have everything to be the way that one wants it to be. Realities of life are such that, in certain situations, after one has made all legal efforts to cure what one perceives as an ill, one has to accept the situation. So far as legislation, national and regional issues are concerned, the Bar always has recourse to legal remedies. Either the demand of the Bar on such issues is legally valid or it is not. If it is legally valid, of all the persons in society, the Bar is the most competent and capable of getting it enforced in a court of law. If the demand is not legally valid and cannot be enforced in a court of law or is not upheld by a court of law, then such a demand cannot be pursued any further.

33. The only exception to the general rule set out above appears to be Item (*III*). We accept that in such cases a strong protest must be lodged. We remain of the view that strikes are illegal and that courts must now take a very serious view of strikes and calls for boycott. However, as stated above, lawyers are part and parcel of the system of administration of justice. A protest on an issue involving dignity, integrity and independence of the Bar and the judiciary, provided it does not exceed one day, may be overlooked by courts, who may turn a blind eye for that one day.

34. One last thing which must be mentioned is that the right of appearance in courts is still within the control and jurisdiction of courts.

Section 30 of the Advocates Act has not been brought into force and rightly so. Control of conduct in court can only be within the domain of courts. Thus Article 145 of the Constitution of India gives to the Supreme Court and Section 34 of the Advocates Act gives to the High Court power to frame rules including rules regarding condition on which a person (including an advocate) can practise in the Supreme Court and/or in the High Court and courts subordinate thereto. Many courts have framed rules in this behalf. Such a rule would be valid and binding on all. Let the Bar take note that unless self-restraint is exercised, courts may now have to consider framing specific rules debarring advocates, guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the courts. Such a rule if framed would not have anything to do with the disciplinary jurisdiction of the Bar Councils. It would be concerning the dignity and orderly functioning of the courts. The right of the advocate to practise envelopes a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for clients before an arbitrator or arbitrators etc. Such a rule would have nothing to do with all the acts done by an advocate during his practice. He may even file *vakalat* on behalf of a client even though his appearance inside the court is not permitted. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by them in exercise of their disciplinary powers. The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must and does have major supervisory and controlling power. Hence courts cannot be and are not divested of control or supervision of conduct in court merely because it may involve the right of an advocate. A rule can stipulate that a person who has committed contempt of court or has behaved unprofessionally and in an unbecoming manner will not have the right to continue to appear and plead and conduct cases in courts. The Bar Councils cannot overrule such a regulation concerning the orderly conduct of court proceedings. On the contrary, it will be their duty to see that such a rule is strictly abided by. Courts of law are structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who is guilty of contempt of court or of unbecoming or unprofessional conduct, standing in the court would erode the dignity of the court and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the courts. The power to frame such rules should not be confused with the right to practise

law. While the Bar Council can exercise control over the latter, the courts are in control of the former. This distinction is clearly brought out by the difference in language in Section 49 of the Advocates Act on the one hand and Article 145 of the Constitution of India and Section 34(1) of the Advocates Act on the other. Section 49 merely empowers the Bar Council to frame rules laying down conditions subject to which an advocate shall have a right to practise i.e. do all the other acts set out above. However, Article 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the court including inter alia rules as to persons practising before this Court. Similarly Section 34 of the Advocates Act empowers High Courts to frame rules, inter alia to lay down conditions on which an advocate shall be permitted to practise in courts. Article 145 of the Constitution of India and Section 34 of the Advocates Act clearly show that there is no absolute right to an advocate to appear in a court. An advocate appears in a court subject to such conditions as are laid down by the court. It must be remembered that Section 30 has not been brought into force and this also shows that there is no absolute right to appear in a court. Even if Section 30 were to be brought into force control of proceedings in court will always remain with the court. Thus even then the right to appear in court will be subject to complying with conditions laid down by courts just as practice outside courts would be subject to conditions laid down by the Bar Council of India. There is thus no conflict or clash between other provisions of the Advocates Act on the one hand and Section 34 or Article 145 of the Constitution of India on the other.

35. In conclusion, it is held that lawyers have no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any is required, can only be by giving press statements, TV interviews, carrying out of court premises banners and/or placards, wearing black or white or any colour armbands, peaceful protest marches outside and away from court premises, going on *dharnas* or relay fasts etc. It is held that lawyers holding *vakalats* on behalf of their clients cannot refuse to attend courts in pursuance of a call for strike or boycott. All lawyers must boldly refuse to abide by any call for strike or boycott. No lawyer can be visited with any adverse consequences by the Association or the Council and no threat or coercion of any nature including that of expulsion can be held out. It is held that no Bar Council or Bar Association can permit calling of a meeting for purposes of considering a call for strike or boycott and requisition, if any, for such meeting must be ignored. It is held that only in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, courts may ignore (turn a blind eye) to a protest abstention from work for not more than one day. It is being clarified that it will be for the court to decide whether or not the issue involves dignity or integrity or independence of the Bar and/or the Bench. Therefore in such cases the President of the Bar must first consult the Chief Justice or the District Judge before advocates decide to absent themselves from court. The decision of the Chief Justice or

the District Judge would be final and have to be abided by the Bar. It is held that courts are under no obligation to adjourn matters because lawyers are on strike. On the contrary, it is the duty of all courts to go on with matters on their boards even in the absence of lawyers. In other words, courts must not be privy to strikes or calls for boycotts. It is held that if a lawyer, holding a *vakalat* of a client, abstains from attending court due to a strike call, he shall be personally liable to pay costs which shall be in addition to damages which he might have to pay his client for loss suffered by him.

36. It is now hoped that with the above clarifications, there will be no strikes and/or calls for boycott. It is hoped that better sense will prevail and self-restraint will be exercised. The petitions stand disposed of accordingly.

M.B. SHAH, J. (*for himself and D.M. Dharmadhikari, J.*) (*concurring*)— We fully agree with what has been stated and discussed by Brother Variava, J. However, we would like to add as under:

For just or unjust cause, strike cannot be justified in the present-day situation. Take strike in any field, it can be easily realised that that weapon does more harm than any justice. Sufferer is the society public at large.

38. On occasions the result is violence or excess use of force by the administration. Mostly the target is to damage public properties.

39. Further, strike was a weapon used for getting justice by downtrodden, poor persons or industrial employees who were not having any other method of redressing their grievances. But by any standard, professionals belonging to a noble profession who are considered to be an intelligent class, cannot have any justification for remaining absent from their duty. The law laid down on the subject is succinctly referred to in the judgment rendered by Brother Variava, J.

40. However, by merely holding strikes as illegal, it would not be sufficient in the present-day situation nor serve any purpose. The root cause for such malady is required to be cured. It is stated that resort to strike is because the administration is having deaf ears in listening to the genuine grievances and even if grievances are heard appropriate actions are not taken. To highlight, therefore, the cause call for strike is given. In our view, whatever be the situation in other fields lawyers cannot claim or justify to go on strike or give a call to boycott the judicial proceedings. It is rightly pointed out by the Attorney-General that by the very nature of their calling to aid and assist in the dispensation of justice, lawyers normally should not resort to strike. Further, it had been repeatedly held that strike is an attempt to interfere with the administration of justice.

41. It is no doubt true that the Bar should be strong, fearless and independent and should be in a position to lead the society. These qualities could be and should be utilized in assisting the judicial system, if required, by exposing any person, whosoever he may be, if he is indulging in any unethical practice. It is hoped that instead of resorting to strike, the Bar would find out other ways and means of redressing their grievances including

passing of resolutions, making representations and taking out silent processions, holding *dharnas* or to resort to relay fast, having discussion by giving TV interviews and press statements.

42. At present it is admitted that the judiciary is overburdened with pending litigation. If strikes are resorted to on one or the other ground, litigants would suffer as cases would not be decided for years to come. Therefore, some concrete joint action is required to be taken by the Bench and the Bar to see that there are no strikes any more.

43. For this purpose, in our view, the suggestion made by the Bar Council of India in its resolution dated 29-9-2002, requires to be seriously considered and implemented by each Bar Association. Grievances Redressal Committees at taluk level, district level, High Court level and Supreme Court level should be established so that grievances of the advocates at all levels could be resolved. If action is required to be taken on the grievances made by the advocates it should be immediately taken. If grievances are found not to be genuine then it should be made clear so that there may not be any further misunderstanding.

44. It is true that advocates are part and parcel of the judicial system as such they are the foundation of the justice-delivery system. It is their responsibility of seeing that justice-delivery system works smoothly. Therefore, it is for each and every Bar Association to be vigilant in implementing the resolution passed by the Bar Council of India of seeing that there are no further strikes any more. The Bar Council of India in its resolution has also stated that the resolution passed by it would be implemented strictly and hence, the Bar Associations and the individual members of the Bar Associations would take all steps to comply with the same and avoid cessation of the work except in the manner and to the extent indicated in the resolution.

45. Further, appropriate rules are required to be framed by the High Courts under Section 34 of the Advocates Act by making it clear that strike by advocate/advocates would be considered interference with the administration of justice and advocate/advocates concerned may be barred from practising before courts in a district or in the High Court.

46. Hence, it is directed that (*a*) all the Bar Associations in the country shall implement the resolution dated 29-9-2002 passed by the Bar Council of India, and (*b*) under Section 34 of the Advocates Act, the High Courts would frame necessary rules so that appropriate action can be taken against defaulting advocate/advocates.

(2017) 5 Supreme Court Cases 702

(BEFORE ADARSH KUMAR GOEL AND UDAY U. LALIT, JJ.)

Criminal Appeal No. 509 of 2017†

HUSSAIN AND ANOTHER .. Appellants;

Versus

UNION OF INDIA .. Respondent.

With

Criminal Appeal No. 511 of 2017‡

AASU .. Appellant;

Versus

STATE OF RAJASTHAN .. Respondent.

Criminal Appeals No. 509 of 2017 with
No. 511 of 2017, decided on March 9, 2017

A. **Constitution of India — Art. 21 — Speedy conclusion of criminal trials and appeals — In view of directions already having been issued by Supreme Court in a number of cases on this issue, held, High Courts must frame guidelines and take steps to effectuate those directions — Hence, all High Courts to frame annual action plan fixing a tentative time-limit for subordinate courts for concluding criminal trials of persons in custody and other long pending cases and monitor implementation of such timelines periodically — Furthermore, High Courts to take other steps consistent with the directions already issued by Supreme Court for expeditious disposal of criminal appeals pending in High Courts where persons are in custody, by fixing priority having regard to the time period of detention — Various reasons and factors contributing to the delay, considered and accordingly further directions issued to High Courts in this regard — Directions also issued re expeditious disposal of bail applications, particularly where trials/appeals had been pending for long (See also Shortnote *C*) — Criminal Procedure Code, 1973, Ss. 439 and 436-A**

B. **Advocates — Professional standards, ethics and Duties of Advocates — Obstruction of court proceedings by uncalled for strikes/abstaining from work by lawyers — Impermissibility of, reiterated — Directed, that High Courts may take such stringent measures as may be found necessary to effectuate judgment of Supreme Court in *Harish Uppal*, (2003) 2 SCC 45**

Held :

Speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21 of the Constitution. Such constitutional right cannot be denied even on the plea of non-availability of financial resources. The court is entitled to issue directions to augment and strengthen investigating machinery, setting-up of new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional Judges and other measures as are necessary for speedy trial. (Paras 9 and 10)

† Arising out of SLP (Crl.) No. 4437 of 2016. From the Judgment and Order dated 22-12-2015 of the High Court of Calcutta in CRM No. 10595 of 2014

‡ Arising out of SLP (Crl.) No. 348 of 2017

Hussainara Khatoon (4) v. *State of Bihar*, (1980) 1 SCC 98 : 1980 SCC (Cri) 40; *Hussainara Khatoon (7)* v. *State of Bihar*, (1995) 5 SCC 326 : 1995 SCC (Cri) 913, *relied on*

Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Supreme Court has held that while a person in custody for a grave offence may not be released if trial is delayed, trial has to be expedited or bail has to be granted in such cases. (Para 11)

Supreme Court Legal Aid Committee v. *Union of India*, (1994) 6 SCC 731 : 1995 SCC (Cri) 39, *relied on*

Timely delivery of justice is a part of human rights. Denial of speedy justice is a threat to public confidence in the administration of justice. (Paras 12 to 16)

Akhtari Bi v. *State of M.P.*, (2001) 4 SCC 355 : 2001 SCC (Cri) 714; *Noor Mohammed* v. *Jethanand*, (2013) 5 SCC 202 : (2013) 2 SCC (Civ) 754; *Thana Singh* v. *Central Bureau of Narcotics*, (2013) 2 SCC 590 : (2013) 2 SCC (Cri) 818; *Imtiyaz Ahmad* v. *State of U.P.*, (2012) 2 SCC 688 : (2012) 1 SCC (Cri) 986; *Anita Kushwaha* v. *Pushap Sudan*, (2016) 8 SCC 509 : (2016) 4 SCC (Civ) 80 : (2016) 3 SCC (Cri) 530 : (2016) 2 SCC (L&S) 463; *Bhim Singh* v. *Union of India*, (2015) 13 SCC 603 : (2016) 1 SCC (Cri) 661; *Bhim Singh* v. *Union of India*, (2015) 13 SCC 605 : (2016) 1 SCC (Cri) 663; *Inhuman Conditions in 1382 Prisons, In re*, (2016) 3 SCC 700 : (2016) 2 SCC (Cri) 170, *relied on*

The 245th Report of the Law Commission was considered by the Supreme Court and after noticing other things, directions issued for computing the required Judge-strength of the district judiciary and also directed the State Governments to take steps for enhancing the Judge-strength accordingly. (Paras 17 and 18)

Imtiyaz Ahmad v. *State of U.P.*, (2012) 2 SCC 688 : (2012) 1 SCC (Cri) 986; *Imtiyaz Ahmad* v. *State of U.P.*, (2017) 3 SCC 658 : (2017) 3 SCC 665 : (2017) 2 SCC (Civ) 311 : (2017) 2 SCC (Civ) 318 : (2017) 2 SCC (Cri) 228 : (2017) 2 SCC (Cri) 235 : (2017) 1 SCC (L&S) 724 : (2017) 1 SCC (L&S) 731, *relied on*

During Joint Conference of Chief Ministers of States and Chief Justices of High Courts held in April 2015, a decision was taken that all High Courts will establish Arrears Committees and prepare a plan to clear backlog of cases pending for more than 5 years. Such Committees have reportedly been established. (Para 19)

The position of five-year-old cases continues to be alarming in many States. Total number of more than five-year-old cases in subordinate courts at the end of the year 2015 is said to be 43,19,693. Number of undertrials detained for more than five years at the end of the year 2015 is said to be 3599. Number of appeals pending in the High Courts where detention period is beyond five years may be still higher. (Para 20)

Imtiyaz Ahmad v. *State of U.P.*, (2017) 3 SCC 658 : (2017) 3 SCC 665 : (2017) 2 SCC (Civ) 311 : (2017) 2 SCC (Civ) 318 : (2017) 2 SCC (Cri) 228 : (2017) 2 SCC (Cri) 235 : (2017) 1 SCC (L&S) 724 : (2017) 1 SCC (L&S) 731, *relied on*

In view of successful implementation of annual plans in some High Courts to dispose of cases of undertrials in custody, in two years in sessions trial cases and six months in magisterial trials, there is no reason why the aforesaid target should not be set uniformly. The same need to be regularly monitored and reflected in performance appraisals of the judicial officers concerned. Handicaps pointed

out can be tackled at an appropriate level. Accordingly, annual plan of each High Court should include achieving the said target and not the target of five years for undertrials in custody. Of course, if such cases can be disposed of earlier, it may be still better. Plans can be revised as per local conditions. The delay in disposal of bail applications and cases where trials are stayed are priority areas for monitoring. Timeline for disposal of bail applications ought to be fixed by the High Court. As far as possible, bail applications in subordinate courts should ordinarily be decided within one week and in High Courts within two-three weeks. Posting of suitable officers in key leadership positions of Session Judges and Chief Judicial Magistrates may perhaps go a long way in dealing with the situation. Non performers/dead wood must be weeded out as per rules, as public interest is above individual interest. (Paras 21 and 22)

Another suggestion relates to remedying the situation of delay in trials on account of absconding of one or the other accused during the trial. In such regard, attention has been drawn to an amendment in the Code of Criminal Procedure, 1898 of Bangladesh by way of adding Section 339-B. It is for the authority concerned to take cognizance of the above amendment which may considerably reduce delay in cases where one or the other accused absconds during the trial. (Paras 23 and 24)

While some of the issues germane to the subject of speedy trials have been discussed, in view of directions already issued by the Supreme Court on these issues in a number of cases, issuance of further directions and monitoring of directions already issued is left to the High Courts concerned. Thus, it is necessary to direct that steps be taken forthwith by all concerned to effectuate the mandate of the fundamental right under Article 21 of the Constitution, especially with regard to persons in custody in view of the directions already issued by the Supreme Court. It is desirable that each High Court frames its annual action plan fixing a tentative time-limit for subordinate courts for deciding criminal trials of persons in custody and other long pending cases and monitors implementation of such timelines periodically. It may perhaps obviate the need for seeking directions in individual cases from the Supreme Court. Further, it is desirable for Chief Justices of all the High Courts to take other steps consistent with the directions already issued by the Supreme Court for expeditious disposal of criminal appeals pending in High Courts where persons are in custody by fixing priority having regard to the time period of detention. The directions for setting up of adequate number of forensic laboratories at all levels, is also reiterated. Specification of some of such issues is in addition to implementation of other steps including timely investigation, timely serving of summons on witnesses and accused, timely filing of charge-sheets and furnishing of copies of charge-sheets to the accused. Such aspects need constant monitoring by the High Courts. (Paras 25 and 26)

One other aspect pointed out is the obstruction of court proceedings by uncalled for strikes/abstaining of work by lawyers or frequent suspension of court work after condolence references. In view of the judgment of the Supreme Court in *Harish Uppal*, (2003) 2 SCC 45, such suspension of work or strikes is clearly illegal and it is high time that the legal fraternity realises its duty to the society which is the foremost. Condolence references can be once in a while periodically say once in two/three months and not frequently. Hardship faced by witnesses if their evidence is not recorded on the day they are summoned or impact of delay on undertrials in

custody on account of such avoidable interruptions of court proceedings is a matter of concern for any responsible body of professionals and they must take appropriate steps. In any case, the aforesaid needs attention of all authorities concerned — the Central Government/State Governments/Bar Councils/Bar Associations as well as the High Courts and ways and means ought to be found out to tackle the menace. Consistent with the above judgment, the High Courts must monitor the aspect strictly and take stringent measures as may be required in the interests of administration of justice. (Para 27)

Harish Uppal v. *Union of India*, (2003) 2 SCC 45, *applied*

Judicial service as well as legal service are not like any other services. They are missions for serving the society. The mission is not achieved if the litigant who is waiting in the queue does not get his turn for a long time. The Chief Justices and Chief Ministers have resolved that all cases must be disposed of within five years which by any standard is quite a long time for a case to be decided in the first court. Decision of cases of undertrials in custody is one of the priority areas. There are obstructions at every level in enforcement of right of speedy trial —vested interests or unscrupulous elements try to delay the proceedings. Lack of infrastructure is another handicap. In spite of all odds, determined efforts are required at every level for success of the mission. Ways and means have to be found out by constant thinking and monitoring. The Presiding Officer of a court cannot rest in a state of helplessness. It is the constitutional responsibility of the State to provide necessary infrastructure and of the High Courts to monitor the functioning of subordinate courts to ensure timely disposal of cases. The first step in the direction is preparation of an appropriate action plan at the level of the High Court and thereafter at the level of each and every individual judicial officer. Implementation of the action plan will require serious efforts and constant monitoring. (Para 28)

Hence, High Courts may issue directions to subordinate courts that (*a*) bail applications be disposed of normally within one week; (*b*) Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be normally concluded within two years; (*c*) efforts be made to dispose of all cases which are five years old by the end of the year; (*d*) as a supplement to Section 436-A CrPC, but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence likely to be awarded if conviction is recorded, such undertrial must be released on personal bond. Such an assessment must be made by the trial courts concerned from time to time; (*e*) The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports. (Para 29.1)

The High Courts are requested to ensure that bail applications filed before them are decided as far as possible within one month and criminal appeals where accused are in custody for more than five years are concluded at the earliest. (Para 29.2)

The High Courts may prepare, issue and monitor appropriate action plans for the subordinate courts. (Para 29.3)

The High Courts may monitor steps for speedy investigation and trials on administrative and judicial side from time to time. (Para 29.4)

The High Courts may take such stringent measures as may be found necessary in the light of judgment of the Supreme Court in *Harish Uppal case*. (Para 29.5)

Harish Uppal v. *Union of India*, (2003) 2 SCC 45, *followed*

Accordingly, the Chief Justices of all High Courts are requested to forthwith take appropriate steps consistent with the directions of the Supreme Court in *Hussainara Khatoon (7)*, (1995) 5 SCC 326; *Akhtari Bi*, (2001) 4 SCC 355; *Noor Mohammed*, (2013) 5 SCC 202; *Thana Singh*, (2013) 2 SCC 590; *Supreme Court Legal Aid Committee*, (1994) 6 SCC 731; *Imtiyaz Ahmad*, (2012) 2 SCC 688; *Imtiaz Ahmad*, (2017) 3 SCC 658 : (2017) 3 SCC 665; *Harish Uppal*, (2003) 2 SCC 45 and Resolution of Chief Justices' Conference and observations hereinabove and to have appropriate monitoring mechanism in place on the administrative side as well as on the judicial side for speeding up disposal of cases of undertrials pending in subordinate courts and appeals pending in the High Courts. (Para 30)

Akhtari Bi v. *State of M.P.*, (2001) 4 SCC 355 : 2001 SCC (Cri) 714; *Hussainara Khatoon (7)* v. *State of Bihar*, (1995) 5 SCC 326 : 1995 SCC (Cri) 913; *Supreme Court Legal Aid Committee* v. *Union of India*, (1994) 6 SCC 731 : 1995 SCC (Cri) 39; *Noor Mohammed* v. *Jethanand*, (2013) 5 SCC 202 : (2013) 2 SCC (Civ) 754; *Thana Singh* v. *Central Bureau of Narcotics*, (2013) 2 SCC 590 : (2013) 2 SCC (Cri) 818; *Imtiyaz Ahmad* v. *State of U.P.*, (2012) 2 SCC 688 : (2012) 1 SCC (Cri) 986; *Imtiyaz Ahmad* v. *State of U.P.*, (2017) 3 SCC 658 : (2017) 3 SCC 665 : (2017) 2 SCC (Civ) 311 : (2017) 2 SCC (Civ) 318 : (2017) 2 SCC (Cri) 228 : (2017) 2 SCC (Cri) 235 : (2017) 1 SCC (L&S) 724 : (2017) 1 SCC (L&S) 731; *Harish Uppal* v. *Union of India*, (2003) 2 SCC 45, *relied on*

A copy of the instant order be sent to all the courts. (Para 31)

C. **Criminal Procedure Code, 1973 — Ss. 439 and 436-A — Bail — Denial of, pending trial/appeal — Accused persons being in custody for a long period — Entitlement to bail — On grounds that speedy trial is their fundamental right under Art. 21, Constitution — Consideration of — Directions issued to High Courts in this regard (*see* under Shortnote *A*) — In present two cases, speedy disposal of the cases directed**

— In first case, appellant-accused have been in custody since 4-8-2013 on allegation of having committed offence under S. 21(c), NDPS Act — Their bail application, pending trial, has been dismissed — In second case, appellant-accused is in custody since 11-1-2009 — He has been convicted by trial court under S. 302 IPC and sentenced to undergo life imprisonment — His bail application has been dismissed by High Court pending appeal

— Held, with regard to grant of bail, pending appeal, decisions of Supreme Court in *Akhtari Bi*, (2001) 4 SCC 355 and *Surinder Singh*, (2005) 7 SCC 387, reiterated, that if appeal is not heard for 5 yrs, excluding delay for which accused himself is responsible, bail should normally be granted Therefore, second case is not covered, as pending appeal in High Court is of the year 2013

In *Abdul Rehman Antulay*, (1992) 1 SCC 225, while holding that speedy trial at all stages is part of right under Art. 21, it was held that if there is violation of right of speedy trial, instead of quashing the proceedings, a higher court can direct conclusion of proceedings in a fixed time

— In light of such principles, directions issued, that pending trial in first case and appeal in second case, may be disposed of within six months — Constitution of India, Art. 21 (Paras 1 to 7 and 23 to 30)

Akhtari Bi v. *State of M.P.*, (2001) 4 SCC 355 : 2001 SCC (Cri) 714; *Surinder Singh* v. *State of Punjab*, (2005) 7 SCC 387 : 2005 SCC (Cri) 1674; *Abdul Rehman Antulay* v. *R.S. Nayak*, (1992) 1 SCC 225 : 1992 SCC (Cri) 93. *reiterated*

Hussain v. *Union of India*, 2015 SCC OnLine Cal 428, *modified*

Hussain v. *Union of India*, SLP (Cri) No. 4437 of 2016, order dated 4-7-2016 (SC), *referred to*

Y-D/58396/CR

Advocates who appeared in this case :

Sidharth Luthra (Amicus Curiae), Senior Advocate (Sameer Chaudhary, Gautam Khazanchi, Anupam Prasad, Ali Chaudhary, Mohd. Adeel Siddiqui, Mohd. Irshad Hanif and Bipin Kumar, Advocates) for the Appellants;

Atmaram N.S. Nadkarni, Additional Solicitor General, S.S. Rebello, Jai D., Vibhu Shanker Mishra, R.K. Rathore, Umesh Babu Chaurasia, Ray Bahadur, M.K. Maroria, Ajit Yadav, Vijay Prakash, Kazi Safiullah, Rauf Rahim and Rohit K. Singh, Advocates) for the Respondent.

Chronological list of cases cited ***on page(s)***

The Judgment of the Court was delivered by

ADARSH KUMAR GOEL, J.

I

1. Leave granted. Grievance in these appeals is against the denial of bail pending trial/appeal where the appellants have been in custody for a long period.

2. In the first case, the appellants have been in the custody since 4-8-2013 on the allegation of having committed the offence under Section 21(*c*) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act). Their bail application, pending trial, has been dismissed[1]. In the second case, the appellant is in custody since 11-1-2009. He has been convicted by the trial court under Section 302 IPC and sentenced to undergo life imprisonment. His bail application has been dismissed by the High Court pending appeal. The appellants contend that, having regard to the long period of custody, they are entitled to bail as speedy trial is their fundamental right under Article 21 of the Constitution.

3. To consider the question as to the circumstances in which bail can be granted on the ground of delayed proceedings when a person is in custody, notice was also issued[2] to the learned Attorney General and Mr Sidharth Luthra, Senior Advocate was appointed Amicus Curiae.

4. We have heard the learned counsel for the parties, the learned Amicus Curiae and the learned Additional Solicitor General.

5. During the hearing, reference has been made to the decisions of this Court dealing with the issue and reference has also been made to Section 436-A CrPC which provides for grant of bail when a person has undergone detention up to one-half of maximum prescribed imprisonment. It was submitted that the

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1 *Hussain* v. *Union of India*, 2015 SCC OnLine Cal 428

2 *Hussain* v. *Union of India*, SLP (Cri) No. 4437 of 2016, order dated 4-7-2016 (SC), wherein it was directed:

"1. Issue notice, only for the limited purpose of examining as to plan of action to be adopted in pursuance of 245th Report of the Law Commission released, after referring to the judgment of this Court in *Imtiyaz Ahmad* v. *State of U.P.*, (2012) 2 SCC 688. Dasti, in addition, is also permitted.

2. In view of the peculiar facts and circumstances of the case, it would be just and proper for this Court to appoint an Amicus Curiae for the petitioner. We request Mr Sidharth Luthra, learned Senior Counsel, who is present in the Court to assist this Court, which he accepts. Mr Luthra is accordingly appointed as Amicus Curiae for the petitioner. We further request Mr Sameer Chaudhary, learned counsel, who is also present in the Court, to assist Mr Luthra, which he accepts. Accordingly, he is also appointed to assist Mr Luthra, learned Senior Counsel, in the matter.

3. The Registry is directed to furnish two sets of paper books to Mr Luthra, learned Senior Counsel as well as to Mr Chaudhary, learned counsel within three days. List the matter after three weeks."

said provision applies only during trial and the first case is not covered by the said provision as the appellant therein has not undergone the requisite detention period to claim bail under the said provision.

6. With regard to grant of bail, pending appeal, reference has been made to the decisions of this Court in *Akhtari Bi* v. *State of M.P.*[3] and *Surinder Singh* v. *State of Punjab*[4] which provides that if the appeal is not heard for 5 years, excluding the delay for which the accused himself is responsible, bail should normally be granted. The second case is not covered by the said judgment as the pending appeal in the High Court is of the year 2013.

7. In *Abdul Rehman Antulay* v. *R.S. Nayak*[5] while holding that speedy trial at all stages is part of right under Article 21, it was held that if there is violation of right of speedy trial, instead of quashing the proceedings, a higher court can direct conclusion of proceedings in a fixed time. In the light of these principles, the present appeals can be disposed of by directing that the pending trial in the first case and the appeal in the second case may be disposed of within six months. We order accordingly and dispose of the matters to the extent of grievance in the two cases.

II

8. However, since the issue is arising frequently, in spite of earlier directions of this Court, further consideration has become necessary in the interest of administration of justice and for enforcement of fundamental right under Article 21.

9. As already noticed, speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21. This constitutional right cannot be denied even on the plea of non-availability of financial resources. The court is entitled to issue directions to augment and strengthen the investigating machinery, setting up of new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional Judges and other measures as are necessary for speedy trial[6].

10. Directions given by this Court in *Hussainara Khatoon*[*, 7] to this effect which were left to be implemented by the High Courts are as follows: (SCC p. 328, para 2)

> "2. Since this Court has already laid down the guidelines by orders passed from time to time in this writ petition and in subsequent orders passed in different cases since then, we do not consider it necessary

3 (2001) 4 SCC 355 : 2001 SCC (Cri) 714
4 (2005) 7 SCC 387 : 2005 SCC (Cri) 1671
5 (1992) 1 SCC 225 at pp. 270-73, para 86 : 1992 SCC (Cri) 93
6 *Hussainara Khatoon (I)* v. *State of Bihar*, (1980) 1 SCC 98, para 10 : 1980 SCC (Cri) 40
* **Ed.**: The reference seems to be to orders reported in *Hussainara Khatoon* v. *State of Bihar*, (1980) 1 SCC 81; (1980) 1 SCC 91; (1980) 1 SCC 93; (1980) 1 SCC 98; (1980) 1 SCC 108 and (1980) 1 SCC 115.
7 *Hussainara Khatoon (7)* v. *State of Bihar*, (1995) 5 SCC 326 : 1995 SCC (Cri) 913

to restate the guidelines periodically *because the enforcement of the guidelines by the subordinate courts functioning in different States should now be the responsibility of the different High Courts to which they are subordinate*. General orders for release of undertrials without reference to specific fact situations in different cases may prove to be hazardous. While there can be no doubt that undertrial prisoners should not languish in jails on account of refusal to enlarge them on bail for want of their capacity to furnish bail with monetary obligations, these are matters which have to be dealt with on case-to-case basis keeping in mind the guidelines laid down by this Court in the orders passed in this writ petition and in subsequent cases from time to time. Sympathy for the undertrials who are in jail for long terms on account of the pendency of cases has to be balanced having regard to the impact of crime, more particularly, serious crime, on society and these considerations have to be weighed having regard to the fact situations in pending cases. While there can be no doubt that trials of those accused of crimes should be disposed of as early as possible, general orders in regard to Judge-strength of subordinate judiciary in each State must be attended to, and its functioning overseen, by the High Court of the State concerned. We share the sympathetic concern of the learned counsel for the petitioners that undertrials should not languish in jails for long spells merely on account of their inability to meet monetary obligations. We are, however, of the view that such monitoring can be done more effectively by the High Courts since it would be easy for those Courts to collect and collate the statistical information in that behalf, apply the broad guidelines already issued and deal with the situation as it emerges from the status reports presented to it. The role of the High Court is to ensure that the guidelines issued by this Court are implemented in letter and spirit. *We think it would suffice if we request the Chief Justices of the High Courts to undertake a review of such cases in their States and give appropriate directions where needed to ensure proper and effective implementation of the guidelines. Instead of repeating the general directions already issued, it would be sufficient to remind the High Courts to ensure expeditious disposal of cases.*" (emphasis supplied)

11. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. This Court has held that while a person in custody for a grave offence may not be released if trial is delayed, trial has to be expedited or bail has to be granted in such cases[8].

12. Timely delivery of justice is a part of human rights. Denial of speedy justice is a threat to public confidence in the administration of justice.

8 *Supreme Court Legal Aid Committee* v. *Union of India*, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39

Directions of this Court in *Noor Mohammed* v. *Jethanand*[9] are as follows: (SCC p. 217, para 34)

> "*34.* ... Therefore, we request the learned Chief Justice of the High Court of Rajasthan as well as the other learned Chief Justices to conceive and adopt a mechanism, regard being had to the priority of cases, to avoid such inordinate delays in matters which can really be dealt with in an expeditious manner. Putting a step forward is a step towards the destination. A sensible individual inspiration and a committed collective endeavour would indubitably help in this regard. Neither less, nor more."

13. In *Thana Singh* v. *Central Bureau of Narcotics*[10] this Court directed that liberal adjournments must be avoided and witnesses once produced must be examined on consecutive dates. Directions were also issued for setting up of sufficient laboratories, for disposal of seized narcotics drugs and for providing charge-sheets and other documents in electronic form in addition to hard copies of same to avoid delay.

14. In *Akhtari Bi*[3] this Court observed as under: (SCC p. 358, para 5)

> "5. ... it is incumbent upon the High Courts to find ways and means by taking steps to ensure the disposal of criminal appeals, particularly such appeals where the accused are in jails, that the matters are disposed of within the specified period not exceeding 5 years in any case. Regular Benches to deal with the criminal cases can be set up where such appeals be listed for final disposal. We feel that if an appeal is not disposed of within the aforesaid period of 5 years, for no fault of the convicts, such convicts may be released on bail on such conditions as may be deemed fit and proper by the court. In computing the period of 5 years, the delay for any period, which is requisite in preparation of the record and the delay attributable to the convict or his counsel can be deducted. There may be cases where even after the lapse of 5 years the convicts may, under the special circumstances of the case, be held not entitled to bail pending the disposal of the appeals filed by them. *We request the Chief Justices of the High Courts, where the criminal cases are pending for more than 5 years to take immediate effective steps for their disposal by constituting regular and Special Benches for that purpose.*" (emphasis supplied)

15. Again in *Imtiyaz Ahmad* v. *State of U.P.*[11] it was observed that long delay has the effect of blatant violation of rule of law and adverse impact on access to justice which is a fundamental right. Denial of this right undermines public confidence in justice delivery. These observations have been reiterated in a recent Constitution Bench judgment in *Anita Kushwaha* v. *Pushap Sudan*[12].

9 (2013) 5 SCC 202 : (2013) 2 SCC (Civ) 754
10 (2013) 2 SCC 590 : (2013) 2 SCC (Cri) 818
3 *Akhtari Bi* v. *State of M.P.*, (2001) 4 SCC 355 : 2001 SCC (Cri) 714
11 (2012) 2 SCC 688 : (2012) 1 SCC (Cri) 986
12 (2016) 8 SCC 509, paras 31-36 : (2016) 4 SCC (Civ) 80 : (2016) 3 SCC (Cri) 530 : (2016) 2 SCC (L&S) 463

In the said judgment it was noticed that providing effective adjudicatory mechanism, reasonably accessible and speedy, was part of access to justice.

16. In *Bhim Singh* v. *Union of India*[13], it was observed that the Central Government must take steps in consultation with the State Governments in fast tracking all types of criminal cases so that criminal justice is delivered timely and expeditiously. In the same case, in a further order[14] it was noted that more than 50% of the prisoners in various jails are undertrial prisoners. In spite of incorporation of Section 436-A in CrPC undertrial prisoners continue to remain in prisons in violation of the mandate of the said section. Accordingly, this Court directed the jurisdictional Magistrate/Chief Judicial Magistrate/ Sessions Judge to hold one sitting in a week in each jail/prison for 2 months for effective implementation of Section 436-A. Again in *Inhuman Conditions in 1382 Prisons, In re*[15] reference was made to the advisory issued by the Ministry of Home Affairs to all the States for implementation of Section 436-A CrPC stipulating constitution of a review committee in every district under the chairmanship of the District Judge. It was noted that 67% of the prisoners in the jails were undertrial prisoners.

III

17. In *Imtiyaz Ahmad*[11] this Court noted that serious cases involving murder, rape, kidnapping and dacoity were pending for long period. In some cases proceedings were delayed on account of stay orders. Out of the said cases, in 9% cases stay was operating for more than 20 years, in 21% stay was operating for more than 10 years. Having regard to the situation noticed in the judgment, this Court directed the High Courts to dispose of cases in which proceedings were stayed preferably within six months from the date of stay orders. The Law Commission was directed to make recommendation for measures to be adopted by way of creation of additional courts and the like matters. The Law Commission made its recommendations in its 245th Report which was examined by the National Court Management Systems Committee (NCMSC) to determine additional number of courts required.

18. The said 245th Report of the Law Commission was thereafter considered by this Court in the judgment dated 2-1-2017 in *Imtiyaz Ahmad* v. *State of U.P.*[16] After noticing the stand of the Ministry of Law and Justice on the subject of creation of additional posts, this Court also noted the recommendations of the 14th Finance Commission whereby additional fiscal allocation was provided. In that context, the Prime Minister's letter to the Chief Ministers calling upon them to allocate funds in the State Budgets was also

13 (2015) 13 SCC 603 : (2016) 1 SCC (Cri) 661
14 *Bhim Singh* v. *Union of India*, (2015) 13 SCC 605 : (2016) 1 SCC (Cri) 663
15 (2016) 3 SCC 700 : (2016) 2 SCC (Cri) 170
11 *Imtiyaz Ahmad* v. *State of U.P.*, (2012) 2 SCC 688 : (2012) 1 SCC (Cri) 986
16 (2017) 3 SCC 658 : (2017) 3 SCC 665 : (2017) 2 SCC (Civ) 311 : (2017) 2 SCC (Civ) 318 : (2017) 2 SCC (Cri) 228 : (2017) 2 SCC (Cri) 235 : (2017) 1 SCC (L&S) 724 : (2017) 1 SCC (L&S) 731

referred to. Further follow-up letter of the Law Minister and Resolution of Chief Justices' Conference held in April 2016 were also referred to. Thereafter, this Court issued directions for computing the required Judge-strength of the District Judiciary and also directed the State Governments to take steps for enhancing the Judge-strength accordingly. The directions are as follows: (SCC p. 680, para 43)

> "*43.* Having regard to the above background, we now proceed to formulate our directions in the following terms:
>
> *43.1.* Until NCMSC formulates a scientific method for determining the basis for computing the required Judge strength of the district judiciary, the Judge strength shall be computed for each State, in accordance with the interim approach indicated in the note submitted by the Chairperson, NCMSC;
>
> *43.2.* NCMSC is requested to endeavour the submission of its final report by 31-12-2017;
>
> *43.3.* A copy of the interim report submitted by the Chairperson, NCMSC shall be forwarded by the Union Ministry of Law and Justice to the Chief Justices of all the High Courts and Chief Secretaries of all States within one month so as to enable them to take follow-up action to determine the required Judge strength of the district judiciary based on the NCMSC interim report, subject to what has been stated in this judgment;
>
> *43.4.* The State Governments shall take up with the High Courts concerned the task of implementing the interim report of the Chairperson, NCMSC (subject to what has been observed above) and take necessary decisions within a period of three months from today for enhancing the required Judge strength of each State judiciary accordingly;
>
> *43.5.* The State Governments shall cooperate in all respects with the High Courts in terms of the resolutions passed in the joint conference of Chief Justices and Chief Ministers in April 2016 with a view to ensuring expeditious disbursal of funds to the State judiciaries in terms of the devolution made under the auspices of the Fourteenth Finance Commission;
>
> *43.6.* The High Courts shall take up the issue of creating additional infrastructure required for meeting the existing sanctioned strength of their State Judiciaries and the enhanced strength in terms of the interim recommendation of NCMSC;
>
> *43.7.* The final report submitted by NCMSC may be placed for consideration before the Conference of Chief Justices. The directions in para 43.1, above shall then be subject to the ultimate decision that is taken on receipt of the final report; and
>
> *43.8.* A copy of this order shall be made available to the Registrars General of each High Court and to all Chief Secretaries of the States for appropriate action."

The said matter now stands adjourned to July 2017.

19. During Joint Conference of Chief Ministers of States and Chief Justices of High Courts held in April 2015, a decision was taken that all High Courts will establish Arrears Committees and prepare a plan to clear backlog of cases pending for more than 5 years. Such Committees have reportedly been established. In Chief Justices' Conference held in April 2016 under Item 8 inter alia the following resolution was passed:

> "**8. DELAY AND ARREARS COMMITTEE:**
>
> * * *
>
> *Resolved* that
>
> (*i*) all High Courts shall assign topmost priority for disposal of cases which are pending for more than five years;
>
> (*ii*) High Courts where arrears of cases pending for more than five years are concentrated shall facilitate their disposal in mission mode;
>
> (*iii*) High Courts shall progressively thereafter set a target of disposing of cases pending for more than four years;
>
> (*iv*) while prioritising the disposal of cases pending in the District Courts for more than five years, additional incentives for the Judges of the District Judiciary be considered where feasible; and
>
> (*v*) efforts be made for strengthening case-flow management rules."

20. The position of five-year-old cases continues to be alarming in many States. Total number of more than five-year-old cases in subordinate courts at the end of the year 2015 is said to be 43,19,693 as noted in para 9 of the judgment of this Court dated 2-1-2017 in *Imtiyaz Ahmad* v. *State of U.P.*[16] Number of undertrials detained for more than five years at the end of the year 2015 is said to be 3599.[17] Number of appeals pending in the High Courts where detention period is beyond five years may be still higher.

21. It appears that annual action plans have been prepared by some High Courts with reference to the subject of discussion in the Chief Justices' Conference. Reference to action plan of the Punjab and Haryana High Court for the year 2011-2012[18] shows that undertrials who were in custody for more than two years as on 1-4-2011 in sessions trial cases and those in custody for more than six months in magisterial trial cases were targeted for disposal, apart from five-year-old cases and other priority cases. Similar targets were fixed for subsequent years and result reflected in the pendency figures shows improvement in disposal of five-year-old cases and cases of undertrials in custody beyond two years in sessions trial cases and six months

16 (2017) 3 SCC 658 : (2017) 3 SCC 665 : (2017) 2 SCC (Civ) 311 : (2017) 2 SCC (Civ) 318 : (2017) 2 SCC (Cri) 228 : (2017) 2 SCC (Cri) 235 : (2017) 1 SCC (L&S) 724 : (2017) 1 SCC (L&S) 731

17 Prison Statistics India—2015

18 Circular dated 2-4-2011 from Registrar Rules, Punjab and Haryana High Court. As per resolution of Full Court meeting dated 29-3-2011, the plan was to be monitored every three months and performance of judicial officers was to be reflected in ACRs.

in magisterial trial cases in subordinate courts in the jurisdiction of the Punjab and Haryana High Court.[19] Reportedly, success is on account of monitoring inter alia by holding quarterly meetings of District Judges with Senior High Court Judges as well as constant monitoring by the Administrative Judges concerned[20]. Presumably, there is similar improvement as a result of planned efforts elsewhere.

22*. In view of successful implementation of plan to dispose of cases of undertrials in custody in two years in sessions trial cases and six months in magisterial trials, we do not see any reason why this target should not be set uniformly. The same need to be regularly monitored and reflected in performance appraisals of the judicial officers concerned. Handicaps pointed out can be tackled at an appropriate level. Accordingly, we are of the view that plan of each High Court should include achieving the said target and not the target of five years for undertrials in custody. Of course, if such cases can be disposed of earlier, it may be still better. Plans can be revised as per local conditions. We also feel delay in disposal of bail applications and cases where trials are stayed are priority areas for monitoring. Timeline for disposal of bail applications ought to be fixed by the High Court. As far as possible, bail applications in subordinate courts should ordinarily be decided within one week and in High Courts within two-three weeks. Posting of suitable officers in key leadership positions of Session Judges and Chief Judicial Magistrates may perhaps go a long way in dealing with the situation. Non-performers/dead wood must be weeded out as per rules, as public interest is above individual interest.

23. Another suggestion which cropped up during the hearing of the present case relates to remedying the situation of delay in trials on account of absconding of one or the other accused during the trial. In this regard our attention has been drawn to an amendment in the Code of Criminal Procedure, 1898 of Bangladesh by way of adding Section 339-B to the following effect:

> "**339-B.** ***Trial in absentia.***—(1) Where after the compliance with the requirements of Section 87 and Section 88, the Court has reason to believe that an accused person has absconded or concealing himself so that he cannot be arrested and produced for trial and there is no immediate prospect of arresting him, the Court taking cognizance of the offence complained of shall, by order published in at least two national daily Bengali Newspapers having wide circulation, direct such person to appear before it within such period as may be specified in the order, *and if such person fails to comply with such direction, he shall be tried in his absence.*
>
> (2) Where in a case after the production or appearance of an accused before the Court or his release on bail, the accused person absconds or fails to appear, the procedure as laid down in sub-section (1) shall not apply and the Court

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19 Report of the Monitoring Committee is that targets were achieved to the extent of 90%, 98,110 old cases were disposed of out of 1,17,880 targeted.

20 See the information on website of the Punjab and Haryana High Court under the caption "Action Plans".

* **Ed.:** Para 22 corrected vide Official Corrigendum No. F.3/Ed.B.J./12/2017 dated 27-3-2017.

competent to try such person for the offence complained of shall, recording its decision so to do, try such person in his absence." (emphasis supplied)

24. It is for the authority concerned to take cognizance of the above amendment which may considerably reduce delay in cases where one or the other accused absconds during the trial.

25. The learned Amicus Curiae as well as the learned Additional Solicitor General have suggested that monitoring by all High Courts is necessary to ensure minimising adjournments at all levels, taking steps to remove obstacles in speedy trials including setting up of adequate number of laboratories, use of video conferencing to examine scientific experts or otherwise, appointment of Public Prosecutors, compliance with Sections 207/208 CrPC by scanning/digitizing police reports, introduce system for electronic service of summons (wherever necessary), issuing timelines for disposal of bail matters at all levels. It has also been suggested that suitable amendments ought to be made in the Code of Criminal Procedure for permitting tendering evidence of medical witnesses on the pattern of Section 293 CrPC. While we have discussed some of the issues germane to the subject of speedy trials, in view of directions already issued by this Court, issuance of further directions and monitoring of directions already issued is left to the High Courts concerned.

26. In view of the above, we do consider it necessary to direct that steps be taken forthwith by all concerned to effectuate the mandate of the fundamental right under Article 21 especially with regard to persons in custody in view of the directions already issued by this Court. It is desirable that each High Court frames its annual action plan fixing a tentative time-limit for subordinate courts for deciding criminal trials of persons in custody and other long pending cases and monitors implementation of such timelines periodically. This may perhaps obviate the need for seeking directions in individual cases from this Court. We also feel that it is desirable for Chief Justices of all the High Courts to take other steps consistent with the directions already issued by this Court for expeditious disposal of criminal appeals pending in High Courts where persons are in custody by fixing priority having regard to the time period of detention. We also reiterate the directions for setting up of adequate number of forensic laboratories at all levels. Specification of some of these issues is in addition to implementation of other steps including timely investigation, timely serving of summons on witnesses and accused, timely filing of charge-sheets and furnishing of copies of charge-sheets to the accused. These aspects need constant monitoring by High Courts.

27. One other aspect pointed out is the obstruction of court proceedings by uncalled for strikes/abstaining of work by lawyers or frequent suspension of court work after condolence references. In view of judgment of this Court in *Harish Uppal* v. *Union of India*[21], such suspension of work or strikes is clearly illegal and it is high time that the legal fraternity realises its duty to the society which is the foremost. Condolence references can be once in a while periodically say once in two/three months and not frequently. Hardship faced

21 (2003) 2 SCC 45

by witnesses if their evidence is not recorded on the day they are summoned or impact of delay on undertrials in custody on account of such avoidable interruptions of court proceedings is a matter of concern for any responsible body of professionals and they must take appropriate steps. In any case, this needs attention of all authorities concerned the Central Government/State Governments/Bar Councils/Bar Associations as well as the High Courts and ways and means ought to be found out to tackle this menace. Consistent with the above judgment, the High Courts must monitor this aspect strictly and take stringent measures as may be required in the interests of administration of justice.

28. Judicial service as well as legal service are not like any other services. They are missions for serving the society. The mission is not achieved if the litigant who is waiting in the queue does not get his turn for a long time. The Chief Justices and Chief Ministers have resolved that all cases must be disposed of within five years which by any standard is quite a long time for a case to be decided in the first court. Decision of cases of undertrials in custody is one of the priority areas. There are obstructions at every level in enforcement of right of speedy trial vested interests or unscrupulous elements try to delay the proceedings. Lack of infrastructure is another handicap. In spite of all odds, determined efforts are required at every level for success of the mission. Ways and means have to be found out by constant thinking and monitoring. The Presiding Officer of a court cannot rest in a state of helplessness. This is the constitutional responsibility of the State to provide necessary infrastructure and of the High Courts to monitor the functioning of subordinate courts to ensure timely disposal of cases. The first step in this direction is preparation of an appropriate action plan at the level of the High Court and thereafter at the level of each and every individual judicial officer. Implementation of the action plan will require serious efforts and constant monitoring.

29. To sum up:

29.1. The High Courts may issue directions to subordinate courts that—

29.1.1. Bail applications be disposed of normally within one week;

29.1.2. Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be normally concluded within two years;

29.1.3. Efforts be made to dispose of all cases which are five years old by the end of the year;

29.1.4. As a supplement to Section 436-A, but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence *likely to be awarded* if conviction is recorded such undertrial must be released on personal bond. Such an assessment must be made by the trial courts concerned from time to time;

29.1.5. The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports.

29.2. The High Courts are requested to ensure that bail applications filed before them are decided as far as possible within one month and criminal

appeals where accused are in custody for more than five years are concluded at the earliest;

29.3. The High Courts may prepare, issue and monitor appropriate action plans for the subordinate courts;

29.4. The High Courts may monitor steps for speedy investigation and trials on administrative and judicial side from time to time;

29.5. The High Courts may take such stringent measures as may be found necessary in the light of judgment of this Court in *Harish Uppal*[21].

30. Accordingly, we request the Chief Justices of all the High Courts to forthwith take appropriate steps consistent with the directions of this Court in *Hussainara Khatoon*[7], *Akhtari Bi*[3], *Noor Mohammed*[9], *Thana Singh*[10], *Supreme Court Legal Aid Committee*[8], *Imtiaz Ahmad*[11, 16], *Harish Uppal*[21] and *Resolution of Chief Justices' Conference* and observations hereinabove and to have appropriate monitoring mechanism in place on the administrative side as well as on the judicial side for speeding up disposal of cases of undertrials pending in subordinate courts and appeals pending in the High Courts.

31. We place on record our appreciation for the valuable assistance rendered by Mr Atmaram N.S. Nadkarni, learned Additional Solicitor General and Mr Sidharth Luthra, learned Senior Advocate. A copy of this order be sent to all the courts.

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21 *Harish Uppal* v. *Union of India*, (2003) 2 SCC 45
7 *Hussainara Khatoon (7)* v. *State of Bihar*, (1995) 5 SCC 326 : 1995 SCC (Cri) 913
3 *Akhtari Bi* v. *State of M.P.*, (2001) 4 SCC 355 : 2001 SCC (Cri) 714
9 *Noor Mohammed* v. *Jethanand*, (2013) 5 SCC 202 : (2013) 2 SCC (Civ) 754
10 *Thana Singh* v. *Central Bureau of Narcotics*, (2013) 2 SCC 590 : (2013) 2 SCC (Cri) 818
8 *Supreme Court Legal Aid Committee* v. *Union of India*, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39
11 *Imtiyaz Ahmad* v. *State of U.P.*, (2012) 2 SCC 688 : (2012) 1 SCC (Cri) 986
16 *Imtiyaz Ahmad* v. *State of U.P.*, (2017) 3 SCC 658 : (2017) 3 SCC 665 : (2017) 2 SCC (Civ) 311 : (2017) 2 SCC (Civ) 318 : (2017) 2 SCC (Cri) 228 : (2017) 2 SCC (Cri) 235 : (2017) 1 SCC (L&S) 724 : (2017) 1 SCC (L&S) 731

(2018) 17 Supreme Court Cases 27

(BEFORE ADARSH KUMAR GOEL AND UDAY U. LALIT, JJ.)

KRISHNAKANT TAMRAKAR .. Appellant;

Versus

STATE OF MADHYA PRADESH .. Respondent.

Criminal Appeal No. 470 of 2018†, decided on March 28, 2018

A. **Courts, Tribunals and Judiciary — Judicial Process — Delay/Speedy disposal — Central Government directed to file affidavit within three months regarding enhancement of judicial infrastructure, All-India Judicial Service, elimination/reduction of strikes by lawyers, etc.**

(a) Feasibility of All-India Judicial Service or creation of appropriate fora to de-congest constitutional courts to achieve constitutional goal of speedy justice

(b) Pending consideration of above, filling of vacancies as per proposal of Central Selection Mechanism

(c) Ministry of Law may compile information and present a quarterly report on strikes/absenteeism from work by Advocates and Bar Associations obstructing access to justice This should be considered in the contempt or inherent jurisdiction of court — Steps should be suggested/considered for tackling frequent uncalled for strikes by Advocates and Bar Associations including steps like removing office bearers of Bar Associations, restraining them from appearing in court till they purge themselves of contempt to satisfaction of Chief Justice of High Court by giving undertaking and said actions may be in addition to other action that may be taken for illegal acts for obstructing access to justice

— (d) Central Government should consider other relevant considerations like: (i) full time experts to evaluate candidates for judicial appointment as well as their work performance after appointment, (ii) process of evaluation for judicial appointment so that no wrong candidate is appointed and (iii) steps required for righteous conduct of Judges Advocates Strike/Boycott by Lawyers Impermissibility of Measures to be taken to reduce/ eliminate the same Directions issued Human and Civil Rights Fair Trial (Paras 17 to 32 and 38 to 52)

B. **Courts, Tribunals and Judiciary — Judicial Process — Delay/Speedy disposal — As matter concerns fundamental rights, Court cannot refuse to look into problem even if issues are primarily policy matters — Access to speedy justice is a part of fundamental rights under Arts. 14 and 21 of the Constitution**

† Arising out of SLP (Crl.) No. 9393 of 2017. Arising from the Judgment and Order in *Krishnakant Tamrakar* v. *State of M.P.*, 2017 SCC OnLine MP 1511 (Madhya Pradesh High Court, Jabalpur Bench, Criminal Appeal No. 1823 of 2009, dt. 3-5-2017)

Constitution of India Arts. 21 and 14 Human and Civil Rights Universal Declaration of Human Rights, 1948 Art. 10 International Law International Conventions International Covenant on Civil and Political Rights, 1966 Arts. 9 and 14 Criminal Procedure Code, 1973, Ss. 167 and 436-A (Paras 6 to 19)

Possibility of decision of five-year-old cases pending in the High Courts particularly the criminal appeals within the existing system — Need to consider decongestion of constitutional courts

The available figures show that long pendency, particularly of more than five years, remains a serious challenge. Volume of work in the High Court was likely to further increase on account of increased disposal of cases in subordinate courts with the increased strength of Judges, infrastructure and other steps being taken. New laws are being enacted providing statutory remedies before the High Courts. If number of constitutional courts is to be increased to match the volume of work being entrusted to such courts, it may have its implication unless it is possible to find sufficient number of suitable persons. Needless to say that nature of work before the constitutional courts particularly laying down of law is time-consuming. Such courts cannot be overburdened. (Para 22)

Krishnakant Tamrakar v. *State of M.P.*, 2017 SCC OnLine MP 1511, *not interfered with*

Kashmira Singh v. *State of Punjab*, (1977) 4 SCC 291 : 1977 SCC (Cri) 559; *Krishnakant Tamrakar* v. *State of M.P.*, 2017 SCC OnLine SC 1647; *Vineet Narain* v. *Union of India*, (1996) 2 SCC 199 : 1996 SCC (Cri) 264; *Prakash Singh* v. *Union of India*, (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417; *State of Punjab* v. *Brijeshwar Singh Chahal*, (2016) 6 SCC 1 : (2016) 3 SCC (Civ) 1 : (2016) 2 SCC (Cri) 475 : (2016) 2 SCC (L&S) 1; *Anita Kushwaha* v. *Pushap Sudan*, (2016) 8 SCC 509 : (2016) 4 SCC (Civ) 80 : (2016) 3 SCC (Cri) 530 : (2016) 2 SCC (L&S) 463; *Imtiyaz Ahmad* v. *State of U.P.*, (2012) 2 SCC 688 : (2012) 1 SCC (Cri) 986; *P. Ramachandra Rao* v. *State of Karnataka*, (2002) 4 SCC 578 : 2002 SCC (Cri) 830; *Imtiyaz Ahmad* v. *State of U.P.*, (2017) 3 SCC 658 : (2017) 2 SCC (Civ) 311 : (2017) 2 SCC (Cri) 228 : (2017) 1 SCC (L&S) 724; *Imtiyaz Ahmad* v. *State of U.P.*, (2017) 3 SCC 658; *Akhtari Bi* v. *State of M.P.*, (2001) 4 SCC 355 : 2001 SCC (Cri) 714; *L. Chandra Kumar* v. *Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577, *referred to*

Woolf Report of 1996; Report titled "Delaying Justice is Denying Justice", by the Canadian Standing Senate Committee on Legal and Constitutional Affairs; United States Speedy Trial Act, 1974; 245th Report of the Law Commission of India, 2014; Resolution of the Joint Conference of Chief Justices and Chief Ministers; Resolution of the Chief Justices' Conference held in April 2015; Court News—October December, 2016 in Supreme Court website (www.supremecourtofindia.nic.in) or (http://supremecourtofindia.nic.in/pdf/CourtNews/COURT_NEWS_Vol_XI_Issue_No4_October_to_December_2016.pdf); Minutes of the meeting of the Arrears Committee held on 23 3 2017, *referred to*

From the data available it is clear that all the steps taken by the Central Government so far have not significantly improved the situation of speedy disposal of criminal appeals. The steps taken are set off by increased volume of work or otherwise. Accordingly, the Union of India ought to consider whether it is viable to have criminal appeals and other matters before the High Courts decided within reasonable time as per existing system. If not, whether it is possible to provide any other suitable forum for such appeals so as to ensure enforcement of fundamental

right of speedy justice or how else the situation can be remedied. The issue of non-viability of providing routine statutory appeals to constitutional courts as observed in *Gujarat Urja Vikas Nigam Ltd.*, (2016) 9 SCC 103 may also need to be considered. (Paras 24 to 32)

Radhey Shyam v. *Chhabi Nath*, (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67; *Sita Ram* v. *State of U.P.*, (1979) 2 SCC 656 : 1979 SCC (Cri) 576; *Gujarat Urja Vikas Nigam Ltd.* v. *Essar Power Ltd.*, (2016) 9 SCC 103; *Dadu* v. *State of Maharashtra*, (2000) 8 SCC 437 : 2000 SCC (Cri) 1528, *referred to*

Relevant extract from the Minutes of meeting of the Arrears Committee held on 8-4-2017; Minutes of the interaction of the Arrears Committee for Supreme Court and High Courts held on 8-4-2017; Minutes of the interaction of the Arrears Committee for Supreme Court and High Courts held on 22-4-2017; Para 8.23 of the Law Commission 272nd Report (2017) titled Assessment of Statutory Frameworks of Tribunals in India; 124th Report of the Law Commission of India (1988) titled "High Court Arrears — A Fresh Look", *referred to*

Filling up of vacancies at all levels with the best available talent

Primacy in appointment of constitutional courts is to be of the Chief Justice of India. At the same time, even without affecting such primacy improvement in working of collegium is a felt necessity. There is a need of a Secretariat and also incorporation of other factors for improved and effective working of the collegiums system. This apart, corrective measures against post appointment conduct or inadequate performance or failure to uphold righteous conduct need to be evolved. These aspects require urgent attention of authorities concerned. (Para 38)

All India Judges Assn. v. *Union of India*, (1992) 1 SCC 119 : 1992 SCC (L&S) 9; *Malik Mazhar Sultan (3)* v. *U.P. Public Service Commission*, (2008) 17 SCC 703 : (2010) 1 SCC (L&S) 942; *All India Judges Assn.* v. *Union of India*, (2002) 4 SCC 247 : 2002 SCC (L&S) 508; *Central Selection Mechanism for Subordinate Judiciary, In re*, 2017 SCC OnLine SC 1694; *Supreme Court Advocates on Record Assn.* v. *Union of India*, (1993) 4 SCC 441; *Special Reference No. 1 of 1998, In re*, (1998) 7 SCC 739; *Supreme Court Advocates on Record Assn.* v. *Union of India*, (2016) 5 SCC 1; *C.S. Karnan, In re*, (2017) 7 SCC 1 : (2017) 3 SCC (Civ) 545 : (2017) 4 SCC (Cri) 46, *referred to*

See Schedule VII List III Entry 11-A to the Constitution; (2016) 5 SCC 1 — Chelameswar, J. — para 1236; Lokur, J. — para 969; Kurian, J. — para 990; Goel, J. — para 1111, *referred to*

Supreme Court Advocates-on-Record Assn. v. *Union of India*, (2016) 5 SCC 1 : (2016) 5 SCC 803 (2), *cited*

If a High Court remains without a permanent Chief Justice, process of speedy justice certainly suffers. In spite of timeline in the Memorandum of Procedure (MoP) for appointments in pursuance of judgment of the Supreme Court in *Supreme Court Advocates-on-Record Assn.*, (1993) 4 SCC 441 that there will be no Acting Chief Justice for more than one month, timely appointments of Chief Justices is not taking place. The Central Government must take all steps to ensure such appointments as per prescribed timeline. The process may require thinking, planning and acting on a continuous basis. Identification of candidates, scrutiny, evaluation and post appointment performance measurements and conduct are time-consuming processes and at least some independent full-time experts are required, if timely and best appointments are to be ensured and requisite in-house oversight is to be a reality. A full-time body consistent with independence of judiciary appears to be immediate need for the system. Absence thereof contributes to denial

of justice. The Central Government must also ensure that MoP in pursuance of order of the Supreme Court in *NJAC case* dated 16-12-2015 brings about the improvements in working of the Collegiums as stipulated. (Para 39)

Supreme Court Advocates-on-Record Assn. v. *Union of India*, (1993) 4 SCC 441, *referred to*

Accountability in terms of performance measurement and righteous conduct at all levels of judicial hierarchy including constitutional courts

There is also a need for mechanism to evaluate and compile performance of the judicial system as per observations in 245th Report of the Law Commission so that there is non-mandatory timeline for decision of cases and accountability consistent with the right of speedy justice. Such mechanism may provide norms for performance measurement for all Judges in the hierarchy. The same has to be done without affecting independence of judiciary. There is also need for an in-house mechanism manned by experts but with safeguards consistent with independence of judiciary for measures against erring Judges other than impeachment as observed in Shri Justice C.S. *Karnan, In re*, (2017) 7 SCC 1. (Para 40)

C.S. Karnan, In re, (2017) 7 SCC 1 : (2017) 3 SCC (Civ) 545 : (2017) 4 SCC (Cri) 46, *referred to*

Reforms in the legal profession — Remedying uncalled for strikes

It is well known that at some places there are frequent strikes, seriously obstructing access to justice. Even cases of persons languishing in custody are delayed on that account. By every strike, irreversible damage is suffered by the judicial system, particularly consumers of justice. They are denied access to justice. Taxpayers' money is lost on account of judicial and public time being lost. Nobody is accountable for such loss and harassment. (Para 41)

Constituent Assembly Debates Vol. 11, *referred to*

Lawyers have no right to go on strike or to give a call for boycott of courts nor can they abstain from the courts. Calls given by Bar Association or Bar Council for such purpose cannot require the court to adjourn the matters. Strike or abstaining from court is unprofessional. (Para 44)

Harish Uppal v. *Union of India*, (2003) 2 SCC 45, *relied on*

Mahipal Singh Rana v. *State of U.P.*, (2016) 8 SCC 335 : (2016) 4 SCC (Civ) 1 : (2016) 3 SCC (Cri) 476 : (2016) 2 SCC (L&S) 390; *Mahipal Singh Rana* v. *State of U.P.*, (2016) 8 SCC 335, *referred to*

The Law Commission, examined the relevant aspects relating to regulation of the legal profession. The Law Commission in its 266th Report found that such conduct of the advocates affects functioning of courts and particularly it contributes to pendency of cases. It analysed the data on loss of working days on account of call of strikes. (Para 46)

Hussain v. *Union of India*, (2017) 5 SCC 702 : (2017) 2 SCC (Cri) 638; *Ramon Services (P) Ltd.* v. *Subhash Kapoor*, (2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152; *Hussainara Khatoon (I)* v. *State of Bihar*, (1980) 1 SCC 81 : 1980 SCC (Cri) 23, *cited*

266th Report of Law Commission on The Advocates Act, 1961 (Regulation of Legal Profession), *referred to*

Since the strikes are in violation of law laid down by the Supreme Court, the same amount to contempt and at least the office-bearers of the associations who give call for the strikes cannot disown their liability for contempt. Every resolution to go on strike and abstain from work is per se contempt. Even if proceedings are not initiated individually against such contemnors by the court concerned or

by the Bar Council concerned for the misconduct, it is necessary to provide for some mechanism to enforce the law laid down by the Supreme Court, pending a legislation to remedy the situation. (Para 49)

124th, 272nd and 14th Reports of the Law Commission of India: The Minutes of the Arrears Committee of Supreme Court dated 8-4-2017, *referred to*

SS-D/60654/S

Advocates who appeared in this case :

Gopal Subramanium (Amicus Curiae), Senior Advocate (Talha Rahman, Pavan Bhushan, Hitesh Saini, Dr Ajay Kumar, Tuhin Lavania, Mahendra Singh, Nandlal Kr. Mishra, Ram Kishor Singh Yadav, Ms Sunita Yadav, Ms Miranda, Kaushal Yadav, S.S. Shamshery, Ms Hari Priya and M.K. Maroria, Advocates) for the appearing parties.

Chronological list of cases cited ***on page(s)***

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3. (2017) 3 SCC 658 : (2017) 2 SCC (Civ) 311 : (2017) 2 SCC (Cri) 228 : (2017) 1 SCC (L&S) 724. *Imtiyaz Ahmad* v. *State of U.P.* 37*d e*, 37*e*
4. 2017 SCC OnLine SC 1694. *Central Selection Mechanism for Subordinate Judiciary, In re* 42*c*
5. 2017 SCC OnLine SC 1647, *Krishnakant Tamrakar* v. *State of M.P.* 32*f g*
6. 2017 SCC OnLine MP 1511, *Krishnakant Tamrakar* v. *State of M.P.* 32*c*, 32*d-e*
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15. (2008) 17 SCC 703 : (2010) 1 SCC (L&S) 942. *Malik Mazhar Sultan (3)* v. *U.P. Public Service Commission* 42*a*
16. (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417, *Prakash Singh* v. *Union of India* 33*d-e*
17. (2003) 2 SCC 45, *Harish Uppal* v. *Union of India* 47*c d*, 49*b*, 49*e f*
18. (2002) 4 SCC 578 : 2002 SCC (Cri) 830. *P. Ramachandra Rao* v. *State of Karnataka* 37*a*
19. (2002) 4 SCC 247 : 2002 SCC (L&S) 508. *All India Judges Assn.* v. *Union of India* 42*a b*
20. (2001) 4 SCC 355 : 2001 SCC (Cri) 714, *Akhtari Bi* v. *State of M.P.* 37*f*
21. (2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152. *Ramon Services (P) Ltd.* v. *Subhash Kapoor* 50*a*
22. (2000) 8 SCC 437 : 2000 SCC (Cri) 1528. *Dadu* v. *State of Maharashtra* 41*c-d*

23. (1998) 7 SCC 739. *Special Reference No. 1 of 1998, In re* 42*d e*
24. (1997) 3 SCC 261 : 1997 SCC (L&S) 577. *L. Chandra Kumar* v. *Union of India* 38*d-e*
25. (1996) 2 SCC 199 : 1996 SCC (Cri) 264. *Vineet Narain* v. *Union of India* 33*d*
26. (1993) 4 SCC 441. *Supreme Court Advocates-on-Record Assn.* v. *Union of India* 42*d e*, 45*c d*
27. (1992) 1 SCC 119 : 1992 SCC (L&S) 9. *All India Judges Assn.* v. *Union of India* 42*a*, 51*c*
28. (1980) 1 SCC 81 : 1980 SCC (Cri) 23. *Hussainara Khatoon (I)* v. *State of Bihar* 49*c d*
29. (1979) 2 SCC 656 : 1979 SCC (Cri) 576. *Sita Ram* v. *State of U.P.* 40*b*
30. (1977) 4 SCC 291 : 1977 SCC (Cri) 559. *Kashmira Singh* v. *State of Punjab* 32*f*

The Judgment of the Court was delivered by

ADARSH KUMAR GOEL, J.— Leave granted. This appeal has been preferred against the order dated 3-5-2017 of the High Court of Madhya Pradesh in *Krishnakant Tamrakar* v. *State of M.P.*[1] whereby prayer for bail, pending disposal of criminal appeal against life sentence has been declined though the appellant has been in custody for more than ten years.

2. The appellant stands convicted under Sections 148, 302/149 IPC and sentenced to life imprisonment, apart from other sentences. According to the prosecution, on 23-6-2005 at 11.30 a.m., the appellant along with the co-accused caused the murder of one Shahid. In view of evidence in support of the charge, the trial court convicted and sentenced the appellant. The appellant applied for bail pending consideration of appeal before the High Court. After the said prayer was rejected, another application was filed. The High Court rejected[1] the second bail application with the observation that the evidence on record did not warrant grant of bail.

3. In this appeal, the order of the High Court is challenged mainly on the ground that the appellant had been in custody for more than ten years and the remedy of appeal will be meaningless if he has to remain in custody for the full term of sentence. Reliance has been placed on the judgment of this Court in *Kashmira Singh* v. *State of Punjab*[2].

The issue

4. When the matter came up for consideration before this Court, the following order[3] was passed:

> "The grievance of the petitioner is that he has been in custody for more than ten years. He has neither been granted bail nor his appeal is heard. It is stated that there is no likelihood of the appeal being heard before the High Court in the near future.

1 2017 SCC OnLine MP 1511
2 (1977) 4 SCC 291 : 1977 SCC (Cri) 559
3 *Krishnakant Tamrakar* v. *State of M.P.*, 2017 SCC OnLine SC 1647

While we are not inclined to grant bail, we issue notice confined to the question as to how the situation can be remedied ensuring that the appeal is heard within a reasonable time at the appellate forum.

Issue notice. Notice be also issued to the Convenor, National Mission for Justice Delivery and Legal Reforms i.e. the Secretary Justice, Union of India and also the Attorney General for India.

Shri Gopal Subramanium, learned Senior Counsel who is present in the Court is requested to assist the Court as Amicus."

5. Accordingly, we have heard the learned Attorney General and the learned Amicus on the question as to how the problem of delay in hearing of the appeals can be remedied.

Submissions of the learned Amicus

6. The learned Amicus submitted that timely justice is essential for the rule of law. Access to justice is a fundamental right under the Constitution of India. It is also recognised under Article 10 of the Universal Declaration of Human Rights, 1948 as well as Articles 9 and 14 of the International Convention on Civil and Political Rights, 1966. There is, thus, dire need to find practical, effective and achievable system for speedy disposal of appeals. In its 245th Report* in the year 2014, the Law Commission of India made an analysis of the method of computing adequate Judge-strength and recommended increase of number of Judges on that basis. In *Vineet Narain* v. *Union of India*[4], this Court held that the government agencies must perform their legal obligations as per mandate of Article 14 of the Constitution. In *Prakash Singh* v. *Union of India*[5], this Court directed police reforms to be brought about for scientific, speedy and quality investigation. The United States Speedy Trial Act, 1974 provides timelines for steps in justice delivery. Timeline provided in different statutes in India, such as filing of charge-sheets under Section 167 CrPC is required to be implemented. Project of National Arrears Grid was required to be implemented. The Woolf Report of 1996 emphasised generation of accurate judicial statistics on a daily basis. The Grid should help identify the steps for dispensation of justice concerning the poor and the underprivileged. Case management practices should be implemented. In its Report titled "Delaying Justice is Denying Justice", the Canadian Standing Senate Committee on Legal and Constitutional Affairs stated "the lack of robust case and case flow management is perhaps the most significant factor contributing to delays". In England and Wales, pre-trial case management is rigorously followed in all criminal cases at both the trial and the appellate levels. Active case management includes:

"(*i*) The early identification of the real issues;

(*ii*) Achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;

* **Ed.**: On Arrears and Backlog: Creating Additional Judicial (Wo)manpower?

4 (1996) 2 SCC 199 : 1996 SCC (Cri) 264

5 (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417

(*iii*) Monitoring the progress of the case and compliance with directions;

(*iv*) Discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;

(*v*) Encouraging the participants to cooperate in the progression of the case, and

(*vi*) Making use of technology."

7. Reference was also made to Case Management Criminal Procedure in England and Wales.

8. The learned Amicus further submitted that in appeals against acquittal efforts should be made to weed out unmeritorious appeals. Competent Government Advocates should be appointed by a fair and transparent mechanism as laid down in *State of Punjab* v. *Brijeshwar Singh Chahal*[6].

9. Vacancies of the High Court Judges should be filled up well before the date a Judge demits the office. Ad hoc Judges should be appointed to deal with the pending appeals.

10. Wherever there is higher pendency of appeals, the same can be transferred to the courts of concurrent jurisdiction of other States. Technology ought to be used to facilitate speedy conduct of trials and disposal of appeals. Electronic copy of all papers should be served as soon as a charge-sheet is filed. The technology can be used for speedy and summary disposal of certain cases such as the traffic offences. Evidence can be recorded by videoconferencing, especially for doctors and investigating officers who may be on outstation job and engaged in official duties which suffer if they have to physically come to the court. There must be change in the work culture amongst the members of the Bar as well as the police. Efforts should be made to avoid adjournments. Timetable should be laid down for hearing of appeals which should be strictly adhered to.

Submissions of learned Attorney General

11. The learned Attorney General submitted that the Government has adopted a coordinated approach to assist the judiciary for liquidation of arrears and pendency by providing better infrastructure for courts including computerisation, increase in strength of Judges, policy and legislative measures in the areas prone to excessive litigation and emphasis on human resource development. E-Courts Integrated Mission Mode Project has been introduced. Computerised courts have been increased to 16,089. Cost of Rs 1670 crores has been approved for the purpose. Videoconferencing facility has been operationalised in 500 courts and prisons. National Judicial Data Grid has information regarding 6.36 crore decided and 2.5 crore pending cases. 5.24 crore orders/judgments are available. Steps have been taken to fill up vacancies in the Supreme Court and High Courts. Appointment of Judges and judicial officers in district and subordinate courts is within the domain

6 (2016) 6 SCC 1 : (2016) 3 SCC (Civ) 1 : (2016) 2 SCC (Cri) 475 : (2016) 2 SCC (L&S) 1

of the High Courts and the State Governments. A total of Rs 5956 crores have been released under Centrally Sponsored Scheme (CSS) for Development of Infrastructure Facilities for the Judiciary. 17,576 court halls and 14,363 residential accommodations are available for the Judges/judicial officers of District and Subordinate Courts. In addition, 2852 court halls and 1622 houses are under construction. 14th Finance Commission has endorsed the proposal to strengthen the judicial system by establishing 1800 Fast Track Courts (FTCs) for five years for specified offences at a cost of Rs 4144 crores. As per resolution of the Joint Conference of Chief Justices and Chief Ministers, the Government has requested the State Governments to strengthen institutional mechanism between the State and the Judiciary. Steps have been taken for timely completion of infrastructure and e-Courts Integrated Mission Mode project. There is need to implement Section 436-A CrPC and ensure periodic monitoring of Undertrial Review Committee Mechanism. The Commercial Courts, Commercial Division and Commercial Appellate Division of the High Court Act, 2015 has been notified to streamline the conduct of cases in Commercial Division and Commercial Courts. Amendments have been made in the Arbitration and Conciliation Act, 1996 and the Negotiable Instruments Act, 1881. In pursuance of the resolution of the Chief Justices' Conference held in April 2015, Arrears Committees have been set up to clear backlog of cases pending from more than five years. The Supreme Court has also constituted the Arrears Committee to formulate steps and reduce pendency of cases in the High Courts and district courts. National Legal Services Authority provides mechanisms for access to justice for the poor. Lok Adalats have been held resulting in disposal of number of cases on the basis of compromise not requiring adjudication, apart from adjudication in public utility Lok Adalats. The Government has approved scheme for engaging Nyaya Mitras to assist the litigants.

12. The learned Attorney General submitted that delay in disposal of appeals can be tackled by appointing more Judges and by better coordination and planning. It was also submitted that by proper scrutiny, application for leave to appeal or even appeals can be summarily disposed of which will reduce the burden of the courts.

13. We place on record our gratitude for the learned Amicus and the learned Attorney General for their valuable assistance rendered.

Consideration of the issue

14. Even though initially notice was issued to consider the issue of remedying the situation of delay in hearing of the criminal appeals before the High Courts, the learned Amicus and the learned Attorney General addressed the Court generally on the issue of speedy justice at all levels. We consider it appropriate to reflect on some important aspects of speedy justice as these aspects are integral to the issue of delay in hearing of criminal appeals by the High Courts:

14.1. First question which we take up for consideration is whether, having regard to the nature of jurisdiction of the High Court and the present volume of

the work, the expectation for speedy disposal of criminal appeals is realistic or there is need for re-engineering of the judicial structure.

14.2. Secondly, when speedy justice is directly linked to timely appointment of best talent, whether there is need to revisit the existing system of appointment of Judges at all levels.

14.3. Thirdly, what can be the mechanism to plan and oversee the best management practices, including employment of technology, for optimum performance and righteous conduct.

14.4. Fourth, how uncalled for frequent strikes obstructs access to justice and what steps are required to remedy the situation.

15. We are conscious that the above issues are primarily policy matters. The subject-matter of restructuring of courts and administration of justice is a matter to be gone into by the executive and the legislature. However, since the subject affects fundamental right of speedy justice, this Court cannot refuse to look into the problem repeatedly presented to it with a view to draw attention of all concerned, leaving to the authorities concerned to consider and act in the matter.

16. There can be no dispute that access to speedy justice is part of fundamental right under Articles 14 and 21 of the Constitution. The National Commission to Review Working of the Constitution recommended that access to speedy justice may be incorporated as an express fundamental right[7].

17. The matter has been subject of consideration in several decisions. In *Imtiyaz Ahmad* v. *State of U.P.*[8] the issue taken up for consideration was delay in disposal of criminal cases where stay was granted by the High Court. On consideration of a report, the Court noted: (SCC p. 697, para 17)

> "(*a*) As high as 9% of the cases have completed more than twenty years since the date of stay order.
>
> (*b*) Roughly 21% of the cases have completed more than ten years.
>
> (*c*) Average pendency per case (counted from the date of stay order till 26-7-2010) works out to be around 7.4 years.
>
> (*d*) Charge-sheet was found to be the most prominent stage where the cases were stayed with almost 32% of the cases falling under this category. The next two prominent stages are found to be "appearance" and "summons", with each comprising 19% of the total number of cases. If "appearance" and "summons" are considered interchangeable, then they would collectively account for the maximum of stay orders."

18. This Court directed the Law Commission to examine the matter with a view to set up additional courts to eliminate delays. Accordingly, the Law Commission examined the matter in its 245th Report* given in July 2014 and recommended review of cadre strength. The Commission noted that the system was unable to deliver timely justice because of huge backlog for which

7 *Anita Kushwaha* v. *Pushap Sudan*, (2016) 8 SCC 509, para 31 : (2016) 4 SCC (Civ) 80 : (2016) 3 SCC (Cri) 530 : (2016) 2 SCC (L&S) 463

8 (2012) 2 SCC 688 : (2012) 1 SCC (Cri) 986

* **Ed.**: On Arrears and Backlog: Creating Additional Judicial (Wo)manpower?

the Judge strength was inadequate. It noted that mandatory time-frames were provided in some countries. In *P. Ramachandra Rao* v. *State of Karnataka*[9], this Court was not in favour of mandatory time-limit. Non-binding directory guidelines could be adopted. 14th Report** of the Law Commission suggested time-frame which was reiterated in subsequent Law Commission reports. The Malimath Committee recommended use of two-year time-frame as the norm by which delay and arrears in the system should be measured. Case specific timetables are adopted to meet the object of individualised timely justice. *The Commission observed that all cases pending for more than one year be categorised as backlogged. All cases backlogged in three years and current cases be decided within one year.* The Commission considered various methods for fixing the Judge strength so as to meet current institution of cases within the expected time-frame as well as also to clear the arrears within the targeted time. One of the problems noticed was huge vacancies and failure in timely filling up of vacancies. Delay and arrears was a concern not only in the trial courts but throughout the judicial system. If the disposal in trial courts increased, the matter may be held up in the higher courts. Adequate infrastructure and support staff was also of importance. Good judicial management practices such as timeliness and performance benchmarks were also discussed. It was observed that the High Courts are already backlogged and not able to keep pace with new filings. It was observed that there was need to establish non-mandatory time-frame for different types of cases. Unless Judges and litigants have clear expectations, there will be little accountability for delays.

19. Thereafter, the matter was considered in *Imtiyaz Ahmad* v. *State of U.P.*[10] This Court gave directions for review of cadre strength in terms of principles laid down therein. However, the said judgment appears to have dealt with the issue of fixing up of strength of Judges for the subordinate judiciary and infrastructure for the district judiciary[11].

Possibility of decision of five-year-old cases pending in the High Courts particularly the criminal appeals within the existing system — Need to consider decongestion of constitutional courts

20. In *Akhtari Bi* v. *State of M.P.*[12], this Court requested the Chief Justices of the High Courts to take immediate effective steps for disposal of criminal appeals pending for more than five years.

21. The matter was considered by the Joint Conference of Chief Ministers and the Chief Justices held in April 2016 and it was resolved:

> "8. DELAY AND ARREARS COMMITTEE.—
>
> Resolved that
>
> (*i*) all High Courts shall assign topmost priority for disposal of cases which are pending for more than five years;

9 (2002) 4 SCC 578 : 2002 SCC (Cri) 830

** **Ed.:** On the Reform of Judicial Administration.

10 (2017) 3 SCC 658 : (2017) 2 SCC (Civ) 311 : (2017) 2 SCC (Cri) 228 : (2017) 1 SCC (L&S) 724

11 *Imtiyaz Ahmad* v. *State of U.P.*, (2017) 3 SCC 658, para 43

12 (2001) 4 SCC 355 : 2001 SCC (Cri) 714

(*ii*) High Courts where arrears of cases pending for more than five years are concentrated shall facilitate their disposal in mission mode;

(*iii*) High Courts shall progressively thereafter set a target of disposing of cases pending for more than four years;

(*iv*) while prioritising the disposal of cases pending in the District Courts for more than five years, additional incentives for the Judges of the district judiciary be considered where feasible; and

(*v*) efforts be made for strengthening case-flow management rules."

22. The available figures[13] show that long pendency, particularly of more than five years, remains a serious challenge. In High Courts, 16.29 lakh cases were more than five years old. 7.43 lakh cases were more than 10 years old. Since current disposal itself was less than the institution of fresh cases, there was no likelihood of old cases being decided in a reasonable time. There could not be increase of strength of High Court Judges beyond a limit. The system could not be top heavy. Volume of work in the High Court was likely to further increase on account of increased disposal of cases in subordinate courts with the increased strength of Judges, infrastructure and other steps being taken. Disposal of cases in subordinate courts is not enough if the same are thereafter held up in the High Courts. New laws are being enacted providing statutory remedies before the High Courts. Moreover, oversight mechanism for Judges of the constitutional courts is not the same as for other Judges[14]. While, there can be no doubt about need for such protection, appointment of large number of such Judges can be counterproductive. If number of constitutional courts is to be increased to match the volume of work being entrusted to such courts, it may have its implication unless it is possible to find sufficient number of suitable persons. The fact that there are large number of vacancies in such courts shows the difficulty in identifying adequate number of suitable

13 Please refer to Court News October-December, 2016 in Supreme Court website (www.supremecourtofindia.nic.in) or (http://supremecourtofindia.nic.in/pdf/CourtNews/COURT NEWS Vol XI Issue No4 October to December 2016.pdf)

14 *L. Chandra Kumar* v. *Union of India*, (1997) 3 SCC 261, para 78 : 1997 SCC (L&S) 577

"*78.* ... The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. *The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man tribunals created by ordinary legislations.* ..." (emphasis supplied)

persons for constitutional courts. Needless to say that nature of work before the constitutional courts particularly laying down of law is time-consuming. Such courts cannot be overburdened.

23. The Arrears Committee of this Court considered the issue of filling up of vacancies in subordinate courts and the issue of arrears. It was noted that while better monitoring, better management and other steps such as the Central selection may help speedy disposal in subordinate courts, the working of constitutional courts stands on different footing. There being mismatch in pendency and disposal, the Committee recommended an interaction with the stakeholders to explore the issues of judicial reforms including re-engineering of structure of administration of justice and the legislative changes necessary for the constitutional goal of speedy justice[15]. Accordingly, a meeting with the stakeholders was held on 8-4-2017. The issues considered were:

> "(*i*) Decongestion of Supreme Court and High Courts from civil and criminal appeals.
>
> (*ii*) Performance of Tribunals in contribution to decongestion of cases in Supreme Court and High Courts.
>
> (*iii*) Central Selection Mechanism to fill up vacancies in subordinate courts.
>
> (*iv*) Video recording and conferencing in courts and video investigation by investigating authorities.
>
> (*v*) Reforms in legal profession.
>
> (*vi*) Issue of granting bail and undertrials."

24. In the said meeting, it was noticed that in most of the High Courts disposal was less than the institution. This called for re-engineering of structure of administration of justice. One of the suggestions was that statutory remedies provided before the constitutional courts may be shifted to alternative fora. It was suggested that Courts of Appeals may be set up higher to the District Courts but below the High Court. Such Courts of Appeals could comprise more than one member, partly drawn from the Senior District Judges and partly recruited directly from the Bar through a Central Selection Mechanism[16]. If

15 Minutes of the meeting of the Arrears Committee held on 23-3-2017

16 Relevant extract from the Minutes of meeting of the Arrears Committee held on 8-4-2017:

> "Reference to the available statistics shows that pendency of more than five-year-old cases in the High Courts was more than 40% of the total pendency in the High Courts and figures of five-year-old cases were on the increase. Criminal appeals in most of the High Courts were pending for more than five years and there was no possibility of such appeals being taken up for hearing to satiate the aspirations of the common litigant of speedy justice. In most of the High Courts, disposal of criminal appeals was less than the institution. Delay in decision of criminal cases, particularly in category of serious cases where granting bail was not safe, was not a satisfactory situation. Unless there was an alternative to ensure speedy disposal for criminal cases in the High Courts, search for structural alternative was the imperative need of the hour. There are other areas of appellate jurisdiction in the High Court including second appeals, matrimonial matters, accidental claim cases, land acquisition cases which also require prompt disposal, but the same get clogged at the

above proposal is considered, pending appeals before the High Court could be transferred to such Benches whose decisions will be final.

25. An enabling statute could be enacted whereby the State could, in consultation with the High Courts, transfer all or certain categories of appeals or other statutory proceedings from the High Courts to the alternative fora. Constitutional remedies will remain intact. It was explained that this would not be creating one extra forum resulting in longer duration of litigation instead of speedy disposal. The constitutional remedy under Article 227 was different from statutory appeal[17].

26. Suggestions considered in the meeting also include restructuring of the Tribunals, reforms in legal profession, online grievance redressal mechanism against administrative decisions with specified time-limits on a par with the Right to Information Act (RTI), summary procedures for civil and criminal disputes of certain categories[18]. The matter was also considered thereafter in the meeting of the Arrears Committee of the Supreme Court with the Arrears Committees of the High Courts[19].

27. In 124th Report of the Law Commission of India (1988) titled "High Court Arrears — A Fresh Look", the Law Commission observed that wherever possible, proliferating appellate and wide original jurisdiction should be controlled and curtailed without impairing the quality of justice. It was

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(footnote 16 *contd.*)

High Court level because of the high pendency of the cases in the High Courts and time taken in decision of such appeals. The statistics show that in most of the High Courts the disposal was less than the institution and as many as 16.29 lakh cases were more than five years old. Figure of 10-year old cases is 7.43 lakhs in the High Courts and more than 20 lakhs in the subordinate courts.

Thus, there is need for re engineering of the structure of administration of justice by which the Supreme Court and the High Courts may discharge only core constitutional functions while the statutory appeals or other statutory functions can be dealt with by an alternative mechanism by Courts of Appeal which, in hierarchy will be higher to the District Judges but below the High Court. Such cadre may comprise of members drawn partly by selection from the Higher Judicial Service and partly from the Bar through centralised recruitment mechanism. It may be possible to lay down disposal norms/targets to be achieved by such Benches and in light thereof number of Benches within the jurisdiction of each High Court may be assessed. Pending appeals or at least certain categories of appeals can be transferred to such Benches. Based on performance, integrity and suitability, members of the appellate Benches may be considered for elevation to the High Courts. Remedy to move the High Court under Articles 226/227 will remain intact. Apprehension was expressed by some of the participants that creating another appellate forum may not necessarily result in reducing the docket load of the High Courts and Supreme Court. Because, going by the present trend there is a tendency of every litigation being carried to the higher forum and at least till the High Court if not the Supreme Court. However, the scope of interference in constitutional jurisdiction of the High Courts under Articles 226/227 is circumscribed and not the same as deciding appeals on facts and law."

17 *Radhey Shyam* v. *Chhabi Nath*, (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67; *Sita Ram* v. *State of U.P.*, (1979) 2 SCC 656 : 1979 SCC (Cri) 576

18 Minutes of the interaction of the Arrears Committee for Supreme Court and High Courts held on 8-4-2017

19 Minutes of the interaction of the Arrears Committee for Supreme Court and High Courts held on 22-4-2017

observed that the approach of the Law Commission is to reduce number of appeals, set up specialist courts/tribunals to reduce the inflow of work to the High Courts.

28. Desirability of amending provisions of direct appeal to this Court was also considered in *Gujarat Urja Vikas Nigam Ltd.* v. *Essar Power Ltd.*[20] Therein, this Court considered the unique role of the highest court and observed that overburdening of constitutional courts was undesirable for functioning of the Constitution. Heavy work of routine nature before constitutional courts affected their assigned core role. The Law Commission was asked to look into the matter.

29. In 272nd Report[***], the Law Commission observed that the forum for challenging the order of Tribunal should be appellate Tribunals, which decision should be final. No statutory appeal should be provided before the High Courts or Supreme Court in routine manner[21]. No action appears to have been taken on the said recommendations.

30. Since one trial and one appeal are considered to be components of fair system of administration of justice in criminal cases of serious nature[22], adjudication at the original forum and at one appellate forum must be within reasonable time which should not normally exceed one to two years, as noted by the Law Commission and the Malimath Commission. At the same time, multiple layers of remedies need to be eliminated. Article 227 remedy, as earlier observed, is meant primarily against perversity or patent error in a judgment.

31. From the data available it is clear that all the steps taken by the Central Government so far have not significantly improved the situation of speedy disposal of criminal appeals. The steps taken are set off by increased volume of work or otherwise.

32. Accordingly, we are of the view that the Union of India ought to consider whether it is viable to have criminal appeals and other matters before the High Courts decided within reasonable time as per existing system. If not, whether it is possible to provide any other suitable forum for such appeals so as to ensure enforcement of fundamental right of speedy justice or how else the situation can be remedied. The issue of non-viability of providing routine statutory appeals to constitutional courts as observed in *Gujarat Urja*[20] may also need to be considered.

Filling up of vacancies at all levels with the best available talent

33. Apart from the above, the steps which need immediate consideration include timely filling up of vacancies at all levels with the best available talent. The 14th Law Commission in its Report in the year 1958 examined the issue of having best talent for subordinate judiciary. It suggested selection by all-India level competition and constitution of All-India Judicial Service. In *All India*

20 (2016) 9 SCC 103

*** **Ed.:** Assessment of Statutory Frameworks of Tribunals in India.

21 Para 8.23 of the Law Commission Report

22 *Dadu* v. *State of Maharashtra*, (2000) 8 SCC 437, para 17 : 2000 SCC (Cri) 1528

Judges Assn. v. *Union of India*[23] this Court observed that the Union of India should take steps in the matter as early as possible. This Court also directed that vacancies at all levels be filled up in a time-bound manner[24]. The uniform method of recruitment was directed to be followed by amending the applicable rules[25].

34. Relying upon the minutes of the Arrears Committee of this Court dated 8-4-2017 that a central selection mechanism may be introduced to timely fill up all the vacancies with the best available talent, the Department of Justice, Government of India vide Letter dated 28-4-2017, addressed to the Secretary General of this Court, stated that the idea of Central Selection Mechanism ought to be considered. The said Letter was treated by the then Chief Justice of India as Suo Motu Writ (Civil) No. 1 of 2017 (*Central Selection Mechanism for Subordinate Judiciary, In re*) and notices were issued. Learned amicus gave a note on the Central Selection Mechanism which was circulated to all the States and the High Courts vide order dated 28-7-2017[26]. The matter is, however, still pending. We refrain from expressing any view on the judicial order to be passed. Needless to say that setting up of Central Selection Mechanism will go a long way in having timely appointments of best available talent. Steps in this regard may be taken by the authorities[27] concerned without delay so that timely and quality appointments can be ensured.

35. Appointment to constitutional courts is governed by the Collegium System as laid down in judgments of this Court in *Supreme Court Advocates-on-Record Assn.* v. *Union of India*[28] and *Special Reference No. 1 of 1998, In re*[29]. Vide 99th Amendment to the Constitution, the said system was sought to be replaced by the National Judicial Appointment Commission (NJAC). The said amendment was struck down by this Court in *Supreme Court*

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23 (1992) 1 SCC 119, para 12 : 1992 SCC (L&S) 9

24 *Malik Mazhar Sultan (3)* v. *U.P. Public Service Commission*, (2008) 17 SCC 703, para 7 : (2010) 1 SCC (L&S) 942

25 *All India Judges Assn.* v. *Union of India*, (2002) 4 SCC 247, para 27 : 2002 SCC (L&S) 508

26 *Central Selection Mechanism for Subordinate Judiciary, In re*, 2017 SCC OnLine SC 1694, wherein it was directed:

> "1. We are tentatively of the view, that the objections raised by a few of the High Courts for centralisation of the selection process of Subordinate Judges, have been suitably dealt with in our order dated 10-7-2017 [*Central Selection Mechanism for Subordinate Judiciary, In re*, 2017 SCC OnLine SC 1644]. It, however, seems that some confusion still persists. This obviously is out of a possible miscommunication. We, therefore, consider it just and appropriate to request Mr Arvind P. Datar, learned Amicus Curiae, to prepare a "Concept Note", highlighting the various aspects of our order dated 10-7-2017 [*Central Selection Mechanism for Subordinate Judiciary, In re*, 2017 SCC OnLine SC 1644] and indicating how the objections raised stand satisfied. The "Concept Note" shall be placed on the record of this case, and circulated amongst learned counsel representing the States or the High Courts, before the next date of hearing.
>
> 2. List again on 4-8-2017, at 3.00 p.m."

27 *See* Schedule VII List III Entry 11-A to the Constitution

28 (1993) 4 SCC 441, paras 478(13), 480 and 486

29 (1998) 7 SCC 739, para 44

Advocates-on-Record Assn. v. *Union of India*[30]. However, it was observed that the functioning of Collegium System needed to be improved[31]. Accordingly, while upholding (*sic* striking down) the amendment, the Court vide order dated 16-10-2015[32] directed:

30 (2016) 5 SCC 1, para 1255

31 (2016) 5 SCC 1 — Chelameswar, J. — para 1236; Lokur, J. — para 969; Kurian, J. — para 990; Goel, J. — para 1111:

"*1236.* ... The abovementioned two are not the only cases where the system failed. It is a matter of public record that in the last 20 years, after the advent of the Collegium System, a number of recommendations made by the Collegia of the High Courts came to be rejected by the Collegium of the Supreme Court. There are also cases where the Collegium of this Court quickly retraced its steps having rejected the recommendations of a particular name made by the High Court Collegium giving scope for a great deal of speculation as to the factors which must have weighed with the Collegium to make such a quick volte face. Such decisions may be justified in some cases and may not in other cases. There is no accountability in this regard. The records are absolutely beyond the reach of any person including the Judges of this Court who are not lucky enough to become the Chief Justice of India. Such a state of affairs does not either enhance the credibility of the institution or good for the people of this country." (SCC pp. 800-01)

"*969.* The result of this declaration is that the "Collegium System" postulated by the *Second Judges case*, (1993) 7 SCC 441 and the *Third Judges case [Special Reference No. 1 of 1998, In re*, (1998) 7 SCC 739] gets revived. However, the procedure for appointment of Judges as laid down in these decisions read with the (Revised) Memorandum of Procedure definitely needs fine tuning. We had requested the learned counsel, on the close of submissions, to give suggestions on the basis that the petitions are dismissed and on the basis that the petitions are allowed. Unfortunately, we received no response, or at best a lukewarm response." (SCC p. 681)

"*990.* All told, all was and is not well. To that extent, I agree with Chelameswar, J. that the present Collegium System lacks transparency, accountability and objectivity. The trust deficit has affected the credibility of the Collegium System, as sometimes observed by the civic society. Quite often, very serious allegations and many a time not unfounded too, have been raised that its approach has been highly subjective. Deserving persons have been ignored wholly for subjective reasons, social and other national realities were overlooked, certain appointments were purposely delayed so as either to benefit vested choices or to deny such benefits to the less patronised, selection of patronised or favoured persons were made in blatant violation of the guidelines resulting in unmerited, if not, bad appointments, the dictatorial attitude of the Collegium seriously affecting the self respect and dignity, if not, independence of Judges, the court, particularly the Supreme Court, often being styled as the Court of the Collegium, the looking forward syndrome affecting impartial assessment, etc., have been some of the other allegations in the air for quite some time. These allegations certainly call for a deep introspection as to whether the institutional trusteeship has kept up the expectations of the Framers of the Constitution. Though one would not like to go into a detailed analysis of the reasons, I feel that it is not the trusteeship that failed, but the frailties of the trustees and the collaborators which failed the system. To me, it is a curable situation yet." (SCC p. 689)

"*1111.* Since the system existing prior to the amendment will stand revived on the 99th Amendment being struck down and grievances have been expressed about its functioning, I am of the view that such grievances ought to be considered. It is made clear that grievances have not been expressed by the petitioners about the existence of the pre-existing system of appointment but about its functioning in practice. It has been argued that this Court can go into this aspect without revisiting the earlier decisions of the larger Benches. I am of the view that such grievances ought to be gone into for which the matter needs to be listed for hearing." (SCC p. 740)

32 *Supreme Court Advocates on Record Assn.* v. *Union of India*, (2016) 5 SCC 1, p. 801, para 1239

"*1239. … 5.* To consider introduction of appropriate measures, if any, for an improved working of the 'Collegium System', list on 3-11-2015."

36. After due consideration of various suggestions, this aspect of the matter was dealt with vide order dated 16-12-2015[33] as follows: (*Supreme Court Advocates-on-Record case*[33], SCC pp. 806-07, paras 1255-1256)

"*1255.* In view of the above, the Government of India may finalise the existing Memorandum of Procedure by supplementing it in consultation with the Chief Justice of India. The Chief Justice of India will take a decision based on the unanimous view of the Collegium comprising the four seniormost puisne Judges of the Supreme Court. They shall take the following factors into consideration:

1256.1. Eligibility criteria: The Memorandum of Procedure may indicate the eligibility criteria, such as the minimum age, for the guidance of the Collegium (both at the level of the High Court and the Supreme Court) for the appointment of Judges, after inviting and taking into consideration the views of the State Government and the Government of India (as the case may be) from time to time.

1256.2. Transparency in the appointment process: The eligibility criteria and the procedure as detailed in the Memorandum of Procedure for the appointment of Judges ought to be made available on the website of the Court concerned and on the website of the Department of Justice of the Government of India. The Memorandum of Procedure may provide for an appropriate procedure for minuting the discussion including recording the dissenting opinion of the Judges in the Collegium while making provision for the confidentiality of the minutes consistent with the requirement of transparency in the system of appointment of Judges.

1256.3. Secretariat: In the interest of better management of the system of appointment of Judges, the Memorandum of Procedure may provide for the establishment of a Secretariat for each High Court and the Supreme Court and prescribe its functions, duties and responsibilities.

1256.4. Complaints: The Memorandum of Procedure may provide for an appropriate mechanism and procedure for dealing with complaints against anyone who is being considered for appointment as a Judge.

1256.5. Miscellaneous: The Memorandum of Procedure may provide for any other matter considered appropriate for ensuring transparency and accountability including interaction with the recommendee(s) by the Collegium of the Supreme Court, without sacrificing the confidentiality of the appointment process."

33 *Supreme Court Advocates on Record Assn. v. Union of India*, (2016) 5 SCC 1 : (2016) 5 SCC 803 (2)

37. Improvement contemplated in the above judgment does not seem to have seen the light of the day. In *C.S. Karnan, In re*[34] observations have been made as to the need to revisit the process of appointments and to set up mechanism for corrective measures other than impeachment against conduct of an erring Judge.

38. We make it clear that we are in no manner deviating from the law laid down by this Court that primacy in appointment of constitutional courts is to be of the Chief Justice of India. At the same time, even without affecting such primacy improvement in working of collegium is a felt necessity as held above. Five-Judge Bench of this Court directed setting up of the Secretariat and also to incorporate other factors for improved and effective working of the collegiums system. This apart, corrective measures against post appointment conduct or inadequate performance or failure to uphold righteous conduct need to be evolved. These aspects require urgent attention of authorities concerned.

39. We may particularly note that if a High Court remains without a permanent Chief Justice, process of speedy justice certainly suffers. In spite of timeline in the MoP for appointments in pursuance of judgment of this Court in *Supreme Court Advocates-on-Record Assn.* v. *Union of India*[35] that there will be no Acting Chief Justice for more than one month[36], timely appointments of Chief Justices is not taking place. Appointment of a Chief Justice for few days for a High Court other than the place where the candidate is already working serves no purpose of the system. The Central Government must take all steps to ensure such appointments as per prescribed timeline.

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34 (2017) 7 SCC 1 : (2017) 3 SCC (Civ) 545 : (2017) 4 SCC (Cri) 46, pp. 56-57, paras 77-78:

> "77. This case, in our opinion, has importance extending beyond the immediate problem. This case highlights two things:
>
> (1) the need to revisit the process of selection and appointment of Judges to the constitutional courts, for that matter any member of the judiciary at all levels; and
>
> (2) the need to set up appropriate legal regime to deal with situations where the conduct of a Judge of a constitutional court requires corrective measures — other than impeachment — to be taken.
>
> 78. … What appropriate mechanism would be suitable for assessing the personality of the candidate who is being considered for appointment to be a member of a constitutional court is a matter which is to be identified after an appropriate debate by all concerned — the Bar, the Bench, the State and civil society. But the need appears to be unquestionable."

35 (1993) 4 SCC 441, para 478

36 Para 5 of the "Memorandum showing the Procedure for Appointment and Transfer of Chief Justices and Judges of High Courts" (MoP).

> "5. Initiation of the proposal for the appointment of Chief Justice of a High Court would be by the Chief Justice of India. The process of appointment must be initiated well in time to ensure the completion at least one month prior to the date of anticipated vacancy for the Chief Justice of the High Court. The Chief Justice of India would ensure that when a Chief Justice is transferred from one High Court to another simultaneous appointment of his successor in his office should be made and *ordinarily the arrangement of appointment of an acting Chief Justice should not be made for more than one month.*" (emphasis supplied)

Even if it may not be possible to make initial appointments to High Courts till suitable candidates are identified, appointment of Chief Justices may stand on different footing as selection is to be made out of available candidates. To speedily identify such candidates, availability of data and involvement of persons who can spend time may be needed. The process may require thinking, planning and acting on a continuous basis. Primacy with the judiciary is necessary but for the job of such onerous nature, effective assistance is a must. Felt needs of time must be addressed. The system cannot remain static or unconcerned even when problems are patent. As already noted there appears to be dire need to strengthen the system of timely appointment of Judges, particularly Chief Justices. Identification of candidates, scrutiny, evaluation and post appointment performance measurements and conduct are time-consuming processes and at least some independent full-time experts are required, if timely and best appointments are to be ensured and requisite in-house oversight is to be a reality. A full-time body consistent with independence of judiciary appears to be immediate need for the system. Absence thereof contributes to denial of justice. The Central Government must also ensure that MoP in pursuance of order of this Court in *NJAC case* dated 16-12-2015 brings about the improvements in working of the collegiums as stipulated.

Accountability in terms of performance measurement and righteous conduct at all levels of judicial hierarchy including constitutional courts

40. There is also a need for mechanism to evaluate and compile performance of the judicial system as per observations in 245th Report of the Law Commission so that there is non-mandatory timeline for decision of cases and accountability consistent with the right of speedy justice. Such mechanism may provide norms for performance measurement for all Judges in the hierarchy. The same has to be done without affecting independence of judiciary. There is also need for an in-house mechanism manned by experts but with safeguards consistent with independence of judiciary for measures against erring Judges other than impeachment as observed in *C.S. Karnan, In re*[34].

Reforms in the legal profession — remedying uncalled for strikes

41. We may also deal with another important aspect of speedy justice. It is well known that at some places there are frequent strikes, seriously obstructing access to justice. Even cases of persons languishing in custody are delayed on that account. By every strike, irreversible damage is suffered by the judicial system, particularly consumers of justice. They are denied access to justice. Taxpayers' money is lost on account of judicial and public time being lost. Nobody is accountable for such loss and harassment.

34 (2017) 7 SCC 1 : (2017) 3 SCC (Civ) 545 : (2017) 4 SCC (Cri) 46

42. Dr Ambedkar in his famous speech on 25-11-1949 had warned: (CAD Vol. 11)

> "The first thing in my judgment we must do is to hold fast to constitutional methods of achieving our social and economic objectives. It means we must abandon the bloody methods of revolution. It means that we must abandon the method of civil disobedience, non-cooperation and satyagraha. When there was no way left for constitutional methods for achieving economic and social objectives, there was a great deal of justification for unconstitutional methods. But where constitutional methods are open, there can be no justification for these unconstitutional methods. These methods are nothing but the Grammar of Anarchy and the sooner they are abandoned, the better for us."

43. The above warning of the Constitution-maker needs to be adhered to at least by the legal fraternity. The Bar has the tradition of placing their professional duty of assisting the access to justice above every other consideration. How is the situation to be tackled. Competent authorities may take a final call.

44. In *Harish Uppal* v. *Union of India*[37], this Court held that lawyers have no right to go on strike or to give a call for boycott of courts nor can they abstain from the courts. Calls given by Bar Association or Bar Council for such purpose cannot require the court to adjourn the matters. Strike or abstaining from court is unprofessional. Even though more than 15 years have passed after the said judgment was rendered, the judgment of this Court is repeatedly flouted and no remedial measures have been adopted. Regulation of right of appearance in courts is within the jurisdiction of the courts. This Court also asked the Law Commission to suggest appropriate changes in the regulatory framework for the legal profession[38]. The Law Commission has submitted 266th Report*. The problem continues seriously affecting the rule of law.

45. In *Mahipal Singh Rana*[38], this Court noted that the High Courts can frame rules to lay down conditions on which advocates can be permitted to practise in courts. An advocate can be debarred from appearing in court even if the disciplinary jurisdiction for misconduct is vested with the Bar Councils[39]. This Court requested the Law Commission to look into all relevant aspects relating to regulation of legal profession[40].

46. The Law Commission, accordingly, examined the relevant aspects relating to regulation of the legal profession. The Law Commission in its 266th Report found that such conduct of the advocates affects functioning of courts

37 (2003) 2 SCC 45

38 *Mahipal Singh Rana* v. *State of U.P.*, (2016) 8 SCC 335 : (2016) 4 SCC (Civ) 1 : (2016) 3 SCC (Cri) 476 : (2016) 2 SCC (L&S) 390

* **Ed.**: On The Advocates Act, 1961 (Regulation of Legal Profession)

39 *Mahipal Singh Rana* v. *State of U.P.*, (2016) 8 SCC 335, paras 20, 30 to 35

40 *Mahipal Singh Rana* v. *State of U.P.*, (2016) 8 SCC 335, para 58

and particularly it contributes to pendency of cases. It analysed the data on loss of working days on account of call of strikes. The analysis is as follows:

"7.2. In the State of Uttarakhand, the information sent by the High Court for the years 2012-2016 shows that in Dehradun District, the advocates were on strike for 455 days during 2012-2016 (on an average, 91 days per year). In Haridwar District, 515 days (103 days a year) were wasted on account of strike.

7.3. In the case of the State of Rajasthan, the High Court of Judicature at Jodhpur saw 142 days of strike during 2012-2016, while the figure stood at 30 for the Jaipur Bench. In Ajmer District Courts, strikes remained for 118 days in the year 2014 alone, while in Jhalawar, 146 days were lost in 2012 on account of strike.

7.4. The case of Uttar Pradesh appears to be the worst. The figures of strike for the years 2011-2016 in the subordinate courts are alarmingly high. In the State of Uttar Pradesh, the District Courts have to work for 265 days in a year. The period of strike in five years period in worst affected districts has been as Muzaffarnagar (791 days), Faizabad (689 days), Sultanpur (594 days), Varanasi (547 days), Chandauli (529 days), Ambedkar Nagar (511 days), Saharanpur (506 days) and Jaunpur (510 days). The average number of days of strike in eight worst affected districts comes to 115 days a year. Thus, it is evident that the courts referred to hereinabove could work on an average for 150 days only in a year.

7.5. In this regard, the situation in subordinate courts in Tamil Nadu had by no means, been better. The High Court of Tamil Nadu has reported that there are 220 working days in a year for the courts in the State. During the period 2011-2016, districts like Kancheepuram, 687 days (137.4 days per year); Kanyakumari, 585 days (117 days per year); Madurai, 577 days (115.4 days per year); Cuddalore, 461 days (92.2 days per year); and Sivagangai, 408 days (81.6 days per year), were the most affected by strike called by advocates.

7.6. As per the responses received from the High Courts of Madhya Pradesh and Odisha, the picture does not emerge to be satisfactory.

7.7. The Commission noted that the strike by advocates or their abstinence from the court were hardly for any justifiable reasons. It could not find any convincing reasons for which the advocates resorted to strike or boycott of work in the courts. The reasons for strike call or abstinence from work varied from local, national to international issues, having no relevance to the working of the courts. To mention a few, bomb blast in Pakistan school, amendments to Sri Lanka's Constitution, inter-State river water disputes, attack on/murder of advocate, earthquake in Nepal, to condole the death of their near relatives, to show solidarity to advocates of other State Bar Associations, moral support to movements by social activists, heavy

rains, or on some religious occasions such as shraadh, Agrasen Jayanti, etc. or even for kavi sammelan.

7.8. The Commission is of the view that unless there are compelling circumstances and the approval for a symbolic strike of one day is obtained from the Bar Council concerned, the advocates shall not resort to strike or abstention from the court work."

47. Thereafter, the Law Commission referred to observations in the judgment of this Court in *Harish Uppal case*[37] that there should be no strikes by the Bar except in rarest of rare situations which should also not exceed one day. The Bar Councils were called upon to take appropriate action in the matter. The Law Commission noted that the strikes were continuing and causing great obstruction to the access to justice. It was observed: (Report No. 266)

"8.3. In spite of all these, the strikes have continued unabated. The dispensation of justice must not stop for any reason. The strike by lawyers have lowered the image of the courts in the eyes of the general public. The Supreme Court has held that right to speedy justice is included in Article 21 of the Constitution. In *Hussainara Khatoon (I)* v. *State of Bihar*[41]; and in some other cases, it was held that the litigant has a right to speedy justice. The lawyers' strike, however, result in denial of these rights to the citizens in the State.

8.4. Recently, the Supreme Court while disposing of the criminal appeal of *Hussain* v. *Union of India*[42] deprecated the practice of boycotting the Court observing that:

'27. One other aspect pointed out is the obstruction of court proceedings by uncalled for strikes/abstaining of work by lawyers or frequent suspension of court work after condolence references. In view of judgment of this Court in *Harish Uppal* v. *Union of India*[37], such suspension of work or strikes is clearly illegal and it is high time that the legal fraternity realises its duty to the society which is the foremost. Condolence references can be once in a while periodically say once in two/three months and not frequently. Hardship faced by witnesses if their evidence is not recorded on the day they are summoned or impact of delay on undertrials in custody on account of such avoidable interruptions of court proceedings is a matter of concern for any responsible body of professionals and they must take appropriate steps. In any case, this needs attention of all authorities concerned the Central Government/State Governments/ Bar Councils/Bar Associations as well as the High Courts and ways and means ought to be found out to tackle this menace. Consistent with the above judgment, the High Courts must monitor this aspect

37 *Harish Uppal* v. *Union of India*, (2003) 2 SCC 45
41 (1980) 1 SCC 81 : 1980 SCC (Cri) 23
42 (2017) 5 SCC 702 : (2017) 2 SCC (Cri) 638

strictly and take stringent measures as may be required in the interests of administration of justice.'

8.5. In *Ramon Services (P) Ltd.* v. *Subhash Kapoor*[43], the Apex Court observed that if any advocate claims that his right to strike must be without any loss to him, but the loss must only be borne by his innocent client, such a claim is repugnant to any principle of fair play and canons of ethics. Therefore, when he opts to strike or boycott the Court he must as well be prepared to bear at least the pecuniary loss suffered by the litigant client who entrusted his brief to that advocate with all confidence that his cause would be safe in the hands of that advocate."

48. Examining other aspects of the regulation of legal profession, the Law Commission recommended review of regulatory mechanism of the Advocates Act as follows: (Report No. 266)

"17.1. There is a dire necessity of reviewing the regulatory mechanism of the Advocates Act, not only in matters of discipline and misconduct of the advocates, but in other areas as well, keeping in view the wide expanse of the legal profession being involved in almost all areas of life. The very constitution of the Bar Councils and their functions also require the introduction of a few provisions in order to consolidate the function of the Bar Councils in its internal matters as well."

49. Since the strikes are in violation of law laid down by this Court, the same amount to contempt and at least the office-bearers of the associations who give call for the strikes cannot disown their liability for contempt. Every resolution to go on strike and abstain from work is per se contempt. Even if proceedings are not initiated individually against such contemnors by the court concerned or by the Bar Council concerned for the misconduct, it is necessary to provide for some mechanism to enforce the law laid down by this Court, pending a legislation to remedy the situation.

50. Accordingly, we consider it necessary, with a view to enforce fundamental right of speedy access to justice under Articles 14 and 21 and law laid by this Court, to direct the Ministry of Law and Justice to present at least a quarterly report on strikes/abstaining from work, loss caused and action proposed. The matter can thereafter be considered in its contempt or inherent jurisdiction of this Court. The Court may, having regard to the fact situation, hold that the office-bearers of the Bar Association/Bar Council who passed the resolution for strike or abstaining from work, are liable to be restrained from appearing before any court for a specified period or until such time as they purge themselves of contempt to the satisfaction of the Chief Justice of the High Court concerned based on an appropriate undertaking/conditions. They may also be liable to be removed from the position of office-bearers of the Bar Association forthwith until the Chief Justice of the High Court concerned so permits on an appropriate undertaking being filed by them. This may be in addition to any

43 (2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152

other action that may be taken for the said illegal acts of obstructing access to justice. The matter may also be considered by this Court on receipt of a report from the High Courts in this regard. This does not debar report/petition from any other source even before the end of a quarter, if situation so warrants.

51. We may now sum up our conclusions:

51.1. In the light of 124th and 272nd Reports of the Law Commission of India, judgment of this Court in *Gujarat Urja*[20], the Minutes of the Arrears Committee of Supreme Court dated 8-4-2017 and all other relevant considerations, the authorities concerned may examine whether there is need for any changes in the judicial structure by creating appropriate fora to decongest the constitutional courts so as to realistically achieve the constitutional goal of speedy justice.

51.2. In view of 14th Report of the Law Commission of India, judgment of this Court in *All India Judges Assn.* v. *Union of India*[23], the Minutes of the Arrears Committee of this Court dated 8-4-2017, and the experience on the subject, pending consideration of issue of All-India Judicial Service, there is need to consider the proposal for Central Selection Mechanism for filling up vacancies in courts other than the constitutional courts and also to consider as to how to supplement inadequacies in the present system of appointment of Judges to the constitutional courts at all levels.

51.3. There is need to consider in the light of observations hereinabove and all other relevant considerations whether there should be a body of full-time experts without affecting independence of judiciary, to assist in identifying, scrutinising and evaluating candidates at pre-appointment stage and to evaluate performance post appointment. The Government may also consider what changes are required in the process of evaluation of candidates at its level so that no wrong candidate is appointed. What steps are required for ensuring righteous conduct of Judges at later stage is also an issue for consideration.

51.4. Pending legislative measures to check the malady of frequent uncalled for strikes obstructing access to justice, the Ministry of Law and Justice may compile information and present a quarterly report on strikes/ abstaining from work, loss caused and action proposed. The matter can thereafter be considered in the contempt or inherent jurisdiction of this Court. The Court may direct having regard to a fact situation, that the office-bearers of the Bar Association/Bar Council who passed the resolution for strikes or abstaining from work or took other steps in that direction are liable to be restrained from appearing before any court for a specified period or till they purge themselves of contempt to the satisfaction of the Chief Justice of the High Court concerned based on an appropriate undertaking/conditions. They may also be liable to be removed from the position of office-bearers of the Bar Association forthwith until the Chief Justice of the High Court concerned

20 *Gujarat Urja Vikas Nigam Ltd.* v. *Essar Power Ltd.*, (2016) 9 SCC 103
23 (1992) 1 SCC 119, para 12 : 1992 SCC (L&S) 9

so permits on an appropriate undertaking being filed by them. This may be in addition to any other action that may be taken for the said illegal acts of obstructing access to justice. The matter may also be considered by this Court on receipt of a report from the High Courts in this regard. This does not debar report/petition from any other source even before the end of a quarter, if situation so warrants.

52. Accordingly, we dispose of this appeal in above terms. We direct the Union of India to file an affidavit in the light of the above observations within three months. First report in terms of para 52.4 may be filed by 30-6-2018. The matter may be listed for consideration of the above affidavit on Wednesday, 4-7-2018 before the appropriate Bench.

(2020) 17 Supreme Court Cases 672

2J

(BEFORE ARUN MISHRA AND M.R. SHAH, JJ.)

DISTRICT BAR ASSOCIATION, DEHRADUN
THROUGH ITS SECRETARY .. Petitioners;

Versus

ISHWAR SHANDILYA AND OTHERS .. Respondents.

SLP (C) No. 5440 of 2020†, decided on February 28, 2020

A. Advocates — Strike/Boycott by Lawyers — Obstruction of court proceedings by uncalled for strikes/abstaining from work by lawyers — Impermissibility of, reiterated — Strikes by Advocates/boycott of courts, reiterated, cannot be justified under guise of right to freedom of speech and expression under Art. 19(1)(a) of the Constitution — Nobody has right to go on strike/boycott courts — Even, such a right, if any, cannot affect rights of others and more particularly, right to speedy justice guaranteed under Arts. 14 and 21 of the Constitution

— Strikes/Boycott of courts by advocates in various districts of Uttarakhand on Saturdays — Directions issued by High Court to stop the strikes, and for reporting, disciplinary action and punishment of recalcitrant Bar Associations and Advocates, and directions to ensure functioning of the courts concerned on all days, with police protection, if required, affirmed by Supreme Court

— Ultimate goal of speedy justice is now recognised as a fundamental right under Arts. 14 and 21 of Constitution — When institution is facing a serious problem of arrears and delay in disposal of cases, such four days' strike in every month by Advocates/boycott of courts, held, cannot be justified

In any case, all submissions on behalf of petitioner Bar Association have already been considered by Supreme Court earlier and more particularly in *Harish Uppal*, (2003) 2 SCC 45, *Common Cause*, (2006) 9 SCC 295 and *Krishnakant Tamrakar*, (2018) 17 SCC 27 Therefore, boycotting courts on every Saturday in various districts in State of Uttarakhand not justifiable at all and as such it tantamounts to contempt of courts It is further directed that all concerned and District Bar Associations concerned to comply with directions issued by High Court impugned in present SLP in their true spirit — It is directed that if it is found that there is any breach of any of the directions issued by the High Court in impugned judgment and order, a serious view shall be taken and consequences shall follow, including punishment under Contempt of Courts Act — Contempt of Courts Act, 1971, Ss. 12 and 14 (Para 6)

Held :

So far as the submission on behalf of the petitioner that to go on strike/boycott courts is part of the fundamental right of freedom of speech and expression under

† Arising out of Diary No. 1476 of 2020. Arising from the Judgment and Order in *Ishwar Shandilya* v. *State of Uttarakhand*, 2019 SCC OnLine Utt 976 [Uttaranchal High Court, Writ Petition (PIL) No. 31 of 2016, dt. 25-9-2019]

Article 19(1)(*a*) of the Constitution and it is a mode of peaceful representation to express the grievances by the lawyers' community is concerned, such a right to freedom of speech cannot be exercised at the cost of the litigants and/or at the cost of the justice delivery system as a whole. To go on strike/boycott courts cannot be justified under the guise of the right to freedom of speech and expression under Article 19(1)(*a*) of the Constitution. Nobody has the right to go on strike/boycott courts. Even, such a right, if any, cannot affect the rights of others and more particularly, the right to speedy justice guaranteed under Articles 14 and 21 of the Constitution. (Paras 6.6 and 6.7)

Harish Uppal v. *Union of India*, (2003) 2 SCC 45; *Common Cause* v. *Union of India*, (2006) 9 SCC 295 : (2006) 2 SCC (Cri) 493; *Krishnakant Tamrakar* v. *State of M.P.*, (2018) 17 SCC 27, *followed*

Ishwar Shandilya v. *State of Uttarakhand*, 2019 SCC OnLine Utt 976, *affirmed*

B. **Advocates Act, 1961 — Ss. 35, 36, 37 and 48 — Duties of Bar Councils — Prevention of strikes/boycotts by lawyers and disciplinary action therefor — Action to be taken against Bar Associations/lawyers instigating/participating in strikes — Role of State Bar Councils and Bar Council of India — Role of Supreme Court as final appellate authority under S. 38 of the Advocates Act — Principles clarified, and firm action directed to be taken by all the authorities concerned to prevent strikes/boycotts by lawyers**

— Held, the time has now come for Bar Council of India and Bar Councils of States to step in and to take concrete steps It is the duty of Bar Councils to ensure that there is no unprofessional and unbecoming conduct by any lawyer Bar Council of India is enjoined with a duty of laying down standards of professional conduct and etiquette for advocates Bar Council of India to ensure that advocates do not behave in an unprofessional and unbecoming manner S. 48 of the Advocates Act gives a right to Bar Council of India to give directions to State Bar Councils — Bar Associations may be separate bodies but all advocates who are members of such associations are under disciplinary jurisdiction of Bar Councils and thus, Bar Councils can always control their conduct — Taking a serious note of strikes by lawyers/Bar Associations despite Supreme Court taking suo motu cognizance, Registry directed to issue notices to Bar Council of India and all State Bar Councils returnable within six weeks to suggest further course of action and to give concrete suggestions to deal with problem of strikes/abstaining work by lawyers (Para 7)

Harish Uppal v. *Union of India*, (2003) 2 SCC 45; *Common Cause* v. *Union of India*, (2006) 9 SCC 295 : (2006) 2 SCC (Cri) 493; *Krishnakant Tamrakar* v. *State of M.P.*, (2018) 17 SCC 27; *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409; *Ramon Services (P) Ltd.* v. *Subhash Kapoor*, (2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152; *Mahabir Prasad Singh* v. *Jacks Aviation (P) Ltd.*, (1999) 1 SCC 37; *Mahipal Singh Rana* v. *State of U.P.*, (2016) 8 SCC 335 : (2016) 4 SCC (Civ) 1 : (2016) 3 SCC (Cri) 476 : (2016) 2 SCC (L&S) 390, *followed*

Hussainara Khatoon (I) v. *State of Bihar*, (1980) 1 SCC 81 : 1980 SCC (Cri) 23; *Hussain* v. *Union of India*, (2017) 5 SCC 702 : (2017) 2 SCC (Cri) 638, *cited*

Law Commission of India, 266th Report, *The Advocates Act, 1961 (Regulation of Legal Profession)*, March 2017, *cited*

Advocates who appeared in this case :
Mahabir Singh, Senior Advocate (Ajai Kr. Bhatia and Vijay S. Bishnoi, Advocates), for the Petitioners.

Chronological list of cases cited ***on page(s)***

1. 2019 SCC OnLine Utt 976, *Ishwar Shandilya* v. *State of Uttarakhand* 674*e*, 674*f*, 675*e*, 676*a*, 676*e*, 690*d*, 691*b*
2. (2018) 17 SCC 27, *Krishnakant Tamrakar* v. *State of M.P.* 676*f*, 685*d e*, 685*g*, 691*b c*
3. (2017) 5 SCC 702 : (2017) 2 SCC (Cri) 638, *Hussain* v. *Union of India* 688*e-f*
4. (2016) 8 SCC 335 : (2016) 4 SCC (Civ) 1 : (2016) 3 SCC (Cri) 476 : (2016) 2 SCC (L&S) 390, *Mahipal Singh Rana* v. *State of U.P.* 686*f*, 686*f g*, 686*g h*, 687*a*
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9. (1998) 4 SCC 409, *Supreme Court Bar Assn.* v. *Union of India* 677*b*, 683*h*
10. (1980) 1 SCC 81 : 1980 SCC (Cri) 23, *Hussainara Khatoon (I)* v. *State of Bihar* 688*e*

The Judgment of the Court was delivered by

M.R. Shah, J. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 25-9-2019 passed by the High Court of Uttarakhand at Nainital in *Ishwar Shandilya* v. *State of Uttarakhand*[1], the District Bar Association, Dehradun, through its Secretary, has preferred the present SLP. That, by the impugned judgment[1] and order, the High Court in the writ petition (PIL) filed by the private respondent herein has issued the following directions: (SCC OnLine Utt paras 133-138)

> "*133.* The District Bar Associations of Dehradun, Haridwar and Udham Singh Nagar shall, forthwith, withdraw their call for a strike, and start attending courts on all working Saturdays. All the District Bar Associations in the State shall forthwith refrain from abstaining from courts because of condolence references for family members of the advocates, or for the other reasons. In case they do not start attending courts, as directed hereinabove, the District Judges concerned shall submit their respective reports to the High Court for it to consider whether action should be initiated against the errant advocates under the Contempt of Courts Act, 1971.

1 2019 SCC OnLine Utt 976

134. The Bar Council of India shall at the earliest, and in any event within three months from today, take action against the recalcitrant Bar Associations pursuant to its show-cause notice dated 12-7-2019, and ensure that these Bar Associations desist from continuing such strikes/boycott of courts.

135. The Uttarakhand State Bar Council shall, within a period of four weeks from today, initiate disciplinary action against the office-bearers of the aforesaid District Bar Associations for their having given a call for illegal strikes/boycott of courts on Saturdays in the judgeship of Dehradun, Haridwar and Udham Singh Nagar.

136. The District Judges of these districts shall ensure that courts function on Saturdays, and sufficient cases are listed and are disposed of by courts, under their judgeship, on all working Saturdays.

137. The Commissioner of Police/Senior Superintendent of Police, of the districts concerned, shall, as and when requested by the District Judge or Judicial Officer, regarding the possibility of court proceedings being impeded because of strike/boycott of courts by the advocates, forthwith provide necessary police protection to ensure smooth functioning of courts, and thereby prevent any impediment to court proceedings because of strikes/boycott by the Bar Associations/Advocates.

138. The High Court is requested to consider taking appropriate measures to ensure functioning of courts on Saturdays, that judicial work is not hampered by such illegal strikes/boycott of courts and wholly unjustified condolence references, and that the Circular issued by it earlier on 12-3-2019 is implemented."

2. From the impugned judgment[1] and order passed by the High Court, it appears that the advocates in the entire district of Dehradun, in several districts of Haridwar and Udham Singh Nagar District in the State of Uttarakhand have been boycotting the courts on all Saturdays for the past more than 35 years. As the strikes are seriously obstructing the access to justice to the needy litigants, Respondent 1 was compelled to approach the High Court by way of writ petition (PIL). Having noted from the information sent by the High Court to the Law Commission that with respect to the State of Uttarakhand for the years 2012-2016 showed that in Dehradun District, the advocates were on strike for 455 days (on an average 91 days per year) and in Haridwar District it is 515 days (about 103 days per year), the High Court was of the opinion that on all such working days on account of strikes and the conduct of the advocates in boycotting courts, it has affected the functioning of the courts and it contributes to the ever-mounting pendency of the cases, and therefore, the aforesaid directions have been issued by the High Court.

1 *Ishwar Shandilya* v. *State of Uttarakhand*, 2019 SCC OnLine Utt 976

3. Feeling aggrieved and dissatisfied with the impugned judgment[1] and order passed by the High Court, the District Bar Association, Dehradun has preferred the present SLP.

4. Shri Mahabir Singh, learned Senior Advocate appearing on behalf of the petitioner has vehemently submitted that the High Court has not properly appreciated and considered the fact that the right to go on strike/boycott courts is a fundamental right to freedom of speech and expression guaranteed under Article 19(1)(*a*) of the Constitution of India.

4.1. It is vehemently submitted by the learned Senior Advocate appearing on behalf of the petitioner that the strike is a mode of peaceful representation to express the grievances by the lawyers' community in absence of no other forum is available.

4.2. It is further submitted by the learned Senior Advocate appearing on behalf of the petitioner that the High Court ought to have held that the protection conferred by Section 48 of the Advocates Act, 1961 is for any act done in good faith, and therefore, the directions issued by the High Court to take action against the advocates on strike would be contrary to the protection conferred by Section 48 of the Advocates Act.

5. The learned Senior Advocate appearing on behalf of the petitioner has stated at the Bar that, as such, the Bar Association has already withdrawn the strike and/or boycotting courts on all Saturdays, his statement is taken on record.

6. Having heard the learned Senior Advocate appearing on behalf of the petitioner and considering the impugned judgment[1] and order passed by the High Court, more particularly, the directions issued by the High Court, which are reproduced hereinabove, we are of the firm opinion that the High Court is absolutely justified in issuing such directions. As such, the directions issued by the High Court are absolutely in consonance with the decisions of this Court in *Harish Uppal* v. *Union of India*[2], *Common Cause* v. *Union of India*[3] and *Krishnakant Tamrakar* v. *State of M.P.*[4]

6.1. In *Harish Uppal*[2], this Court has specifically observed and held that the lawyers have no right to go on strike or even token strike or to give a call for strike. It is also further observed that nor can they while holding vakalat on behalf of the clients, abstain from appearing in courts in pursuance of a call for strike or boycott. It is further observed by this Court that it is unprofessional as well as unbecoming for a lawyer to refuse to attend the court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council. It is further observed that an advocate is an officer of the court and enjoys a special status in the society; the advocates have obligations and duties to ensure the

1 *Ishwar Shandilya* v. *State of Uttarakhand*, 2019 SCC OnLine Utt 976
2 (2003) 2 SCC 45
3 (2006) 9 SCC 295 : (2006) 2 SCC (Cri) 493
4 (2018) 17 SCC 27

smooth functioning of the court; they owe a duty to their clients and strikes interfere with the administration of justice. They cannot, thus, disrupt court proceedings and put interest of their clients in jeopardy.

6.2. While considering the role of the Bar Councils, it is observed in paras 25 and 26 of the aforesaid decision as under: (*Harish Uppal case*[2], SCC pp. 66-68)

> "25. In *Supreme Court Bar Assn.* v. *Union of India*[5] it has been held that professional misconduct may also amount to contempt of court (para 21). It has further been held as follows: (SCC pp. 444-46, paras 79-80)
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> '79. An advocate who is found guilty of contempt of court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case. The learned Solicitor General informed us that there have been cases where the Bar Council of India taking note of the contumacious and objectionable conduct of an advocate, had initiated disciplinary proceedings against him and even punished him for "professional misconduct", on the basis of his having been found guilty of committing contempt of court. We do not entertain any doubt that the Bar Council of the State or Bar Council of India, as the case may be, when apprised of the established contumacious conduct of an advocate by the High Court or by this Court, would rise to the occasion, and take appropriate action against such an advocate. Under Article 144 of the Constitution "all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court". The Bar Council which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette is also obliged to act "in aid of the Supreme Court". It must, whenever facts warrant, rise to the occasion and discharge its duties uninfluenced by the position of the contemnor advocate. It must act in accordance with the prescribed procedure, whenever its attention is drawn by this Court to the contumacious and unbecoming conduct of an advocate which has the tendency to interfere with due administration of justice. It is possible for the High Courts also to draw the attention of the Bar Council of the State to a case of professional misconduct of a contemnor advocate to enable the State Bar Council to proceed in the manner prescribed by the Act and the Rules framed thereunder. There is no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the courts and the majesty of law and prevent any interference in the administration of justice. The

2 *Harish Uppal* v. *Union of India*, (2003) 2 SCC 45
5 (1998) 4 SCC 409

learned counsel for the parties present before us do not dispute and rightly so that whenever a court of record records its findings about the conduct of an advocate while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the Bar Council concerned, appropriate action should be initiated by the Bar Council concerned in accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette. Nothing is more destructive of public confidence in the administration of justice than incivility, rudeness or disrespectful conduct on the part of a counsel towards the court or disregard by the court of the privileges of the Bar. In case the Bar Council, even after receiving "reference" from the Court, fails to take action against the advocate concerned, this Court might consider invoking its powers under Section 38 of the Act by sending for the record of the proceedings from the Bar Council and passing appropriate orders. Of course, the appellate powers under Section 38 would be available to this Court only and not to the High Courts. We, however, hope that such a situation would not arise.

80. In a given case it may be possible, for this Court or the High Court, to prevent the contemnor advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practise as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practise as an advocate in other courts or tribunals.'

Thus a Constitution Bench of this Court has held that the Bar Councils are expected to rise to the occasion as they are responsible to uphold the dignity of courts and majesty of law and to prevent interference in administration of justice. In our view it is the duty of the Bar Councils to ensure that there is no unprofessional and/or unbecoming conduct. This being their duty no Bar Council can even consider giving a call for strike or a call for boycott. It follows that the Bar Councils and even Bar Associations can never consider or take seriously any requisition calling for a meeting to consider a call for a strike or a call for boycott. Such requisitions should be consigned to the place where they belong viz. the waste-paper basket. In case any Association calls for a strike or a call for boycott the State Bar Council concerned and on their failure the Bar Council of India must immediately take disciplinary action against the advocates who give a call for strike and if the Committee members permit calling of a meeting for such purpose,

against the Committee members. Further, it is the duty of every advocate to boldly ignore a call for strike or boycott.

26. It must also be noted that courts are not powerless or helpless. Section 38 of the Advocates Act provides that even in disciplinary matters the final appellate authority is the Supreme Court.

Thus even if the Bar Councils do not rise to the occasion and perform their duties by taking disciplinary action on a complaint from a client against an advocate for non-appearance by reason of a call for strike or boycott, on an appeal the Supreme Court can and will. Apart from this, as set out in *Ramon Services case*[6] every court now should and must mulct advocates who hold *vakalats* but still refrain from attending courts in pursuance of a strike call with costs. Such costs would be in addition to the damages which the advocate may have to pay for the loss suffered by his client by reason of his non-appearance."

6.3. In the aforesaid decision, this Court took note of the resolution dated 29-9-2002 passed by the Bar Council of India, by which it was resolved, inter alia, to constitute the Grievance Redressal Committees at the taluk/sub-division or tehsil levels, at the district level, the High Court and the Supreme Court levels. Thereafter, this Court further observed that merely holding strikes as illegal would not be sufficient in the present day situation nor would it serve any purpose. Some concrete joint action is required to be taken by the Bench and the Bar to see that there are no strikes anymore. That, thereafter, this Court directed that:

(*a*) all the Bar Associations in the country shall implement the resolution dated 29-9-2002 passed by the Bar Council of India, and

(*b*) under Section 34 of the Advocates Act, the High Courts would frame necessary rules so that appropriate actions can be taken against the defaulting advocate/advocates.

6.4. Despite the law laid down by this Court in the aforesaid decisions and even the concern expressed by this Court against the strikes by the lawyers, things did not improve and again the issue of lawyers going on strikes came to be considered in *Common Cause*[3] and this Court in para 4 of that judgment, held as under: (SCC pp. 298-304)

"*4*. The Constitution Bench has, in *Harish Uppal case*[2] culled out the law in the following terms: (SCC pp. 64 & 71-74, paras 20-21 & 34-36)

"*20*. Thus the law is already well settled. It is the duty of every advocate who has accepted a brief to attend trial, even though it may go on day-to-day and for a prolonged period. It is also settled law that a lawyer who has accepted a brief cannot refuse to attend court because

6 *Ramon Services (P) Ltd.* v. *Subhash Kapoor*, (2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152

3 *Common Cause* v. *Union of India*, (2006) 9 SCC 295 : (2006) 2 SCC (Cri) 493

2 *Harish Uppal* v. *Union of India*, (2003) 2 SCC 45

a boycott call is given by the Bar Association. It is settled law that it is unprofessional as well as unbecoming for a lawyer who has accepted a brief to refuse to attend court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council. It is settled law that courts are under an obligation to hear and decide cases brought before them and cannot adjourn matters merely because lawyers are on strike. The law is that it is the duty and obligation of courts to go on with matters or otherwise it would tantamount to becoming a privy to the strike. It is also settled law that if a resolution is passed by Bar Associations expressing want of confidence in judicial officers, it would amount to scandalising the courts to undermine its authority and thereby the advocates will have committed contempt of court. Lawyers have known, at least since *Mahabir Singh case*[7] that if they participate in a boycott or a strike, their action is ex facie bad in view of the declaration of law by this Court. A lawyer's duty is to boldly ignore a call for strike or boycott of court(s). Lawyers have also known, at least since *Ramon Services case*[6], that the advocates would be answerable for the consequences suffered by their clients if the non-appearance was solely on grounds of a strike call.

21. It must also be remembered that an advocate is an officer of the court and enjoys special status in society. Advocates have obligations and duties to ensure smooth functioning of the court. They owe a duty to their clients. Strikes interfere with administration of justice. They cannot thus disrupt court proceedings and put interest of their clients in jeopardy. ...

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34. One last thing which must be mentioned is that the right of appearance in courts is still within the control and jurisdiction of courts. Section 30 of the Advocates Act has not been brought into force and rightly so. Control of conduct in court can only be within the domain of courts. Thus Article 145 of the Constitution of India gives to the Supreme Court and Section 34 of the Advocates Act gives to the High Court power to frame rules including rules regarding condition on which a person (including an advocate) can practise in the Supreme Court and/or in the High Court and courts subordinate thereto. Many courts have framed rules in this behalf. Such a rule would be valid and binding on all. Let the Bar take note that unless self-restraint is exercised, courts may now have to consider framing specific rules debarring advocates guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the courts. Such a rule if framed would not have anything to do with the disciplinary jurisdiction of the Bar Councils. It would be concerning

7 *Mahabir Prasad Singh* v. *Jacks Aviation (P) Ltd.*, (1999) 1 SCC 37

6 *Ramon Services (P) Ltd.* v. *Subhash Kapoor*, (2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152

the dignity and orderly functioning of the courts. The right of the advocate to practise envelopes a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for clients before an arbitrator or arbitrators, etc. Such a rule would have nothing to do with all the acts done by an advocate during his practice. He may even file *vakalat* on behalf of a client even though his appearance inside the court is not permitted. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by them in exercise of their disciplinary powers. The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must and does have major supervisory and controlling power. Hence courts cannot be and are not divested of control or supervision of conduct in court merely because it may involve the right of an advocate. A rule can stipulate that a person who has committed contempt of court or has behaved unprofessionally and in an unbecoming manner will not have the right to continue to appear and plead and conduct cases in courts. The Bar Councils cannot overrule such a regulation concerning the orderly conduct of court proceedings. On the contrary, it will be their duty to see that such a rule is strictly abided by. Courts of law are structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who is guilty of contempt of court or of unbecoming or unprofessional conduct, standing in the court would erode the dignity of the court and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the courts. The power to frame such rules should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the courts are in control of the former. This distinction is clearly brought out by the difference in language in Section 49 of the Advocates Act on the one hand and Article 145 of the Constitution of India and Section 34(1) of the Advocates Act on the other. Section 49 merely empowers the Bar Council to frame rules laying down conditions subject to which an advocate shall have a right to practise i.e. do all the other acts set out above. However, Article 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the court including inter alia rules as to persons practising before this Court. Similarly Section 34 of the Advocates Act empowers High

Courts to frame rules, inter alia to lay down conditions on which an advocate shall be permitted to practise in courts. Article 145 of the Constitution of India and Section 34 of the Advocates Act clearly show that there is no absolute right to an advocate to appear in a court. An advocate appears in a court subject to such conditions as are laid down by the court. It must be remembered that Section 30 has not been brought into force, and this also shows that there is no absolute right to appear in a court. Even if Section 30 were to be brought into force control of proceedings in court will always remain with the court. Thus even then the right to appear in court will be subject to complying with conditions laid down by courts just as practice outside courts would be subject to conditions laid down by the Bar Council of India. There is thus no conflict or clash between other provisions of the Advocates Act on the one hand and Section 34 or Article 145 of the Constitution of India on the other.

35. In conclusion, it is held that lawyers have no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any is required, can only be by giving press statements, TV interviews, carrying out of court premises banners and/or placards, wearing black or white or any colour armbands, peaceful protest marches outside and away from court premises, going on *dharnas* or relay fasts, etc. It is held that lawyers holding *vakalats* on behalf of their clients cannot refuse to attend courts in pursuance of a call for strike or boycott. All lawyers must boldly refuse to abide by any call for strike or boycott. No lawyer can be visited with any adverse consequences by the Association or the Council and no threat or coercion of any nature including that of expulsion can be held out. It is held that no Bar Council or Bar Association can permit calling of a meeting for purposes of considering a call for strike or boycott and requisition, if any, for such meeting must be ignored. It is held that only in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, courts may ignore (turn a blind eye) to a protest, abstention from work for not more than one day. It is being clarified that it will be for the court to decide whether or not the issue involves dignity or integrity or independence of the Bar and/or the Bench. Therefore in such cases the President of the Bar must first consult the Chief Justice or the District Judge before advocates decide to absent themselves from court. The decision of the Chief Justice or the District Judge would be final and have to be abided by the Bar. It is held that courts are under no obligation to adjourn matters because lawyers are on strike. On the contrary, it is the duty of all courts to go on with matters on their boards even in the absence of lawyers. In other words, courts must not be privy to strikes or calls for boycotts. It is held that if a lawyer, holding a *vakalat* of a client, abstains from attending court due to a strike call, he shall be personally liable to pay

costs which shall be in addition to damages which he might have to pay his client for loss suffered by him.

a *36.* It is now hoped that with the above clarifications, there will be no strikes and/or calls for boycott. It is hoped that better sense will prevail and self-restraint will be exercised. The petitions stand disposed of accordingly.'

The Court also dealt with the role of Bar Councils on the following terms: (SCC pp. 66-68, paras 25-26)

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'25. In *Supreme Court Bar Assn.* v. *Union of India*[5], it has been held that professional misconduct may also amount to contempt of court (para 21). It has further been held as follows: (SCC pp. 444-46, paras 79-80)

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"79. An advocate who is found guilty of contempt of court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case. The learned Solicitor General informed us that there have been cases where the Bar Council of

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India taking note of the contumacious and objectionable conduct of an advocate, had initiated disciplinary proceedings against him and even punished him for "professional misconduct", on the basis of his having been found guilty of committing contempt of court. We do not entertain any doubt that the Bar Council of the State or Bar Council of India, as the case may be, when apprised

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of the established contumacious conduct of an advocate by the High Court or by this Court, would rise to the occasion, and take appropriate action against such an advocate. Under Article 144 of the Constitution 'all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court'. The Bar Council

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which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette is also obliged to act "in aid of the Supreme Court". It must, whenever facts warrant, rise to the occasion and discharge its duties uninfluenced by the position of the contemnor advocate. It must act in accordance with the prescribed procedure,

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whenever its attention is drawn by this Court to the contumacious and unbecoming conduct of an advocate which has the tendency to interfere with due administration of justice. It is possible for the High Courts also to draw the attention of the Bar Council of the State to a case of professional misconduct of a contemnor advocate to enable the State Bar Council to proceed in the manner

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prescribed by the Act and the rules framed thereunder. There is

5 (1998) 4 SCC 409

no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the courts and the majesty of law and prevent any interference in the administration of justice. The learned counsel for the parties present before us do not dispute and rightly so that whenever a court of record records its findings about the conduct of an advocate while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the Bar Council concerned, appropriate action should be initiated by the Bar Council concerned in accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette. Nothing is more destructive of public confidence in the administration of justice than incivility, rudeness or disrespectful conduct on the part of a counsel towards the court or disregard by the court of the privileges of the Bar. In case the Bar Council, even after receiving "reference" from the Court, fails to take action against the advocate concerned, this Court might consider invoking its powers under Section 38 of the Act by sending for the record of the proceedings from the Bar Council and passing appropriate orders. Of course, the appellate powers under Section 38 would be available to this Court only and not to the High Courts. We, however, hope that such a situation would not arise.

80. In a given case it may be possible, for this Court or the High Court, to prevent the contemnor advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practise as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practise as an advocate in other courts or tribunals."

Thus a Constitution Bench of this Court has held that the Bar Councils are expected to rise to the occasion as they are responsible to uphold the dignity of courts and majesty of law and to prevent interference in administration of justice. In our view it is the duty of the Bar Councils to ensure that there is no unprofessional and/or unbecoming conduct. This being their duty no Bar Council can even consider giving a call for strike or a call for boycott. It follows that the Bar Councils and even Bar Associations can never consider or take seriously any requisition calling for a meeting to consider a call for a strike or a call for boycott.

Such requisitions should be consigned to the place where they belong viz. the waste-paper basket. In case any Association calls for a strike or a call for boycott, the State Bar Council concerned and on its failure the Bar Council of India must immediately take disciplinary action against the advocates who give a call for strike and if the Committee members permit calling of a meeting for such purpose, against the Committee members. Further, it is the duty of every advocate to boldly ignore a call for strike or boycott.

26. It must also be noted that courts are not powerless or helpless. Section 38 of the Advocates Act provides that even in disciplinary matters the final appellate authority is the Supreme Court. Thus even if the Bar Councils do not rise to the occasion and perform their duties by taking disciplinary action on a complaint from a client against an advocate for non-appearance by reason of a call for strike or boycott, on an appeal the Supreme Court can and will. Apart from this, as set out in *Ramon Services case*[6] every court now should and must mulct advocates who hold *vakalats* but still refrain from attending courts in pursuance of a strike call, with costs. Such costs would be in addition to the damages which the advocate may have to pay for the loss suffered by his client by reason of his non-appearance."

Apart from reiterating the above law, we do not propose to take any further action. The contempt notices stand discharged."

6.5. While considering the issue of delay/speedy disposal, in *Krishnakant Tamrakar*[4], this Court had the occasion to consider how uncalled for frequent strikes obstruct the access to justice and what steps are required to remedy the situation. In the aforesaid decision, it is observed by this Court that access to speedy justice is a part of the fundamental rights under Articles 14 and 21 of the Constitution of India. This Court was of the opinion that one of the reasons/root cause for delay is uncalled for strikes by the lawyers. In the aforesaid decision, this Court also took note of 266th Law Commission Report, in which there was a reference to the strikes by the lawyers in Dehradun and Haridwar Districts itself. In the aforesaid decision, this Court also took note of the recommendations made by the Law Commission. This Court further observed that since the strikes are in violation of the law laid down by this Court, the same amounts to contempt and at least the office-bearers of the Associations who give call for the strikes cannot disown their liability for contempt. In paras 41 to 50, this Court held as under: (*Krishnakant Tamrakar case*[4], SCC pp. 46-51)

"*41.* We may also deal with another important aspect of speedy justice. It is well known that at some places there are frequent strikes, seriously

6 *Ramon Services (P) Ltd.* v. *Subhash Kapoor*, (2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152

4 *Krishnakant Tamrakar* v. *State of M.P.*, (2018) 17 SCC 27

obstructing access to justice. Even cases of persons languishing in custody are delayed on that account. By every strike, irreversible damage is suffered by the judicial system, particularly consumers of justice. They are denied access to justice. Taxpayers' money is lost on account of judicial and public time being lost. Nobody is accountable for such loss and harassment.

42. Dr Ambedkar in his famous speech on 25-11-1949 had warned: (CAD Vol. 11)

> 'The first thing in my judgment we must do is to hold fast to constitutional methods of achieving our social and economic objectives. It means we must abandon the bloody methods of revolution. It means that we must abandon the method of civil disobedience, non-cooperation and satyagraha. When there was no way left for constitutional methods for achieving economic and social objectives, there was a great deal of justification for unconstitutional methods. But where constitutional methods are open, there can be no justification for these unconstitutional methods. These methods are nothing but the Grammar of Anarchy and the sooner they are abandoned, the better for us.'

43. The above warning of the Constitution-maker needs to be adhered to at least by the legal fraternity. The Bar has the tradition of placing their professional duty of assisting the access to justice above every other consideration. How is the situation to be tackled. Competent authorities may take a final call.

44. In *Harish Uppal* v. *Union of India*[2], this Court held that lawyers have no right to go on strike or to give a call for boycott of courts nor can they abstain from the courts. Calls given by Bar Association or Bar Council for such purpose cannot require the court to adjourn the matters. Strike or abstaining from court is unprofessional. Even though more than 15 years have passed after the said judgment was rendered, the judgment of this Court is repeatedly flouted and no remedial measures have been adopted. Regulation of right of appearance in courts is within the jurisdiction of the courts. This Court also asked the Law Commission to suggest appropriate changes in the regulatory framework for the legal profession [*Mahipal Singh Rana* v. *State of U.P.*[8]]. The Law Commission has submitted 266th Report*. The problem continues seriously affecting the rule of law.

45. In *Mahipal Singh Rana*[8], this Court noted that the High Courts can frame rules to lay down conditions on which advocates can be permitted to practise in courts. An advocate can be debarred from appearing in court even if the disciplinary jurisdiction for misconduct is vested with the Bar Councils [*Mahipal Singh Rana* v. *State of U.P.*[8], paras 20, 30 to 35]. This Court requested the Law Commission to look into all relevant aspects

2 (2003) 2 SCC 45

8 (2016) 8 SCC 335 : (2016) 4 SCC (Civ) 1 : (2016) 3 SCC (Cri) 476 : (2016) 2 SCC (L&S) 390

* Ed.: On the Advocates Act, 1961 (Regulation of Legal Profession).

relating to regulation of legal profession [*Mahipal Singh Rana* v. *State of U.P.*[8], para 58].

46. The Law Commission, accordingly, examined the relevant aspects relating to regulation of the legal profession. The Law Commission in its 266th Report found that such conduct of the advocates affects functioning of courts and particularly it contributes to pendency of cases. It analysed the data on loss of working days on account of call of strikes. The analysis is as follows:

> '7.2. In the State of Uttarakhand, the information sent by the High Court for the years 2012-2016 shows that in Dehradun District, the advocates were on strike for 455 days during 2012-2016 (on an average, 91 days per year). In Haridwar District, 515 days (103 days a year) were wasted on account of strike.
>
> 7.3. In the case of the State of Rajasthan, the High Court of Judicature at Jodhpur saw 142 days of strike during 2012- 2016, while the figure stood at 30 for the Jaipur Bench. In Ajmer District Courts, strikes remained for 118 days in the year 2014 alone, while in Jhalawar, 146 days were lost in 2012 on account of strike.
>
> 7.4. The case of Uttar Pradesh appears to be the worst. The figures of strike for the years 2011-2016 in the subordinate courts are alarmingly high. In the State of Uttar Pradesh, the District Courts have to work for 265 days in a year. The period of strike in five year period in worst affected districts has been as Muzaffarnagar (791 days), Faizabad (689 days), Sultanpur (594 days), Varanasi (547 days), Chandauli (529 days), Ambedkar Nagar (511 days), Saharanpur (506 days) and Jaunpur (510 days). The average number of days of strike in eight worst affected districts comes to 115 days a year. Thus, it is evident that the courts referred to hereinabove could work on an average for 150 days only in a year.
>
> 7.5. In this regard, the situation in subordinate courts in Tamil Nadu had by no means, been better. The High Court of Tamil Nadu has reported that there are 220 working days in a year for the courts in the State. During the period 2011-2016, districts like Kancheepuram, 687 days (137.4 days per year); Kanyakumari, 585 days (117 days per year); Madurai, 577 days (115.4 days per year); Cuddalore, 461 days (92.2 days per year); and Sivagangai, 408 days (81.6 days per year), were the most affected by strike called by advocates.
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> 7.6. As per the responses received from the High Courts of Madhya Pradesh and Odisha, the picture does not emerge to be satisfactory.
>
> 7.7. The Commission noted that the strike by advocates or their abstinence from the court were hardly for any justifiable reasons. It could not find any convincing reasons for which the advocates resorted to strike or boycott of work in the courts. The reasons for

8 (2016) 8 SCC 335 : (2016) 4 SCC (Civ) 1 : (2016) 3 SCC (Cri) 476 : (2016) 2 SCC (L&S) 390

strike call or abstinence from work varied from local, national to international issues, having no relevance to the working of the courts. To mention a few, bomb blast in Pakistan school, amendments to Sri Lanka's Constitution, inter-State river water disputes, attack on/murder of advocate, earthquake in Nepal, to condole the death of their near relatives, to show solidarity to advocates of other State Bar Associations, moral support to movements by social activists, heavy rains, or on some religious occasions such as shraadh, Agrasen Jayanti, etc. or even for kavi sammelan.

7.8. The Commission is of the view that unless there are compelling circumstances and the approval for a symbolic strike of one day is obtained from the Bar Council concerned, the advocates shall not resort to strike or abstention from the court work.'

47. Thereafter, the Law Commission referred to observations in the judgment of this Court in *Harish Uppal case*[2] that there should be no strikes by the Bar except in rarest of rare situations which should also not exceed one day. The Bar Councils were called upon to take appropriate action in the matter. The Law Commission noted that the strikes were continuing and causing great obstruction to the access to justice. It was observed: (Report No. 266)

'8.3. In spite of all these, the strikes have continued unabated. The dispensation of justice must not stop for any reason. The strike by lawyers have lowered the image of the courts in the eyes of the general public. The Supreme Court has held that right to speedy justice is included in Article 21 of the Constitution. In *Hussainara Khatoon (I)* v. *State of Bihar*[9]; and in some other cases, it was held that the litigant has a right to speedy justice. The lawyers' strike, however, result in denial of these rights to the citizens in the State.

8.4. Recently, the Supreme Court while disposing of the criminal appeal of *Hussain* v. *Union of India*[10] deprecated the practice of boycotting the Court observing that: (SCC pp. 716-17, para 27)

"27. One other aspect pointed out is the obstruction of court proceedings by uncalled for strikes/abstaining of work by lawyers or frequent suspension of court work after condolence references. In view of judgment of this Court in *Harish Uppal* v. *Union of India*[2], such suspension of work or strikes is clearly illegal and it is high time that the legal fraternity realises its duty to the society which is the foremost. Condolence references can be once in a while periodically say once in two/three months and not frequently. Hardship faced by witnesses if their evidence is not recorded on the day they are summoned or impact of delay on

2 *Harish Uppal* v. *Union of India*, (2003) 2 SCC 45
9 (1980) 1 SCC 81 : 1980 SCC (Cri) 23
10 (2017) 5 SCC 702 : (2017) 2 SCC (Cri) 638

undertrials in custody on account of such avoidable interruptions of court proceedings is a matter of concern for any responsible body of professionals and they must take appropriate steps. In any case, this needs attention of all authorities concerned — the Central Government/State Governments/Bar Councils/Bar Associations as well as the High Courts and ways and means ought to be found out to tackle this menace. Consistent with the above judgment, the High Courts must monitor this aspect strictly and take stringent measures as may be required in the interests of administration of justice."

8.5. In *Ramon Services (P) Ltd.* v. *Subhash Kapoor*[6], the Supreme Court observed that if any advocate claims that his right to strike must be without any loss to him, but the loss must only be borne by his innocent client, such a claim is repugnant to any principle of fair play and canons of ethics. Therefore, when he opts to strike or boycott the Court he must as well be prepared to bear at least the pecuniary loss suffered by the litigant client who entrusted his brief to that advocate with all confidence that his cause would be safe in the hands of that advocate.'

48. Examining other aspects of the regulation of legal profession, the Law Commission recommended review of regulatory mechanism of the Advocates Act as follows: (Report No. 266)

'17.1. There is a dire necessity of reviewing the regulatory mechanism of the Advocates Act, not only in matters of discipline and misconduct of the advocates, but in other areas as well, keeping in view the wide expanse of the legal profession being involved in almost all areas of life. The very constitution of the Bar Councils and their functions also require the introduction of a few provisions in order to consolidate the function of the Bar Councils in its internal matters as well.'

49. Since the strikes are in violation of law laid down by this Court, the same amount to contempt and at least the office-bearers of the associations who give call for the strikes cannot disown their liability for contempt. Every resolution to go on strike and abstain from work is per se contempt. Even if proceedings are not initiated individually against such contemnors by the court concerned or by the Bar Council concerned for the misconduct, it is necessary to provide for some mechanism to enforce the law laid down by this Court, pending a legislation to remedy the situation.

50. Accordingly, we consider it necessary, with a view to enforce fundamental right of speedy access to justice under Articles 14 and 21 and law laid by this Court, to direct the Ministry of Law and Justice to present at least a quarterly report on strikes/abstaining from work, loss caused and action proposed. The matter can thereafter be considered in its contempt

6 (2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152

or inherent jurisdiction of this Court. The Court may, having regard to the fact situation, hold that the office-bearers of the Bar Association/Bar Council who passed the resolution for strike or abstaining from work, are liable to be restrained from appearing before any court for a specified period or until such time as they purge themselves of contempt to the satisfaction of the Chief Justice of the High Court concerned based on an appropriate undertaking/conditions. They may also be liable to be removed from the position of office-bearers of the Bar Association forthwith until the Chief Justice of the High Court concerned so permits on an appropriate undertaking being filed by them. This may be in addition to any other action that may be taken for the said illegal acts of obstructing access to justice. The matter may also be considered by this Court on receipt of a report from the High Courts in this regard. This does not debar report/petition from any other source even before the end of a quarter, if situation so warrants."

6.6. In spite of the law laid down by this Court in the aforesaid decisions, this Court time and again deprecated the lawyers to go on strikes, the strikes were continued unabated. Even in the present case, the advocates have been boycotting the courts on all Saturdays, in the entire district of Dehradun, in several parts of the District of Haridwar and Udham Singh Nagar District of the State of Uttarakhand. Because of such strikes, the ultimate sufferers are the litigants. From the data mentioned in the impugned judgment[1] and order, things are very shocking. Every month on 3-4 Saturdays, the advocates are on strike and abstain from working, on one pretext or the other. If the lawyers would have worked on those days, it would have been in the larger interest and it would have achieved the ultimate goal of speedy justice, which is now recognised as a fundamental right under Articles 14 and 21 of the Constitution. It would have helped in early disposal of the criminal trials and, therefore, it would have been in the interest of those who are languishing in the jail and waiting for their trial to conclude. When the institution is facing a serious problem of arrears and delay in disposal of cases, how the institution as a whole can afford such four days' strike in a month.

6.7. Now, so far as the submission on behalf of the petitioner that to go on strike/boycott courts is a fundamental right of freedom of speech and expression under Article 19(1)(*a*) of the Constitution and it is a mode of peaceful representation to express the grievances by the lawyers' community is concerned, such a right to freedom of speech cannot be exercised at the cost of the litigants and/or at the cost of the justice delivery system as a whole. To go on strike/boycott courts cannot be justified under the guise of the right to freedom of speech and expression under Article 19(1)(*a*) of the Constitution. Nobody has the right to go on strike/boycott courts. Even, such a right, if any, cannot affect the rights of others and more particularly, the right of speedy justice guaranteed under Articles 14 and 21 of the Constitution. In any case, all the aforesaid submissions are already considered by this Court earlier and more particularly in the decisions referred to hereinabove. Therefore, boycotting courts on every Saturday in the entire district of Dehradun, in several districts of Haridwar and Udham Singh Nagar District in the State of Uttarakhand is

1 *Ishwar Shandilya* v. *State of Uttarakhand*, 2019 SCC OnLine Utt 976

not justifiable at all and as such it tantamounts to contempt of the courts, as observed by this Court in the aforesaid decisions. Therefore, the High Court is absolutely justified in issuing the impugned directions. We are in complete agreement with the view expressed by the High Court and the ultimate conclusion and the directions issued by the High Court. Therefore, the present special leave petition deserves to be dismissed and is accordingly dismissed. We further direct all concerned and the District Bar Associations concerned to comply with the directions issued by the High Court impugned in the present SLP in its true spirit. It is directed that if it is found that there is any breach of any of the directions issued by the High Court in the impugned judgment[1] and order, a serious view shall be taken and the consequences shall follow, including the punishment under the Contempt of Courts Act.

7. As observed hereinabove, in spite of the decisions of this Court in *Harish Uppal*[2], *Common Cause*[3] and *Krishnakant Tamrakar*[4] and despite the warnings by the courts, time and again, still, in some of the courts, the lawyers go on strikes/are on strikes. It appears that despite the strong words used by this Court in the aforesaid decisions, criticising the conduct on the part of the lawyers to go on strikes, it appears that the message has not reached. Even despite the resolution of the Bar Council of India dated 29-9-2002, thereafter, no further concrete steps are taken even by the Bar Council of India and/or the other Bar Councils of the States. A day has now come for the Bar Council of India and the Bar Councils of the States to step in and to take concrete steps. It is the duty of the Bar Councils to ensure that there is no unprofessional and unbecoming conduct by any lawyer. As observed by this Court in *Harish Uppal*[2], the Bar Council of India is enjoined with a duty of laying down the standards of professional conduct and etiquette for the advocates. It is further observed that this would mean that the Bar Council of India ensures that the advocates do not behave in an unprofessional and unbecoming manner. Section 48 of the Advocates Act gives a right to the Bar Council of India to give directions to the State Bar Councils. It is further observed that the Bar Associations may be separate bodies but all the advocates who are members of such associations are under disciplinary jurisdiction of the Bar Councils and thus, the Bar Councils can always control their conduct. Therefore, taking a serious note of the fact that despite the aforesaid decisions of this Court, still the lawyers/Bar Associations go on strikes, we take suo motu cognizance and issue notices to the Bar Council of India and all the State Bar Councils to suggest the further course of action and to give concrete suggestions to deal with the problem of strikes/abstaining the work by the lawyers. The notices may be made returnable within six weeks from today. The Registry is directed to issue the notices to the Bar Council of India and all the State Bar Councils accordingly.

1 *Ishwar Shandilya* v. *State of Uttarakhand*, 2019 SCC OnLine Utt 976
2 *Harish Uppal* v. *Union of India*, (2003) 2 SCC 45
3 *Common Cause* v. *Union of India*, (2006) 9 SCC 295 : (2006) 2 SCC (Cri) 493
4 *Krishnakant Tamrakar* v. *State of M.P.*, (2018) 17 SCC 27

activity in the light of vital concerns with regard to protection of illegal extraction and transportation of minerals.

20. In the present case, by amendment dated 18-5-2017, the power has also been delegated to the Sub Divisional Office to initiate proceeding under Rule 53 and impose fine / penalty under the aforesaid provision, but also enhance a penalty of minimum thirty to maximum seventy times of the royalty of illegal extracted / transported minerals whereas as per unamended provision the penalty was ten times of the market value of the mineral and thus, we are of the view that the amending provisions of Rule 53 would apply in the case in hand in the matter of procedure only because no person has a vested right in any course or procedure. He has only the right of defence in the manner prescribed for time being by or for the authority, which the case is pending and, if, by amendment the mode of procedural is altered, he has no other right than to proceed according to the altered mode. A change of forum (from the court of Collector to Sub-Divisional Officer) is a matter of procedure and, therefore, if an amended Rules requires or give authority to Sub-Divisional Officer instead of Collector, the said authority is competent to consider the question and decide it in accordance with law.

21. For the above mentioned reasons, we are of the view that the Sub-Divisional Officer is competent to pass the impugned order, but he has acted illegally and the penalty has been imposed on the basis of amended Rule 53 of Rules of 1996, treated it to have retrospective operation and, therefore, we quash that part of the order and remit the matter back to the learned Sub-Divisional Officer to reconsider the same and decide the question of imposition of penalty as per the Rules, which was prevailing on the date of joint inspection made by the joint inspect team and the same has to be dealt with under amended provisions (only procedural part) and decide it afresh, after giving opportunity of hearing to the petitioner in accordance with law, preferably, within a period of sixty days from the date of filing of the certified copy of the order.

22. In the result, the writ petitions are allowed in part, to the extent as indicated hereinabove, but with no costs.

Petitions partly allowed.

ABSTAIN FROM COURT-WORK : LEGALITY OF CALL GIVEN BY BAR COUNCIL TO MEMBERS OF BAR

(Hemant Gupta, C. J. and Vijay Kumar Shukla, J.)

PRAVEEN PANDEY *Petitioner.*

vs.

STATE OF M. P. *Respondent.*

Advocates Act (25 of 1961), SS. 6, 35 and Constitution of India, Art. 19(1)(g) — *Abstain from Court Work - Call to all Advocates in State by State*

W. P. No. 8078 of 2018 decided on 10-4-2018. (Jabalpur)

Bar Council — Demand for appointment of High Court Judges, enactment of Advocates' Protection Act and seating arrangement of Advocates in High Court premises — Calling upon Advocates in State to observe a week long protest and to abstain from Court proceedings - Held, as illegal, unconstitutional, against statutory provisions as well as contrary to judgments of Supreme Court.

The State Bar Council derives its authority from the Advocates Act, 1961 and has to discharge functions which are conferred on it by the said Act. None of the provisions of the Act confers power on the statutory body to call the members to abstain from judicial work. The responsibility of every member of the Bar is to assist Court in the administration of justice. The call given to the Advocates by the State Bar Council to abstain from Judicial work negates the statutory right of Advocate where freedom to practice any profession is guaranteed under Article 19(1)(g) of the Constitution of India. The State Bar Council was expected to address the problem of the members of the Bar but instead, a decision taken to abstain from work is, in fact, aggravation of problem of mounting arrears as a result of which the poor, needy, under trials, convicts and numerous other persons desirous of seeking justice from the Courts may suffer on account of lack of legal assistance. The action of the State Bar Council to call upon the Advocates of the State to abstain from Court work, does not fall within the four corners of the Advocates Act, 1961 and the role assigned to the Bar Council. Such call for strike is illegal, unconstitutional, against the statutory provision and contrary to the Constitution Bench judgment of Supreme Court. (2003) 2 SCC 45, 2017(3) M.P.L.J. (Cri.) (S.C.) 188 and AIR 1996 Calcutta 331, Rel. (Paras 18 to 21)

अधिवक्ता अधिनियम (1961 का 25), धाराएं 6, 35 तथा भारत का संविधान, अनुच्छेद 19(1)(g) — न्यायालयीन कार्य से प्रविरत रहना — राज्य विधिज्ञ संघ द्वारा राज्य में सभी अधिवक्ताओं को आव्हान — उच्च न्यायालय के न्यायाधिशों की नियुक्ति, अधिवक्ता संरक्षण अधिनियम लागू करने एवं उच्च न्यायालय परिसरों में अधिवक्ताओं की बैठने की व्यवस्था के लिए मांग — एक सप्ताह के लिए विरोध करने एवं न्यायालय कार्यवाहियों से प्रविरत रहने के लिए राज्य में अधिवक्ताओं को आव्हान किया गया - इसे विधिविरुद्ध, असंवैधानिक, कानूनी उपबंधों के विरुद्ध साथ ही सर्वोच्च न्यायालय के निर्णयों के विपरित माना गया। (2003) 2 SCC 45, 2017(3) M.P.L.J. (Cri.) (S.C.) 188 एवं AIR 1996 Calcutta 331, अवलंबित। (पद 18 से 21)

Petitioner in person.

None for the respondents.

Mohd. Fahim Anwar, Registrar General and A. K. Shukla, Principal Registrar (Judicial), M. P. High Court.

List of cases referred :

1. *Ex-Capt. Harish Uppal vs. Union of India and another, (2003) 2 SCC 45* (Paras 3, 18)
2. *Dr. P. G. Najpande vs. State of M. P. and another, W. P. No. 4436/2018* (Para 8)

3.	*Arunava Ghosh and others vs. Bar Council of West Bengal and other, AIR 1996 Calcutta 331*	(Paras 13, 18, 19)
4.	*Hussain and another vs. Union of India, 2017(3) M.P.L.J. (Cri.) (S.C.) 188 = (2017) 5 SCC 702*	(Paras 16, 18)
5.	*Krishnakant Tamrakar vs. State of M. P., Criminal Appeal No. 470/2018 decided on 28-3-2018*	(Paras 17, 18)

ORDER

HEMANT GUPTA, C. J. :— The present petition in public interest has been filed by the petitioner, a practicing Advocate of this Court, challenging the call to all the Advocates in the State by the State Bar Council to abstain from Court work from 9th April, 2018 to 14th April, 2018. The demand is of appointment of High Court Judges, enactment of Advocates' Protection Act and seating arrangement of Advocates in the High Court premises.

2. The Chairman, State Bar Council of Madhya Pradesh is said to have addressed a Press Conference on 28th March, 2018 giving an ultimatum to the State for fulfillment of their demands by 8th of April, 2018 otherwise the State Bar Council will call the strike in whole of State of Madhya Pradesh and that no Advocate will appear before any Court. The Chairman has also threatened the Advocates that, whosoever will appear in the Courts, shall be subjected to a disciplinary action. News with regard to holding of Press Conference was published in the newspapers such as Patrika: Jabalpur (Annexure P-1) and Dainik Bhaskar: Jabalpur dated 29-3-2018 (Annexure P-2).

3. It is contended that the State Bar Council is a statutory body and it has no jurisdiction to call for the strike. The call of strike affects the urgent hearing matters which are pending in the Courts. The petitioner refers to a Constitution Bench judgment of the Supreme Court reported as *(2003) 2 SCC 45, Ex-Capt. Harish Uppal vs. Union of India and another.*

4. As per the listing mechanism in this Court, a Short Messaging Service (SMS) of hearing of the petition on 5-4-2018 was sent to Shri Kuldeep Singh, Panel Lawyer of State Bar Council of M. P. on 5-4-2018 at 12:46:34. The case was called for hearing at 2.30 p.m. when Shri Naman Nagrath, Senior Advocate appeared for the State Bar Council and the case was adjourned to 6-4-2018. On 6-4-2018, at about 12 p.m., the case was called. Shri Nagrath, stated that meeting of the office bearers of the State Bar Council with the office bearers of all the Bar Associations at the Principal Seat of High Court was convened at about 4.30 p.m. on 5th April, 2018 and it has been decided to call for voluntary abstaining from work by the members of the Bar. The case was ordered to be taken up at 01.00 p.m. with the direction that Shri Naman Nagrath to disclose the issues on which the members have decided to abstain from work and the names of the office bearers of the State Bar Council; office bearers of the different Bar Associations of the High Court of Principal Seat at Jabalpur, Gwalior and Indore so that further action, as may be permissible in law, can be considered. At 01.00 p.m. on 6th April, 2018, when the case was taken up, Shri Nagrath sought time to comply

with the order passed earlier in the day. On his request, the case was ordered to be taken up on 9-4-2018 at 2.30 p.m. However, when the case was called for hearing yesterday, Shri Nagrath did not appear.

5. The Registrar General of this Court produced on record a Press release and an appeal to the members of the different Bar Associations to attend the Court work issued earlier in the day on 9-4-2018. It was circulated that by abstaining from work from 9th April, 2018 to 15th April, 2018, approximately 960 Court working hours of the High Court will be jeopardized and about 40,000 working hours (of approximately 1315 Judicial Officers) in the Subordinate Courts will be affected. Shri A. K. Shukla, Principal Registrar (Judicial) has produced the record of the cases decided, as also the status of appointments in the Subordinate judiciary and the present vacancy position. Such details have been kept on record.

6. In the first representation dated 21st March, 2018, the State Bar Council has sought the resolution of three issues; (1) immediate steps for appointment of Judges to the High Court, (2) enactment of Advocates Protection Act and (3) appropriate arrangement for working space/chambers.

7. The Registrar General of this Court sent an information to the Chairman, State Bar Council on 22-3-2018 itself that the Chief Justice is conscious of the prevailing situation regarding the vacancies and necessary steps are being taken whereas the Issue Nos. 2 and 3 pertain to the State Government for which they need to directly approach the State Government. Therefore, there is no cause to propose to go for a week-long protest or for abstaining from judicial work. It is, thereafter, the Press Conference was held on 28th March, 2018. A supplementary representation was submitted on 5th April, 2018 raising grievance of non-sanctioning of 16 additional posts of High Court Judges; the vacant posts of District Judges and Additional District Judges; non-appointment of Presiding Officers of the District Consumer Redressal Forums and other Quasi-Judicial Tribunals; the system of payment of e-Court fee and new criminal listing mechanism. Therefore, the Bar Council has decided to continue with the protest from 9th April, 2018 to 14th April, 2018.

8. It cannot be disputed that the enactment of Advocates Protection Act or arrangement for working space/chambers, as sought, is to be considered by the State Government. As per information given by the Principal Registrar (Judicial), a public interest litigation bearing *W. P. No. 4436/2018, Dr. P. G. Najpande vs. State of M. P. and another* is pending in the High Court for non-appointment of the Presidents of the District Consumer Redressal Forums, which is now fixed for 30th April, 2018 in view of the statement of the State counsel that Chairpersons of 13 District Consumer Redressal Forum shall be appointed before the said date.

9. In respect of the vacancies in the subordinate Courts, it is pointed out that as many as 560 posts i.e. 235 in the Higher Judicial Service and 325 in Madhya Pradesh Judicial Services have been created by the State Government on

5th October, 2016 and such posts have been decided to be filled up in staggered manner i.e. 111 posts in 2016, 150 posts in 2017, 150 posts in 2018 and 149 posts in 2019 in order to ensure that necessary infrastructure is available for working of the officers. After sanction of 560 additional posts, the total posts as on 31st March, 2018 are 2021 out of which 706 posts are vacant including the newly created 560 posts. The appointment/selection of 424 Judicial Officers is in progress out of which 253 posts are to be filled in the year 2018 and the process of appointment of 171 officers is near completion. The selection process of 149 Judicial Officers i.e. 59 of Higher Judicial Service and 90 of State Judicial Service will be taken up in the year 2019. Therefore, it cannot be said that there is an acute shortage of the Judicial Officers.

10. The Principal Registrar (Judicial) furnished information regarding appeals preferred and decided in last two years. It shows that from 1st April, 2017 to 31st March, 2018 as many as 1717 Division Bench criminal appeals and 4476 Single Bench criminal appeals, total 6193 criminal appeals were decided. Out of such appeals 1656 criminal appeals i.e. 1239 Division Bench appeals and 417 Single Bench appeals, the accused persons were in custody. Still further, in 140 cases, Amicus Curiae were appointed. It may also be noticed that in the year 2016, 1658 Division Bench appeals were preferred out of which 519 appeals were decided whereas in the year 2017, total 1617 Division Bench appeals were preferred out of which 1390 appeals were decided. On the other hand, in the years 2016 and 2017, total number of 5631 and 7904 Single Bench criminal appeals were preferred and out of which 1464 and 4290 appeals were decided in the years 2016 and 2017 respectively. Thus, we find that disposal of the cases at the High Court level has not deteriorated but has substantially improved in the year 2017.

11. Though the statement of Shri Nagrath was that abstaining from work is voluntary but even Shri Nagrath has failed to appear on 9th April, 2018 when the present writ petition was called for hearing. None of the members of the Bar appeared for hearing though in few cases, on mention memo by the Members of the Bar, the writ petitions were listed for hearing on the same day. Therefore, it is not a voluntary act but a call given by a statutory body which is competent to take disciplinary action against the Advocates enrolled with it and is compelling the members of the Bar to abstain from work. The so-called object to abstain from work is that there are huge arrears. There is no doubt about it. But, the abstaining of work is not addressing the issue of reducing the arrears but is increasing the same. One can understand if the State Bar Council has to request the Courts to work extra to address the problem of arrears or the members of the Bar decide not to seek adjournments and to avoid repetitive arguments so that the disposal could be much better.

12. This Bench has been hearing criminal appeals in which the accused persons are in custody for more than 10 years at 03.30 p.m. every day for almost a year but the Bench is deprived of assistance of the Advocates, who are engaged

by the convicts and this Bench has to take assistance from the Legal Aid counsel to argue the appeals on behalf of the accused persons who are in custody for more than 10 years. Therefore, the State Bar Council was expected to address the problem of the members of the Bar of not appearing in Court but instead, a decision taken to abstain from work is, in fact, aggravation of problem of mounting arrears.

13. A Single Bench of Calcutta High Court in a judgment reported as *AIR 1996 Calcutta 331, Arunava Ghosh and others vs. Bar Council of West Bengal and other* was examining the resolution of the Bar Council of West Bengal to call the Advocates to abstain from attending the Courts in view of lack of Court infrastructure. The Court held that the Bar Council is to ensure safe place of work for all lawyers, as the lawyers were adjunct to the administration of justice and that the Bar Council had to ensure that the cause of administration of justice did not suffer. The Court held as under :

> "8. Quoting from observations of the Supreme Court and the English Courts in different cases relating to the nature and character of the legal profession and the standard of ethics to be followed by the Advocates and also referring to the rules framed by the Bar Council under section 49(1)(c) of the Advocates Act relating to standard of the professional conduct and etiquette, it has been further contended by the petitioners that the Advocates practise the profession of law to serve the people to secure justice for them and to do everything as agent of his client to espouse honourably and fearlessly the cause of his client although not as his client's mouthpiece, having allegiance to a higher cause, namely the cause of truth and justice which he secures as an officer of the Court. It is contended that such standard of professional conduct and etiquette imposes a compulsive duty on an Advocate to accept brief of a litigant unless exempted by the rules and to plead his cause in Court and not to withdraw from such duty without notice to his client and without reasonable cause.
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> 10. It has been prayed by the writ petitioners, inter alia, for a declaration that the respondents have no jurisdiction or power to call upon Courts/Tribunal/Authorities or the Advocates to cease work or to boycott any Court or to resort to strike so that normal works of the Courts are disrupted and the Advocates are prevented from practising profession of law; for a further direction upon the respondents to forebear from interfering with or suspending or prohibiting the Advocates from performing their professional work by calling upon them to cease work and for issue of a writ in the nature of prohibition prohibiting the respondents from giving any effect or further effect to the resolution dated 3rd May, 6th May, 11th May and 13th May, 1994 and for writ in the nature of mandamus directing the respondents to withdraw

and/or rescind such resolutions. A writ in the nature of *quo warranto* has also been asked for commanding the respondent No. 2 and respondent Nos. 5 to 27 to vacate the office of the members of the West Bengal Bar Council to withdraw and resile such resolution.

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28. The Bar Council of West Bengal and some other respondents supporting the stand of the Bar Council in their submission have not disputed the facts that the Bar Council being a statutory body its powers are circumscribed by the statute. But all of them have submitted, inter alia, that the Bar Council does possess the power even to call upon the Advocates to cease work for the purpose of protecting the interest of the entire legal fraternity in exercise of its function under section 6(1)(d) and (i) of the Advocates Act and all of them have justified such action of Bar Council by contending, inter alia, that such a measure was resorted to by the Bar Council as a last resort, for protecting the interest of the legal fraternity and as all other methods failed to rouse the State Government into action.

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41. Admittedly the Bar Council of West Bengal is State within the meaning of Article 12 of the Constitution of India. Every Act of State must be presumed to be informed with reason and in public interest. Whosoever seeks to displace this presumption has a heavy onus to discharge.

42. Section 6 of the Advocates Act lists within the functions of the Bar Council the doing of all other things necessary for discharging the functions from sub-sections 1(a) to 1(h). It was not possible for the legislature to visualise and accordingly to enumerate the specific actions that the Bar Council could take in the eventualities that might arise in course of time. The situation was singular. The Advocates were denied a safe place of work. The Bar Council which is State within the meaning of Article 12, found that exhortations were fruitless and in exasperation decided upon the cease work for a limited period with advance notice that if in the meantime anything meaningful was done, the cease work would not take effect. It was in the interest of all Advocates to ensure what the Bar Council was striving for and unless the action proposed was binding and unless the Bar Council had the authority to punish a violation, it would be a meaningless step and would hardly be a method of persuading the Government to take action.

43. The Bar Council had, therefore, to ensure safe place of work for all lawyers, not only the Lawyers affected in particular Courts, and also, since lawyers were adjunct of the administration of justice, the Bar Council had to ensure that the cause of administration of Justice did not suffer.

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51. Under section 35 of the Advocates Act when the State Bar Council on receipt of a complaint or otherwise has a reason to believe that any Advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee. In the instant case although by the impugned resolution dated 13th May, 1994 the Bar Council did not resolve that it had already reason to believe that the Advocates, who defied the call of the Bar Council for ceasing work have committed other misconduct, it resolved that show cause notices be issued against such Advocates and in the event the State Bar Council has reason to believe that such Advocates are guilty of other misconduct the case may be referred to the Disciplinary Committee.

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54. As to the merits of the controversy between the parties, it is pertinent to note, that in the instant case the Court is concerned only the existence or lack of jurisdiction of Bar Council to give call for cease work and to compel the Advocates on its roll to follow such resolution and the Court is not concerned with the question whether an association of Advocates can call for such a cease work or whether an Advocate individually or collectively has the right to strike work.

55. While examining, the issues which have been raised before this Court, it is necessary to keep in mind that the Bar Council of West Bengal or for the matter of that any State Bar Council or Bar Council of India is neither an Association nor a Guild of the Advocates nor the same is a Trade Union. The Bar Council of West Bengal and for the matter that all State Bar Council and All India Bar Council admittedly are statutory bodies created and/or reconstituted under the Advocates Act 1961. The fact that the Bar Council being a statutory body its powers and functions are circumscribed by the provisions of the Statute as asserted by the petitioners, is not really disputed by the respondents. The fact that the Bar Council has also not been invested specifically with the power of giving a call to the members on its roll to cease work either under the Advocates Act 1961 or under any other statute is not also disputed by the respondent. But the respondents have contended inter alia, that one of the functions of the Bar Council under section 6(1)(d) of the Advocates Act is to safeguard the rights, privileges and interest of Advocates on its roll and under section 6(1)(i) of the said Act, it has the power to do all other things necessary for discharging the functions enumerated in the other clause including clause (d) of sub-section (1) of section 6 of the said Act. It has been contended that to protect the rights, privileges and interest of the Advocates on its roll the Bar Council has the power under aforesaid clause (i) of sub-section (1) of section 6 to do all other things necessary to discharge such functions, and therefore it had the power to give call

for cease work as the same bona fide was thought necessary by the Bar Council to protect the interest of the Advocates, all other methods to protect the interest of the Advocates, because of the failure of the State Government to shift the Courts from the dilapidated building to a safer building, having failed to obtain result.

56. Assuming there is scope of such interpretation of section 6(1), (d) and (i) of the said Act as it is sought to be made by the respondents, namely the impugned action resorted to by the Bar Council having been thought to be necessary for protecting the interest of the Advocate the same was permissible and the Bar Council had the jurisdiction to take such action, then the question obviously comes in how far the Bar Council can go in the matter of taking any action or doing anything which is considered necessary for protection and safeguard the interest the rights and privileges of the Advocates. In doing such things what is thought by the Bar Council to be necessary, can it do such a thing which although may be thought to be necessary by the Bar Council for protecting the interest of the Advocates and their rights and privileges, which also takes away the statutory or constitutional right of an Advocate even though may be temporarily? The answer in my view will be in the negative. Such power to the Bar Council, which apart from being statutory body is also an authority within the meaning of Art. 12 of the Constitution, cannot be unbriddled and uncontrolled, but like all state actions must be free from arbitrariness, must be reasonable. The Bar Council being a statutory body while exercising its functions under section 6(1)(d) and (i) of the Advocates Act while doing all things which are necessary for discharging its various other functions enumerated in different clauses of sub-section (1) of section 6 including safeguarding the rights, privileges and interest of the Advocates on its roll cannot do such things which are illegal, or which are against the public policy or against the law of the land, which are unreasonable, arbitrary or which adversely affects the livelihood, right and interest of other persons including Advocates. In my view in the name of safeguarding the rights, privileges and interests of the Advocates on its roll the Bar Council cannot certainly do something which will take away, even though temporarily, the statutory and the constitutional right of an Advocate to practise, except under the provisions of section 35 of the Advocates Act.

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60. An examination of the Bar Council Act, 1926 and the Advocates Act, 1961 will clearly indicate that the State Bar Council has no power or jurisdiction to take away the right of an Advocate to practice as of right either temporarily or permanently or to compel him not to practice even for a day or affect his right to practise in any manner whatsoever except

by way of exercising, disciplinary jurisdiction under section 35 of the Advocates Act 1961.

61. Such being the position of law and admittedly, the State Bar Council also not having been specifically invested with any power to call upon the Advocates on its roll to cease work or to compel an Advocate to cease work, to read the existence of such power impliedly under clause (i) of sub-section (1) section 6 of the Advocates Act will be against all canons of interpretation particularly when the effect of the same would be negation and affectation of statutory right of Advocates to practice as of right.

62. Such call for cease work by the Bar Council and compelling an Advocate to cease work not only amounts to negation of such statutory right of Advocate under section 14 of the Bar Council Act to practise as of right, the same is also an invasion of the fundamental right of an Advocate as guaranteed under Art. 19(1)(g) of the Constitution of India under which the freedom to practise any profession is guaranteed subject to reasonable restrictions that may be imposed. In exercise of such fundamental right every Advocate has the freedom to practise as a lawyer. Subject to reasonable restrictions that might be imposed. The only reasonable restriction upon such freedom and right of an Advocate is provided in the aforesaid provision of section 14 of the Bar Council Act, 1926 and in the various regulatory measures including disciplinary power which could be exercised by the Bar Council under the Advocates Act, 1961. There is no other provision either in the Advocates Act or in the Bar Council Act or in any other legislation or enactment empowering the Bar Council to affect such right of an Advocate to practise as of right either by compelling him to cease work or in any other manner whatsoever."

14. We respectfully approve the reasoning and findings given in the said Judgment dealing with the right of the Bar Council to give call for abstaining work from the Courts.

15. A Constitution Bench of the Supreme Court in *Ex. Capt. Harish Uppal's* case (supra) observed as under :—

"20. Thus the law is already well settled. It is the duty of every Advocate who has accepted a brief to attend trial, even though it may go on day to day and for a prolonged period. It is also settled law that a lawyer who has accepted a brief cannot refuse to attend Court because a boycott call is given by the Bar Association. It is settled law that it is unprofessional as well as unbecoming for a lawyer who has accepted a brief to refuse to attend Court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council. It is settled law that Courts are under an obligation to hear and decide cases brought before them and cannot adjourn matters merely because lawyers are on strike. The law is that it is

the duty and obligation of Courts to go on with matters or otherwise it would tantamount to becoming a privy to the strike. It is also settled law that if a resolution is passed by Bar Associations expressing want of confidence in judicial officers it would amount to scandalising the Courts to undermine its authority and thereby the Advocates will have committed contempt of Court. Lawyers have known, at least since *Mahabir Prasad Singh vs. Jacks Aviation (P) Ltd., (1999) 1 SCC 37* that if they participate in a boycott or a strike, their action is ex-facie bad in view of the declaration of law by this Court. A lawyer's duty is to boldly ignore a call for strike or boycott of Court/s. Lawyers have also known, at least since Roman Services' case, that the Advocates would be answerable for the consequences suffered by their clients if the non-appearance was solely on grounds of a strike call.

21. It must also be remembered that an Advocate is an officer of the Court and enjoys special status in society. Advocates have obligations and duties to ensure smooth functioning of the Court. They owe a duty to their client. Strikes interfere with administration of justice. They cannot thus disrupt Court proceedings and put interest of their clients in jeopardy. In the words of Mr. H. M. Seervai, a distinguished jurist :

> "Lawyers ought to know that at least as long as lawful redress is available to aggrieved lawyers, there is no justification for lawyers to join in an illegal conspiracy to commit a gross, criminal contempt of Court, thereby striking at the heart of the liberty conferred on every person by our Constitution. Strike is an attempt to interfere with the administration of justice. The principle is that those who have duties to discharge in a Court of justice are protected by the law and are shielded by the law to discharge those duties, the advocates in return have duty to protect the Courts. For, once conceded that lawyers are above the law and the law Courts, there can be no limit to lawyers taking the law into their hands to paralyse the working of the Courts. "In my submission", he said that "it is high time that the Supreme Court and the High Courts make it clear beyond doubt that they will not tolerate any interference from anybody or authority in the daily administration of justice. For in no other way can the Supreme Court and the High Courts maintain the high position and exercise the great powers conferred by the Constitution and the law to do justice without fear or favour, affection or ill-will."

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35. In conclusion it is held that lawyers have no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any is required, can only be by giving press statements, TV interviews, carrying out of Court premises banners and/or placards, wearing black or white or any colour arm bands, peaceful protect marches outside and away from

Court premises, going on dharnas or relay fasts etc. It is held that lawyers holding Vakalats on behalf of their clients cannot refuse to attend Courts in pursuance of a call for strike or boycott. All lawyers must boldly refuse to abide by any call for strike or boycott. No lawyer can be visited with any adverse consequences by the Association or the Council and no threat or coercion of any nature including that of expulsion can be held out. It is held that no Bar Council or Bar Association can permit calling of a meeting for purposes of considering a call for strike or boycott and requisition, if any, for such meeting must be ignored. It is held that only in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, Courts may ignore (turn a blind eye) to a protest abstention from work for not more than one day. It is being clarified that it will be for the Court to decide whether or not the issue involves dignity or integrity or independence of the Bar and/or the Bench. Therefore in such cases the President of the Bar must first consult the Chief Justice or the District Judge before Advocate decide to absent themselves from Court. The decision of the Chief Justice or the District Judge would be final and have to be abided by the Bar. It is held that Courts are under no obligation to adjourn matters because lawyers are on strike. On the contrary, it is the duty of all Courts to go on with matters on their boards even in the absence of lawyers. In other words, Courts must not be privy to strikes or calls for boycotts. It is held that if a lawyer, holding a Vakalat of a client, abstains from attending Court due to a strike call, he shall be personally liable to pay costs which shall be in addition to damages which he might have to pay his client for loss suffered by him."

16. In another judgment reported as *2017(3) M.P.L.J. (Cri.) (S.C.) 188 = (2017) 5 SCC 702, Hussain and another vs. Union of India*, the Court held that the speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21 of the Constitution of India. After saying so, the Court held as under :—

"27. One other aspect pointed out is the obstruction of Court proceedings by uncalled for strikes/abstaining of work by lawyers or frequent suspension of Court work after condolence references. In view of judgment of this Court in *Harish Uppal vs. Union of India, (2003) 2 SCC 45*, such suspension of work or strikes is clearly illegal and it is high time that the legal fraternity realizes its duty to the society which is the foremost. Condolence references can be once in while periodically say once in two/three months and not frequently. Hardship faced by witnesses if their evidence is not recorded on the day they are summoned or impact of delay on undertrials in custody on account of such avoidable interruptions of Court proceedings is a matter of concern for any responsible body of professionals and they must take appropriate steps.

In any case, this needs attention of all authorities concerned - the Central Government/State Governments/Bar Councils/Bar Associations as well as the High Courts and ways and means ought to be found out to tackle this menace. Consistent with the above judgment, the High Courts must monitor this aspect strictly and take stringent measures as may be required in the interests of administration of justice.

28. Judicial service as well as legal service are not like any other services. They are missions for serving the society. The mission is not achieved if the litigant who is waiting in the queue does not get his turn for a long time. Chief Justices and Chief Ministers have resolved that all cases must be disposed of within five years which by any standard is quite a long time for a case to be decided in the first Court. Decision of cases of undertrials in custody is one of the priority areas. There are obstructions at every level in enforcement of right of speedy trial – vested interests or unscrupulous elements try to delay the proceedings. Lack of infrastructure is another handicap. In spite of all odds, determined efforts are required at every level for success of the mission. Ways and means have to be found out by constant thinking and monitoring. The Presiding Officer of a Court cannot rest in the state of helplessness. This is the constitutional responsibility of the State to provide necessary infrastructure and of the High Courts to monitor the functioning of subordinate Courts to ensure timely disposal of cases. The first step in this direction is preparation of an appropriate action plan at the level of the High Court and thereafter at the level of each and every individual judicial officer. Implementation of the action plan will require serious efforts and constant monitoring."

17. The Supreme Court in another judgment in *Criminal Appeal No. 470/2018, Krishnakant Tamrakar vs. State of M. P. decided on 28th March, 2018* considered various issues including the issue of uncalled for strikes by the members of the Bar. The Court held as under :—

"46. In *Ex-Capt. Harish Uppal vs. Union of India, (2003) 2 SCC 45*, this Court held that lawyers have no right to go on strike or to give a call for boycott of Courts nor can they abstain from the Courts. Calls given by Bar Association or Bar Council for such purpose cannot require the Court to adjourn the matters. Strike or abstaining from Court is unprofessional. Even though more than 15 years have passed after the said judgment was rendered, the judgment of this Court is repeatedly flouted and no remedial measures have been adopted. Regulation of right of appearance in Courts is within the jurisdiction of the Courts. This Court also asked the Law Commission to suggest appropriate changes in the regulatory framework for the legal profession. The Law Commission has submitted 266th Report. The problem continues seriously affecting the rule of law.

47. In *Mahipal Singh Rana vs. State of U. P., (2016) 8 SCC 335*, this Court noted that the High Courts can frame rules to lay down conditions

on which Advocates can be permitted to practise in Courts. An Advocate can be debarred from appearing in Court even if the disciplinary jurisdiction for misconduct is vested with the Bar Councils. This Court requested the Law Commission to look into all relevant aspects relating to regulation of legal profession.

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51. Since the strikes are in violation of law laid down by this Court, the same amount to contempt and at least the office bearers of the associations who give call for the strikes cannot disown their liability for contempt. Every resolution to go on strike and abstain from work is per se contempt. Even if proceedings are not initiated individually against such contemnors by the Court concerned or by the Bar Council concerned for the misconduct, it is necessary to provide for some mechanism to enforce the law laid down by this Court, pending a legislation to remedy the situation.

52. Accordingly, we consider it necessary, with a view to enforce fundamental right of speedy access to justice under Articles 14 and 21 and law laid by this Court, to direct the Ministry of Law and Justice to present at least a quarterly report on strikes/abstaining from work, loss caused and action proposed. The matter can thereafter be considered in its contempt or inherent jurisdiction of this Court. The Court may, having regard to the fact situation, hold that the office bearers of the Bar Association/Bar Council who passed the resolution for strike or abstaining from work, are liable to be restrained from appearing before any Court for a specified period or until such time as they purge themselves of contempt to the satisfaction of the Chief Justice of the concerned High Court based on an appropriate undertaking/conditions. They may also be liable to be removed from the position of office bearers of the Bar Association forthwith until the Chief Justice of the concerned High Court so permits on an appropriate undertaking being filed by them. This may be in addition to any other action that may be taken for the said illegal acts of obstructing access to justice. The matter may also be considered by this Court on receipt of a report from the High Courts in this regard. This does not debar report/petition from any other source even before the end of a quarter, if situation so warrants."

18. The Bar Council is a creation of the Advocates Act, 1961 (in short "the Act") and is a body corporate. The function of the State Bar Council is to admit persons as Advocates on its roll and to entertain and determine cases of misconduct against Advocates and to safeguard the rights, privileges and interests of Advocates on its roll but giving of a call by a statutory body established under the Act to entertain and to decide the cases of misconduct against Advocates, cannot itself indulge in an act which is not permissible under the Act nor is permissible in view of the Constitution Bench judgment of the

Supreme Court in *Ex-Capt. Harish Uppal* (supra) and subsequent pronouncements of the Supreme Court in *Hussain's* case (supra); *Krishnakant Tamrakar's* case (supra) as well as the decision of the Calcutta High Court in *Arunava Ghosh's* case (supra), as referred to above.

19. If an Advocate does not appear at the time of hearing of the cases, he can be proceeded against for misconduct for negligence in defending the interest of his client. The call of the Bar Council to Advocates of the State to abstain from work, does not fall within the four corners of the Act and the role assigned to the Bar Council. The State Bar Council derives its authority from the Act and has to discharge functions which are conferred on it. None of the provisions of the Act confers power on the statutory body to call the members to abstain from judicial work which is a responsibility of every member of the Bar in terms of the provisions of the Act itself. It has been rightly held by the Calcutta High Court in *Arunava Ghosh* (supra) that the Act does not confer any power or jurisdiction on the State Bar Council to take away the right of an Advocate to practice as of right either temporarily or permanently or to compel him not to practice even for a day or affect his right to practice in any manner whatsoever except by way of exercising disciplinary jurisdiction under section 35 of the Act. Therefore, the call given to the Advocates to abstain from judicial work negates the statutory right of Advocates to practice and also is an violation of fundamental right of an Advocate where freedom to practice any profession is guaranteed under section 19(1)(g) of the Constitution of India.

20. In view of the foregoing, we find that the decision of the State Bar Council calling upon the Advocates in the State to observe a week-long protest and to abstain from all judicial works and Court proceedings is illegal, unconstitutional and against the statutory provisions as well as contrary to the judgments of the Supreme Court. Therefore, we hold the call to abstain from Court work vide letters dated 21st March, 2018 and 5th April, 2018 as illegal and against the provisions of the Advocates Act and the Judgments on the subject.

21. Consequently, we direct the Advocates in the State to resume the work forthwith so that the poor, needy, under-trials, convicts and numerous other persons desiring to seek justice from the Courts do not suffer on account of lack of legal assistance for the reason that the members of the Bar are not available to work in the Courts.

22. A copy of this Order be served on the Bar Council of India, State Bar Council; Bar Associations on the Principal Seat and Benches of this Court; Chief Secretary and Principal Secretary (Law) of the State of Madhya Pradesh forthwith for information and necessary action. The order be displayed prominently on the website of this Court for information of the Advocates and General Public as well.

23. List on 11-4-2018 for further proceedings.

Order accordingly.

2-Judge Bench
2020
July 6

(2020) 7 Supreme Court Cases 805

(BEFORE ARUN MISHRA AND S. ABDUL NAZEER, JJ.)

REEPAK KANSAL .. Petitioner;

Versus

SECRETARY GENERAL, SUPREME COURT OF INDIA AND OTHERS .. Respondents.

Writ Petition (C) No. 541 of 2020*, decided on July 6, 2020

Constitution of India — Art. 32 — Maintainability — Defective petitions and delay in removing defects by petitioner — Baseless and reckless allegations against Registry of Court about delayed listing, charging excess fees, etc., tagging cases with other cases without authorisation of Court and favouritism towards influential lawyers/petitioners — There being no merit in allegations, writ petition dismissed with costs of Rs 100 on the petitioner advocate as a token to remind him of his responsibility towards the noble profession and that he ought not to have preferred such a petition (Paras 1, 22 and 23)

— (i) Facts — Three instances were alleged by the petitioner — (i)(a) In the first instance, the writ petition filed during COVID-19 Lockdown period was decided within 10 days with a direction to Union of India to examine the feasibility of implementing the prayer, that is, implementing One Nation One Ration Card Scheme — (i)(b) In the second instance, in spite of defects being noted in the writ petition, it was listed within five working days, which cannot be considered as inordinate — (i)(c) In the third instance, the petitioner himself took 13-14 days to remove the defect for which there was a delay of about 20 days in listing of matter from date of filing — Thereafter, within three days the matter was heard and dismissed (Paras 8 to 11)

— (ii) Recklessness and careless conduct of petitioner in filing petition — (ii)(a) Petitioner had capability to argue as he was an advocate of Court Thus the circular of his letter seeking adjournment by expecting a call from Registrar regarding his fitness to argue in person was not proper (ii)(b) Petitioner was careless in making allegations — He sought time to collect evidence in support of his allegations — (ii)(c) Petitioner erred in impleading proper parties He ought to have impleaded Supreme Court of India through Secretary General (Paras 14 to 16)

(iii) Judicial Notice of relevant facts (iii)(a) Large number of petitions filed are defective and yet parties insist and seek permission to mention them so that it could be listed urgently Parties filing defective petitions should not expect an urgent listing of same instantly — (iii)(b) To err is human and there can be an error on the part of the Dealing Assistants too To expect perfection from them is too much, particularly when they are working to their maximum capacity even during the pandemic despite danger to their life and safety caused due to pandemic, and when several of the Dealing Staff, as well as Officers, have suffered due to COVID-19 During such a hard time, it was not

* Under Article 32 of the Constitution of India

expected of the petitioner who is an officer of the Court to file such a petition to demoralise the Registry instead of recognising the task undertaken by them (iii)(c) It has become a widespread practice to blame the Registry for no good reasons — Such evil is also spreading in the various High Courts

— (iv) Noble profession — Duty of Advocates and Registry — It should be remembered that worthy lawyers are the part of the judicial system, are officers of the court and are a class apart in the society — The Court expects members of the noble fraternity to respect themselves first The Registry is part and parcel of the system, and the system has to work in tandem and mutual reverence The Court also expects from the Registry to work efficiently and effectively — At the same time, it is expected of the lawyers also to remove the defects effectively and not to unnecessarily cast aspersions on the system — Courts, Tribunals and Judiciary — Judicial Process — Administration/ Registry of Courts Supreme Court, Federal Court and Privy Council Role of the Bar, Administration and Public Institutions/Officers — Advocates — Professional standards, ethics and Duties of Advocates (Paras 18 to 21)

The petitioner, an advocate in the Supreme Court, filed a writ petition under Article 32 of the Constitution seeking refund of alleged excess court fees and other charges. The petitioner also prayed for taking action against erring officers of the Supreme Court for their involvement in the listing, clearing and Bench hunting. The petitioner alleged favouritism towards influential lawyers/petitioners, law firms, etc., and prayed for a direction to respondents to give equal treatment towards ordinary lawyers/petitioners.

Three instances were alleged by the petitioner. In the first instance, the writ petition of the petitioner, filed during COVID-19 Lockdown period was decided within 10 days with a direction to the Union of India to examine the feasibility of implementing the prayer of the petitioner, that is, One Nation One Ration Card Scheme. In the second instance, in spite of defects being noted in the writ petition, it was listed within five working days. In the third instance, the petitioner himself took 13-14 days to remove the defect for which there was a delay of about 20 days in listing of matter from date of filing. Thereafter, within three days the matter was heard and dismissed.

The Court in present matter took judicial notice of widespread, baseless and reckless allegations against the Registry. The Court arrived at a factual finding that the petitioner was careless in making allegations, had not impleaded the proper and necessary parties and that allegations had no merit.

Dismissing the writ petition with costs of Rs 100 as a token to remind the petitioner about his responsibility towards the noble profession, the Supreme Court

Held :

Court not functioning with full strength due to COVID-19 Lockdown

On facts and considering the ongoing pandemic caused by COVID-19, the Registry of the Court is working with less strength, and therefore, there was no justification for the petitioner to allege discrimination vis-à-vis to him and to favour any particular individual. The defects were there in all the three cases filed by the petitioner. (Para 13)

Recklessness and careless conduct of petitioner in filing petition

The petitioner has filed this writ application in a hurry. When it was listed, he circulated a letter to the effect that, as per procedure, he expected that he would be called for interaction by the Registrar to find out his fitness whether he could argue a case in person. The petitioner ought to know that he is an advocate of the Court and argues the matter. As such, it was not necessary to summon him for adjudging his capability as to whether he could argue the case. There was no justification to entertain this kind of apprehension in mind. He ought to have been careful in circulating such a letter seeking a wholly unjustified adjournment. (Para 14)

In the letter circulated by him, it was further stated that he wanted to collect the evidence and to file it, and for that purpose, he prayed for six weeks' time. The conduct indicates that the petitioner was careless and not serious while he made the allegations. He filed the writ application without due inquiries, and without collecting the requisite material. Such conduct was least expected of an officer of the Supreme Court. The petitioner ought to have been careful before cast of unnecessary aspersions on the Registry and the staff of the Supreme Court. (Para 15)

The petition as filed could not be said to be maintainable. The petitioner has impleaded the Secretary General, various Registrars, and officers of the Registry, SCBA, and the Union of India in his writ application. In contrast, the writ is filed against the Supreme Court itself. He ought to have impleaded the Supreme Court of India in the writ application through Secretary General. The omission indicates careless conduct on the part of the petitioner. The petition was filed in undue haste. (Para 16)

Judicial notice

Judicial notice taken of the fact that a large number of petitions are filed which are defective; still, the insistence is made to list them and mention is made that they should be listed urgently. It happens in a large number of matters, and unnecessary pressure is put upon the Assistants dealing with the cases. Due to mistakes/carelessness when petitions with defects are filed, it should not be expected that they should be listed instantly. To err is human and there can be an error on the part of the Dealing Assistants too. This is too much to expect perfection from them, particularly when they are working to their maximum capacity even during the pandemic. The cases are being listed. It could not be said that there was an inordinate delay in listing the matters in view of the defects. The Court functioned during the lockdown, the cases were scanned and listed by the Registry. The staff of the Court is working despite danger to their life and safety caused due to pandemic, and several of the Dealing Staff, as well as Officers, have suffered due to COVID-19. During such a hard time, it was not expected of the petitioner who is an officer of the Court to file such a petition to demoralise the Registry instead of recognising the task undertaken by them even during the pandemic and lockdown period. (Para 17)

It has become a widespread practice to blame the Registry for no good reasons. To err is human, as many petitions are filed with defects, and the defects are not cured for years together. A large number of such cases were listed in the recent past for removal of defects which were pending for years. In such situation, when the pandemic is going on, baseless and reckless allegations are made against the Registry, which is part and parcel of the judicial system. Judicial notice of the fact

that such evil is also spreading in the various High Courts, and the Registry is blamed unnecessarily for no good reasons. (Para 18)

No merit — Writ petition dismissed

There is no ground to entertain the petition. The petitioner should be more careful and live up to the dignity of the profession which it enjoys. (Para 22)

The petition is dismissed with costs of Rs 100 (Rupees one hundred only) on the petitioner as a token to remind his responsibility towards noble profession and that he ought not to have preferred such a petition. (Para 23)

Reepak Kansal v. *Union of India*, (2020) 7 SCC 815; *Reepak Kansal* v. *Union of India*, 2020 SCC OnLine SC 585, *referred to*

Noble profession

It is to be remembered by worthy lawyers that they are the part of the judicial system; they are officers of the court and are a class apart in the society. (Para 18)

The Court expects members of the noble fraternity to respect themselves first. They are an intellectual class of the society. What may be proper for others may still be improper for them, the expectations from them are to be exemplary to the entire society, then only the dignity of noble profession and judicial system can be protected. The Registry is nothing but an arm of the Court and an extension of its dignity. The Bar is an equally respected and responsible part of the integral system, The Registry is part and parcel of the system, and the system has to work in tandem and mutual reverence. The Court also expects from the Registry to work efficiently and effectively. At the same time, it is expected of the lawyers also to remove the defects effectively and not to unnecessarily cast aspersions on the system. (Paras 19 to 21)

R. Muthukrishnan v. *High Court of Madras*, (2019) 16 SCC 407 : (2020) 2 SCC (Civ) 502 : (2020) 2 SCC (Cri) 300; *Kamini Jaiswal* v. *Union of India*, (2018) 1 SCC 156 : (2018) 1 SCC (Cri) 297, *relied on*

Charan Lal Sahu v. *Union of India*, (1988) 3 SCC 255 : 1988 SCC (Cri) 662; *R.K. Anand* v. *High Court of Delhi*, (2009) 8 SCC 106 : (2010) 2 SCC (Cri) 563, *cited*

SS-D/64755/C

Advocates who appeared in this case :

Tushar Mehta, Solicitor General, Piyush Beriwal, Kanu Aggarwal, Arvind Kr. Sharma and B.V. Balaram Das, Advocates, for the Respondents;

Petitioner-in-Person.

Chronological list of cases cited ***on page(s)***

1. (2020) 7 SCC 815, *Reepak Kansal* v. *Union of India* 810*f-g*, 810*g-h*
2. 2020 SCC OnLine SC 585, *Reepak Kansal* v. *Union of India* 811*c-d*, 811*d*
3. (2019) 16 SCC 407 : (2020) 2 SCC (Civ) 502 : (2020) 2 SCC (Cri) 300, *R. Muthukrishnan* v. *High Court of Madras* 813*a*
4. (2018) 1 SCC 156 : (2018) 1 SCC (Cri) 297, *Kamini Jaiswal* v. *Union of India* 814*f*
5. (2009) 8 SCC 106 : (2010) 2 SCC (Cri) 563, *R.K. Anand* v. *High Court of Delhi* 814*g-h*
6. (1988) 3 SCC 255 : 1988 SCC (Cri) 662, *Charan Lal Sahu* v. *Union of India* 814*f*

The Judgment of the Court was delivered by

ARUN MISHRA, J.— The petitioner, who is an advocate practising in this Court, has filed the writ petition under Article 32 of the Constitution of India against various officers of the Registry of this Court and the Union of India. Prayer has been made to issue an appropriate writ, order or direction in the nature of mandamus directing the respondents not to give preference to the

cases filed by influential lawyers/petitioners, law firms, etc. Prayer has been made to direct the respondents to give equal treatment to the cases filed by ordinary lawyers/petitioners and not to point out unnecessary defects, refund the excess court fee and other charges, and not to tag the cases without order or direction of the Court with other cases. A prayer has also been made to direct the Secretary General of this Court to take action against the erring officers for their involvement in the listing, clearing and Bench hunting.

2. It is averred in the petition that equal treatment has not been given to the ordinary lawyers/litigants. They favour some law firms or advocates for reasons best known to them.

3. The petitioner's first instance is that Writ Petition (Civil) D. No. 10951 of 2020 was filed by him on 16-4-2020. The Registry pointed out three defects i.e.

(1) Court fee of Rs 530 was not paid,

(2) Documents to be placed as per index, and

(3) Details given in index were incomplete and annexures were not filed, matter to be rechecked.

The petitioner had clarified vide email dated 18-4-2020, that he had paid the court fee of Rs 730 and there was no annexure with the petition. However, the petitioner was forced to pay more court fees to get the matter listed. Despite the letter of urgency, the Registry failed to register and list the writ petition. The petitioner requested the Secretary, Supreme Court Bar Association, about not listing the writ petition. On 27-4-2020, the writ petition was listed before the Court.

4. The second instance given by the petitioner is that Writ Petition (Civil) D. No. 11236 of 2020 was filed on 12-5-2020, which has not been listed by the Registry till today. He was informed that there were no defects in the writ petition, but a copy of the writ petition was missing. After that, no update was given by the Registry.

5. The third instance given is about Writ Petition (Civil) No. 522 of 2020 (Diary No. 11552 of 2020) filed by the petitioner on 20-5-2020. The Dealing Assistant pointed out defects on 26-5-2020. The defects were pointed out by the Dealing Assistant after six days of filing, though the application for urgency was filed in the petition. The following note was made by the Registry:

> "MATTER NEEDS TO BE RECHECKED AS WHOLE INDEX IS BLANK, PETITION, AFFIDAVIT, VAKALATNAMA, MEMO OF APPEARANCE AND APPLICATION ALL ARE UNSIGNED AND DEFICIT COURT FEE, ETC."

The petitioner clarified that the signed documents were already uploaded. The matter was urgent, and he had uploaded them again along with the signed documents on 26-5-2020. Again the defects were pointed out on 29-5-2020, by the Dealing Assistant to the following effect:

> "Application is not proper as heading not tally with index and be specific about the subject and prayer of application."

The petitioner cured the defects on 29-5-2020. After that, the Dealing Assistant did not recheck the matter. On 2-6-2020, the petitioner made a call and requested the Branch Officer concerned to direct the Dealing Assistant to recheck the matter. On 2-6-2020, the matter was rechecked and numbered as Diary No. 11552 of 2020. The case was verified on 6-6-2020, and listed for 6-7-2020 (computer-generated), which would make the case infructuous. The application for urgency was not considered. The petitioner was informed that the case was likely to be listed on 6-7-2020. He sent an email about the urgency. The Registry was not willing to list Diary No. 11552 of 2020 despite the application for urgency. Hence, the writ petition has been filed.

6. It is averred that on 23-4-2020, WP Diary No. 11006 of 2020 titled as *Arnab Ranjan Goswami* v. *Union of India* was filed at 8.07 p.m. without annexure. The Registry had chosen not to point out any defects, and a special supplementary list was uploaded on the same day. The category was not specified in the notification to be heard during a nationwide lockdown. No procedure was followed by the Registry for urgent hearing during the lockdown. The petitioner made a complaint to Secretary General against the illegal activities of the Registry but the same is without response.

7. We have heard the petitioner. The present writ petition was initially listed for 18-6-2020, however on 17-6-2020, a letter was circulated by the petitioner that he was under the impression that Registry would call the petitioner to interact with the Registrar in order to appear and argue in person as per the procedure. Still, it was not intimated to the petitioner that the Registry exempted the petitioner, and there was no need to interact with the Registrar. The petitioner was out of Delhi due to pre-arrangement and did not carry a soft or hard copy of the writ petition to argue the matter. The petitioner also prayed for time of six weeks to file annexure/evidence i.e. complaint/reminder concerning de-tagging of writ, delay in checking and rechecking the matters, application, and reply under RTI regarding de-tagging, proof of excess court fee, etc. to prove his submissions before this Court. The prayer to adjourn the case was declined, and the case was listed for hearing on 19-6-2020. The petitioner was heard in person. He repeated the facts about the discrimination being meted out by the Registry of not listing the cases promptly.

8. We have also perused the files of the cases. Writ Petition (C) D. No. 10951 of 2020 was filed on 17-4-2020 during the nationwide lockdown, under Article 32 of the Constitution of India with a prayer for the One Nation One Ration Card Scheme. It was heard and decided on 27-4-2020[1]. The Union of India was directed to examine whether it was feasible for it to implement the Scheme at this stage or not and take appropriate decision in this regard, keeping in view the present circumstances. Accordingly, the writ petition was disposed of.

9. Although defects were noted, Writ Petition (C) Diary No. 10951 of 2020 was listed, heard, and finally decided on 27-4-2020[1]. It was filed on 17-4-2020. 18-4-2020 and 19-4-2020 were holidays. There were only five working days,

1 *Reepak Kansal* v. *Union of India*, (2020) 7 SCC 815

and during the nationwide lockdown, the Court functioning was minimal. The case was mentioned in the cause list on 26-4-2020, to be listed on 27-4-2020. Thus, it could not be said that there was delay much less inordinate, one by the officials of the Registry in listing the matter mentioned above.

10. Concerning the second instance i.e. Diary No. 11236 of 2020, which was filed by the petitioner on 9-5-2020, the Registry has noted several defects on 14-5-2020. The petition is still lying with defects.

11. Concerning the third instance i.e. Writ Petition No. 522 of 2020 (D. No. 11552 of 2020), the same was filed on 20-5-2020. Again, a defective petition and defects were pointed out by the Registry on 26-5-2020, that the whole index was blank. The petition, affidavit, vakalatnama, memo of appearance, and application were all unsigned with a deficit court fee, etc. The petitioner removed the defects. However, other defects were caused, such as the application filed was not proper as the heading did not tally with the index, and specific subjects and prayers were not mentioned. The defects were recured, and the petition was refiled on 3-6-2020. The matter was processed and listed on 9-6-2020, and was heard and dismissed on 12-6-2020[2], as other matters on the similar issues were pending as such the matter was not considered to be necessary. The petitioner has not disclosed about listing of the case for 12-6-2020, and its decision and averred that the computer-generated date was 6-7-2020. The Registry did not follow the computer-generated date, and the case was listed for 12-6-2020, on which it was dismissed[2]. The petitioner himself was responsible for 12-13 days of delay in removing the defects.

12. As to case of Arnab Goswami, it was listed urgently in view of the order of the competent authority. It pertained to liberty and freedom of media.

13. In the aforesaid circumstances, considering the ongoing pandemic caused by COVID-19, the Registry of this Court is working with less strength, and because of the facts described above and circumstances, we find that there was no justification for the petitioner to allege discrimination vis-à-vis to him and to favour any particular individual. The defects were there in all the three cases filed by the petitioner.

14. The petitioner has filed this writ application in a hurry. When it was listed, he circulated a letter to the effect that, as per procedure, he expected that he would be called for interaction by the Registrar of this Court to find out his fitness whether he could argue a case in person. The petitioner ought to know that he is an advocate of this Court and argues the matter in this Court. As such, it was not necessary to summon him for adjudging his capability as to whether he could argue the case. Be that as it may. Circulating such a letter was not appropriate at his stance and why he doubted his ability to argue. There was no justification to entertain this kind of apprehension in mind. He ought to have been careful in circulating such a letter seeking a wholly unjustified adjournment.

2 *Reepak Kansal* v. *Union of India*, 2020 SCC OnLine SC 585

15. In the letter circulated by him, it was further stated that he wanted to collect the evidence and to file it, and for that purpose, he prayed for six weeks' time. The conduct indicates that the petitioner was careless and not serious while he made the allegations. He filed the writ application without due inquiries, and without collecting the requisite material. Such conduct was least expected of an officer of this Court. The petitioner ought to have been careful before cast of unnecessary aspersions on the Registry and the staff of this Court.

16. The petition as filed could not be said to be maintainable. The petitioner has impleaded the Secretary General, various Registrars, and officers of the Registry, SCBA, and the Union of India in his writ application. In contrast, the writ is filed against this Court itself. He ought to have impleaded the Supreme Court of India in the writ application through Secretary General. The omission indicates careless conduct on the part of the petitioner. The petition was filed in undue haste.

17. We take judicial notice of the fact that a large number of petitions are filed which are defective; still, the insistence is made to list them and mention is made that they should be listed urgently. It happens in a large number of matters, and unnecessary pressure is put upon the Assistants dealing with the cases. We find due to mistakes/carelessness when petitions with defects are filed, it should not be expected that they should be listed instantly. To err is human and there can be an error on the part of the Dealing Assistants too. This is too much to expect perfection from them, particularly when they are working to their maximum capacity even during the pandemic. The cases are being listed. It could not be said that there was an inordinate delay in listing the matters in view of the defects. The Court functioned during the lockdown, the cases were scanned and listed by the Registry. The staff of this Court is working despite danger to their life and safety caused due to pandemic, and several of the Dealing Staff, as well as Officers, have suffered due to COVID-19. During such a hard time, it was not expected of the petitioner who is an officer of this Court to file such a petition to demoralise the Registry of this Court instead of recognising the task undertaken by them even during the pandemic and lockdown period.

18. We see, in general, it has become a widespread practice to blame the Registry for no good reasons. To err is human, as many petitions are filed with defects, and the defects are not cured for years together. A large number of such cases were listed in the recent past before the Court for removal of defects which were pending for years. In such situation, when the pandemic is going on, baseless and reckless allegations are made against the Registry of this Court, which is part and parcel of the judicial system. We take judicial notice of the fact that such evil is also spreading in the various High Courts, and the Registry is blamed unnecessarily for no good reasons. It is to be remembered by worthy lawyers that they are the part of the judicial system; they are officers of the court and are a class apart in the society.

19. Regarding exemplary behaviour from members of noble profession in *R. Muthukrishnan* v. *High Court of Madras*[3], the Court observed concerning the expectation from gentlemen lawyers, thus: (SCC pp. 426-27, 435-36 & 476, paras 25-27, 44 & 85)

> "25. The role of a lawyer is indispensable in the system of delivery of justice. He is bound by the professional ethics and to maintain the high standard. His duty is to the court, to his own client, to the opposite side, and to maintain the respect of opposite party counsel also. What may be proper to others in the society, may be improper for him to do as he belongs to a respected intellectual class of the society and a member of the noble profession, the expectation from him is higher. Advocates are treated with respect in society. People repose immense faith in the judiciary and judicial system and the first person who deals with them is a lawyer. Litigants repose faith in a lawyer and share with them privileged information. They put their signatures wherever asked by a lawyer. An advocate is supposed to protect their rights and to ensure that untainted justice is delivered to his cause.
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> 26. The high values of the noble profession have to be protected by all concerned at all costs and in all the circumstances cannot be forgotten even by the youngsters in the fight of survival in formative years. The nobility of legal profession requires an advocate to remember that he is not over attached to any case as advocate does not win or lose a case, real recipient of justice is behind the curtain, who is at the receiving end. As a matter of fact, we do not give to a litigant anything except recognising his rights. A litigant has a right to be impartially advised by a lawyer. Advocates are not supposed to be money guzzlers or ambulance chasers. A lawyer should not expect any favour from the Judge and should not involve by any means in influencing the fair decision-making process. It is his duty to master the facts and the law and submit the same precisely in the court, his duty is not to waste the courts' time.
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> 27. It is said by Alexander Cockburn that "the weapon of the advocate is the sword of a soldier, not the dagger of the assassin". *It is the ethical duty of lawyers not to expect any favour from a Judge. He must rely on the precedents, read them carefully and avoid corruption and collusion of any kind, not to make false pleadings and avoid twisting of facts. In a profession, everything cannot be said to be fair even in the struggle for survival. The ethical standard is uncompromisable. Honesty, dedication and hard work is the only source towards perfection. An advocate's conduct is supposed to be exemplary.* In case an advocate causes disrepute of the Judges or his colleagues or involves himself in misconduct, that is the most sinister and damaging act which can be done to the entire legal system. Such a person is definitely deadwood and deserves to be chopped off.
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3 (2019) 16 SCC 407 : (2020) 2 SCC (Civ) 502 : (2020) 2 SCC (Cri) 300

44. The Bar Council has the power to discipline lawyers and maintain nobility of profession and that power imposes great responsibility. The court has the power of contempt and that lethal power too accompanies with greater responsibility. Contempt is a weapon like *Brahmastra* to be used sparingly to remain effective. At the same time, a Judge has to guard the dignity of the Court and take action in contempt and in case of necessity to impose appropriate exemplary punishment too. *A lawyer is supposed to be governed by professional ethics, professional etiquette and professional ethos which are a habitual mode of conduct. He has to perform himself with elegance, dignity and decency. He has to bear himself at all times and observe himself in a manner befitting as an officer of the court. He is a privileged member of the community and a gentleman. He has to mainsail with honesty and sail with the oar of hard word, then his boat is bound to reach to the bank. He has to be honest, courageous, eloquent, industrious, witty and judgmental.*

* * *

85. Soul searching is absolutely necessary and the blame game and maligning must stop forthwith. Confidence and reverence and positive thinking is the only way. It is pious hope that the Bar Council would improve upon the function of its Disciplinary Committees so as to make the system more accountable, publish performance audit on the disciplinary side of various Bar Councils. The same should be made public. The Bar Council of India under its supervisory control can implement good ideas as always done by it and would not lag behind in cleaning process so badly required. It is to make the profession more noble and it is absolutely necessary to remove the black sheep from the profession to preserve the rich ideals of the Bar and on which it struggled for the values of freedom. It is basically not for the Court to control the Bar. It is the statutory duty of the Bar to make it more noble and also to protect the Judges and the legal system, not to destroy the Bar itself by inaction and the system which is important pillar of democracy." (emphasis supplied)

20. In *Kamini Jaiswal* v. *Union of India*[4], it was observed: (SCC p. 182, paras 24-25)

"*24*. ... In *Charan Lal Sahu* v. *Union of India*[5], this Court has observed that in a petition filed under Article 32 in the form of PIL attempt of mudslinging against the advocates, Supreme Court and also against the other constitutional institutions indulged in by an advocate in a careless manner, meaningless and as contradictory pleadings, clumsy allegations, contempt was ordered to be drawn. The Registry was directed not to entertain any PIL petition of the petitioner in future.

25. In *R.K. Anand* v. *High Court of Delhi*[6], this Court observed that there could be ways in which conduct and action of malefactor was

4 (2018) 1 SCC 156 : (2018) 1 SCC (Cri) 297
5 (1988) 3 SCC 255 : 1988 SCC (Cri) 662
6 (2009) 8 SCC 106 : (2010) 2 SCC (Cri) 563

professional misconduct. The purity of the court proceedings has to be maintained. The Court does not only have the right but also an obligation to protect itself and can bar the malefactor from appearing before the Court for an appropriate period of time. There is a duty cast upon an advocate to protect the dignity of this Court not to scandalise the very institution as observed in the said decision."

21. We expect members of the noble fraternity to respect themselves first. They are an intellectual class of the society. What may be proper for others may still be improper for them, the expectations from them are to be exemplary to the entire society, then only the dignity of noble profession and judicial system can be protected. The Registry is nothing but an arm of this Court and an extension of its dignity. The Bar is an equally respected and responsible part of the integral system. The Registry is part and parcel of the system, and the system has to work in tandem and mutual reverence. We also expect from the Registry to work efficiently and effectively. At the same time, it is expected of the lawyers also to remove the defects effectively and not to unnecessarily cast aspersions on the system.

22. Thus, we find no ground to entertain the petition. We expect the petitioner to be more careful and live up to the dignity of the profession which it enjoys.

23. We dismiss the petition and impose costs of Rs 100 (Rupees one hundred only) on the petitioner as a token to remind his responsibility towards noble profession and that he ought not to have preferred such a petition.

[CONNECTED ORDER]

(2020) 7 Supreme Court Cases 815

(Record of Proceedings)

3-Judge Bench
2020
April 27

(BEFORE N.V. RAMANA, SANJAY KISHAN KAUL AND B.R. GAVAI, JJ.)

REEPAK KANSAL .. Petitioner;

Versus

UNION OF INDIA .. Respondent.

Writ Petition (C) No. ... (Diary No. 10951 of 2020)*, Order dated April 27, 2020

Constitution of India — Arts. 21, 14, 39, 41, 46 and 51-A(h) — One Nation One Ration Card Scheme especially to benefit migrant workers — Central Government directed to examine the feasibility of implementing scheme during COVID-19 Pandemic — Human and Civil Rights — Right to Food/Safe Food/Freedom From Malnutrition and Hunger

SS-D/64756/C

* Under Article 32 of the Constitution of India

2020 SCC OnLine SC 407

In the Supreme Court of India

Affirmed in *Prashant Bhushan, In re (Contempt Matter)*, (2021) 1 SCC 745; *Prashant Bhushan, In re (Contempt Matter)*, (2021) 3 SCC 160

(BEFORE DEEPAK GUPTA AND ANIRUDDHA BOSE, JJ.)

Re : Vijay Kurle and Others ... Alleged Contemnor(s).

Suo Motu Contempt Petition (Criminal) No. 2 of 2019

Decided on April 27, 2020

The Judgment of the Court was delivered by

DEEPAK GUPTA, J.:— A Bench of this Court while dealing with Suo Motu Contempt Petition (Criminal) No. 1 of 2019 took note of a letter dated 23.03.2019 received by the office of the Judges of the Bench on 25.03.2019. This was a copy of the letter sent by the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society to the President of India, Chief Justice of India and the Chief Justice of the Bombay High Court. In the said letter, reference was made to two complaints - one made by the Indian Bar Association, dated 20.03.2019 through alleged contemnor no. 1, Shri Vijay Kurle, State President of

2. Maharashtra and Goa of the Indian Bar Association, and the second complaint dated 19.03.2019 made by alleged contemnor no. 2, Shri Rashid Khan Pathan, National Secretary of the Human Rights Security Council. It was mentioned that these complaints have not only been sent to the President of India and the Chief Justice of India but also have been circulated in the social media and the complaints were attached as Annexures-1 and 2 to the said letter. The Bench took note of the letter and the complaints attached to the said letter and specifically noted the prayers made in both the complaints and found that both the complaints are substantially similar. The Bench on noting the allegations made in the complaints was of the view that scandalous allegations have been made against the members of the said Bench and, therefore, notice was issued to Shri Vijay Kurle, alleged contemnor no. 1, Shri Rashid Khan Pathan, alleged contemnor no. 2, Shri Nilesh Ojha, alleged contemnor no. 3 and Shri Mathews Nedumpara, alleged contemnor no. 4. The Bench also directed that the matter be placed before the Chief Justice of India to constitute an appropriate Bench to hear and decide the contempt case.

3. After notice was issued, Shri Nedumpara filed an application, being Criminal M.P. No. 60568/2019 for discharge in which he stated that he barely knew Shri Vijay Kurle and Shri Nilesh Ojha, and did not know Shri Rashid Khan Pathan at all. He denied any role in sending those complaints. Therefore, vide order dated 02.09.2019 we had discharged Shri Mathews Nedumpara but made it clear that if during the course of proceedings any evidence comes up against him, he would be summoned again. On the same date, Shri Nilesh Ojha who appears in person stated that the Registry has not given complete copy of the annexures attached with the letter of the Bombay Bar Association and Bombay Incorporated Law Society to him along with the notice. The Registry was directed to supply the annexures to him. On 30.09.2019 we were informed that the Registry has not given complete annexures. Thereafter, we had directed the Registry to supply 3 sets of Annexures P1 to P15 attached with the letter which were sent to alleged contemnor nos. 1 to 3. On the same date, we appointed Shri Sidharth Luthra, learned senior counsel, as amicus curiae to assist the Court. On 04.11.2019, alleged contemnor nos. 1 to 3 admitted that all the documents have been supplied to them and thereafter, fresh replies were permitted to be filed.

4. In the letter of the Bombay Bar Association and the Bombay Incorporated Law Society reference was made not only to the allegations in the complaints levelled against the 2 Hon'ble Judges of this Court but also other allegations were made which indicated that alleged contemnor nos. 1 to 3 had committed contempt of the Bombay High Court also. On 09.12.2019 we had clarified that in view of the original order taking *suo motu* notice and the documents placed on record, the charge against Shri Vijay Kurle, alleged contemnor no. 1 was only in respect of the scandalous allegations levelled against 2 Judges of this Court in the letter dated 20.03.2019 sent by him as State President of Maharashtra and Goa of the Indian Bar Association. We have also clarified that as far as Shri Rashid Khan Pathan, alleged contemnor no. 2, is concerned, the charge against him only relates to the scandalous allegations made against 2 Judges of this Court in the letter dated 19.03.2019 sent by him. As far as Shri Nilesh Ojha, alleged contemnor no. 3 was concerned, the only document against him was also the letter dated 20.03.2019 which letter was not signed by him, but admittedly, he is President of the Indian Bar Association. We had given opportunity to Shri Nilesh Ojha to explain his position whether the letter dated 20.03.2019 was sent with his consent or under his authority.

5. It would be pertinent to mention that Shri Vijay Kurle and Shri Rashid Khan Pathan have not denied that they are the authors of the letters which are signed by them.

6. The basis of the present contempt are the two letters dated 20.03.2019 and 19.03.2019 admittedly signed by alleged contemnor nos. 1 and 2 i.e. Shri Vijay Kurle and Shri Rashid Khan Pathan respectively. These letters are very lengthy running into more than 250 pages combined. Therefore, it would not be feasible to extract the entire letters but we have no doubt in our mind that the tenor of the letters is highly disrespectful, and scandalous and scurrilous allegations have been levelled against 2 Judges of this Court.

7. The three alleged contemnors have raised a number of preliminary issues. We may summarise the same as follows:—

(i) That the Bench of Justice R. F. Nariman and Justice Vineet Saran could not have taken cognizance of the case because the case was not assigned to them by the Chief Justice and that both the Judges acted as Judge in their own cause.

(ii) That the Bench has not *suo motu* taken notice of the contempt and therefore the Registry cannot treat it as a *suo motu* petition.

(iii) That even in *suo motu* contempt proceedings the consent of the Attorney General is necessary.

(iv) That the proper procedure of framing a charge is not followed because the defects at the initial stage cannot be cured by later orders/developments.

(v) That the Judges were bound to disclose the source of information.

Powers of the Supreme Court

8. Before we deal with the objections individually, we need to understand what are the powers of the Supreme Court of India in relation to dealing with contempt of the Supreme Court in the light of Articles 129 and 142 of the Constitution of India when read in conjunction with the Contempt of Courts Act, 1971. According to the alleged contemnors, the Contempt of Courts Act is the final word in the matter and if the procedure prescribed under the Contempt of Courts Act has not been followed then the proceedings have to be dropped. On the other hand, Shri Sidharth Luthra, learned amicus curiae while making reference to a large number of decisions contends that the Supreme Court being a Court of Record is not bound by the provisions of the Contempt of Courts Act. The only requirement is that the procedure followed is just and fair and in accordance with the principles of natural justice.

9. Article 129 of the Constitution of India reads as follows:

> "129. Supreme Court to be a court of record.- The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."

A bare reading of Article 129 clearly shows that this Court being a Court of Record shall have all the powers of such a Court of Record including the power to punish for contempt of itself. This is a constitutional power which cannot be taken away or in any manner abridged by statute.

10. Article 142 of the Constitution of India reads as follows:

> "142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.- (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.
>
> (2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself."

11. Article 142 also provides that this Court can punish any person for contempt of itself but this power is subject to the provisions of any law made by parliament. A comparison of the provisions of Article 129 and clause (2) of Article 142 clearly shows that whereas the founding fathers felt that the powers under clause 92) of Article 142 could be subject to any law made by parliament, there is no such restriction as far as Article 129 is concerned. The power under clause (2) of Article 142 is not the primary source of power of Court of Record which is Article 129 and there is no such restriction in Article 129. Samaraditya Pal in the Law of Contempt[1] has very succinctly stated the legal position as follows:

> "Although the law of contempt is largely governed by the 1971 Act, it is now settled law in India that the High Courts and the Supreme Court derive their jurisdiction and power from Articles 215 and 129 of the Constitution. This situation results in giving scope for "judicial self-dealing".

12. The High Courts also enjoy similar powers like the Supreme Court under Article 215 of the Constitution. The main argument of the alleged contemnors is that notice should have been issued in terms of the provisions of the Contempt of Courts Act and any violation of the Contempt of Courts Act would vitiate the entire proceedings. We do not accept this argument. In view of the fact that the power to punish for contempt of itself is a constitutional power vested in this Court, such power cannot be abridged or taken away even by legislative enactment. Court[2]. It would be pertinent to mention that the said judgment was given in the context of the Contempt of Courts Act, 1952. The issue before this Court in the said case was whether contempt proceedings could said to be the proceedings under the Criminal Procedure Code, 1973 (Cr.PC) and the Supreme Court had the power to transfer the proceedings from one court to another under the Cr.PC. Rejecting the prayer for transfer, this Court held as follows:—

> "....We hold therefore that the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself. This rule was laid down by the Privy Council in *In re Pollard*, ([L.R.] 2 P.C. 106 at 120) and was followed in India

and in Burma in *In re Vallabhdas*, (ILR 27 Bom 394 at 390) and *Ebrahim Mamoojee Parekh* v. *King Emperor*, (ILR 4 Rang 257 at 259-261). In our view that is still the law."

13. A Constitution Bench of this Court in *Shri C. K. Daphtary* v. *Shri O.P. Gupta*[3] was dealing with a case where the contemnor had published a pamphlet casting scurrilous aspersions on 2 Judges of this Court. During the course of argument, the contemnor raised a plea that all the evidence has not been furnished to him and made a request that the petitioner be asked to furnish the "pamphlet" or "book" annexed to the petition. The Court rejected this argument holding that the booklet/pamphlet had been annexed to the petition in original and the Court had directed that the matter be decided on affidavits.

14. In respect of the absence of a specific charge being framed, the Court held that a specific charge was not required to be framed and the only requirement was that a fair procedure should be followed. Dealing with the Contempt of Courts Act, 1952 this Court held as follows:—

"58. We are here also not concerned with any law made by Parliament. Article 129 shows that the Supreme Court has all the powers of a Court of Record, including the power to punish for contempt of itself; and Article 142(2) goes further and enables us to investigate any contempt of this Court."

15. Thereafter, this Court approved the observations in *Sukhdev Singh Sodhi's case* (supra) and held as follows:—

"78. In our view that is still the law. It is in accordance with the practice of this Court that a notice was issued to the respondents and opportunity given to them to file affidavits stating facts and their contentions. At one stage, after arguments had begun Respondent No. 1 asked for postponement of the case to engage some lawyers who were engaged in fighting elections. We refused adjournment because we were of the view that the request was not reasonable and was made with a view to delay matters. We may mention that the first respondent fully argued his case for a number of days. The procedure adopted by us is the usual procedure followed in all cases."

16. According to the alleged contemnors, both the aforesaid judgments are *per incuriam* after coming into force of the Contempt of Courts Act, 1971. They are definitely not *per incuriam* because they have been decided on the basis of the law which admittedly existed, but for the purposes of this case, we shall treat the argument of the alleged contemnors to be that the judgments are no longer good law and do not bind this Court. It has been contended by the alleged contemnors that both the aforesaid cases are overruled by later judgments. We shall now refer to some of the decisions cited by the parties.

17. In *P.N. Duda* v. *P. Shiv Shanker*[4] the respondent, Shri P. Shiv Shiv Shanker, who was a former judge of the High Court and was the Minister for Law, Justice and Company Affairs delivered a speech which was said to be contemptuous. A petition was filed by the petitioner P. N. Duda who was an advocate of this Court but this Court declined to initiate contempt proceedings. At the outset, we may note that while giving the reasons for not initiating contempt, though this Court held that the contempt petition was not maintainable, it went into the merits of the speech delivered by Shri P. Shiv Shanker and held that there was no imminent danger of interference with the administration of the justice and bringing administration into disrepute. It was held that Shri P. Shiv Shanker was not guilty of contempt of this Court. Having held so, the Court went on to decide whether the petition could have been entertained on behalf of Shri Duda. In the said petition, Shri Duda had written a letter to the Attorney General seeking consent for initiating contempt proceedings against Shri P. Shiv Shanker. A copy of the said letter was also sent to the Solicitor

General of India. While seeking consent, the petitioner had also stated that the Attorney General may be embarrassed to give consent for prosecution of the Law Minister and in view of the said allegations, the Attorney General felt that the credibility and authority of the office of the Attorney General was undermined and therefore did not deny or grant sanction for prosecution. The Court held that the petitioner could not move the Court for initiating contempt proceedings against the respondent without consent of the Attorney General and the Solicitor General. The relevant portion of the judgment reads as follows:—

> "39. The question of contempt of court came up for consideration in the case of *C.K. Daphtary* v. *O.P. Gupta.* In that case a petition under Article 129 of the Constitution was filed by Shri C.K. Daphtary and three other advocates bringing to the notice of this Court alleged contempt committed by the respondents. There this court held that under Article 129 of the Constitution this Court had the power to punish for contempt of itself and under Article 143(2) it could investigate any such contempt. This Court reiterated that the Constitution made this Court the guardian of fundamental rights. This Court further held that under the existing law of contempt of court any publication which was calculated to interfere with the due course of justice or proper administration of law would amount to contempt of court. A scurrilous attack on a Judge, in respect of a judgment or past conduct has in our country the inevitable effect of undermining the confidence of the public in the Judiciary ; and if confidence in Judiciary goes administration of justice definitely suffers. In that case a pamphlet was alleged to have contained statements amounting to contempt of the court. As the Attorney General did not move in the matter, the President of the Supreme Court bar and the other petitioners chose to bring the matter to the notice of the court. It was alleged that the said President and the other members of the bar have no locus standi. This Court held that the court could issue a notice suo motu. The President of the Supreme Court bar and other petitioners were perfectly entitled to bring to the notice of the court any contempt of the court. The first respondent referred to Lord Shawcross Committee's recommendation in U.K. that "proceedings should be instituted only if the Attorney General in his discretion considers them necessary". This was only a recommendation made in the light of circumstances prevailing in England. But that is not the law in India, this Court reiterated. It has to be borne that decision was rendered on March 19, 1971 and the present Act in India was passed on December 24, 1971. Therefore that decision cannot be of any assistance. We have noticed Sanyal Committee's recommendations in India as to why the Attorney General should be associated with it, and thereafter in U.K. there was report of Phillimore Committee in 1974. In India the reason for having the consent of the Attorney General was examined and explained by Sanyal Committee Report as noticed before."

18. The alleged contemnors contended that the last portion of the aforesaid paragraph shows that the judgment in *C.K. Daphtary's case* (supra) having been delivered prior to the enactment of Contempt of Courts Act, 1971 is no longer applicable. We may however point out that in the very next paragraph in the same judgment, it was held as follows:—

> "40. Our attention was drawn by Shri Ganguly to a decision of the Allahabad High Court in *G.N. Verma* v. *Hargovind Dayal*, (AIR 1975 All 52) where the Division Bench reiterated that Rules which provide for the manner in which proceedings for contempt of court should be taken continue to apply even after the enactment of the Contempt of Courts Act, 1971. Therefore cognizance could be taken suo motu and information contained in the application by a private individual could be utilised. As we have mentioned hereinbefore indubitably cognizance could be taken suo motu by the court but members of the public have also the right to move the

court. That right of bringing to the notice of the court is dependent upon consent being given either by the Attorney General or the Solicitor General and if that consent is withheld without reasons or without consideration of that right granted to any other person under Section 15 of the Act that could be investigated in an application made to the court."

19. The alleged contemnors rely on certain observations in the concurring judgment of Justice Ranganathan in the same judgment wherein he has approved the following passage from a judgment of the Delhi High Court in *Anil Kumar Gupta* v. *K. Subba Rao*.[5]:—

"The office is to take note that in future if any information is lodged even in the form of a petition inviting this Court to take action under the Contempt of Courts Act or Article 215 of the Constitution, where the informant is not one of the persons named in Section 15 of the said Act, it should not be styled as a petition and should not be placed for admission on the judicial side. Such a petition should be placed before the Chief Justice for orders in Chambers and the Chief Justice may decide either by himself or in consultation with the other judges of the Court whether to take any cognizance of the information. The office is directed to strike off the information as "Criminal Original No. 51 of 1973" and to file it."

20. Thereafter Justice Ranganathan made the following observation:—

"54.…I think that the direction given by the Delhi High Court sets out the proper procedure in such cases and may be adopted, at least in future, as a practice direction or as a rule, by this Court and other High Courts…."

21. Relying upon the aforesaid observations in the judgment delivered by Justice Ranganathan it is submitted that the petition could not have been placed for admission on the judicial side but should have been placed before the Chief Justice and not before any other Bench. We are not at all in agreement with the submission. What Justice Ranganathan observed is an obiter and not the finding of the Bench and this is not the procedure prescribed under the Rules of this Court.

22. This Court has framed rules in this regard known as The Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975 (for short 'the Rules') and relevant portion of Rule 3 of the Rules reads as follows:—

"3. In case of contempt other than the contempt referred to in rule 2, the Court may take action—

(a) *suo motu*, or

(b) on a petition made by Attorney-General, or Solicitor- General, or

(c) on a petition made by any person, and in the case of a criminal contempt with the consent in writing of the Attorney-General or the Solicitor-General."

23. A bare perusal of Rule 3 shows that there are 3 ways for initiating contempt proceedings. The first is *suo motu*, the second is on a petition made by the Attorney General or the Solicitor General, and the third is on the basis of a petition made by any person and where criminal contempt is involved then the consent of the Attorney General or the Solicitor General is necessary. Rules 4 and 5 prescribe for the manner of filing of a petition under Rules 3(b) and 3(c). Rule 4 lays down the requirements of a petition to be filed under Rules 3(b) and 3(c) and Rule 5 requires that every petition under Rule 3(b) or Rule 3(c) shall be placed before the Court for preliminary hearing. Rule 6 requires notice to the person charged to be in terms of Form I. Rule 6 reads as follows:—

"6. (1) Notice to the person charged shall be in Form I. The person charged shall, unless otherwise ordered, appear in person before the Court as directed on the date fixed for hearing of the proceeding, and shall continue to remain present during hearing till the proceeding is finally disposed of by order of the Court.

(2) When action is instituted on petition, a copy of the petition along with the annexure and affidavits shall be served upon the person charged."

24. These Rules have been framed by the Supreme Court in exercise of the powers vested in it under Section 23 of the Contempt of Courts Act, 1971 and they have been notified with the approval of Hon'ble the President of India.

25. In *Pritam Pal* v. *High Court of Madhya Pradesh, Jabalpur Through Registrar*[6], a 2 Judge Bench of this Court held as follows:—

"15. Prior to the Contempt of Courts Act, 1971, it was held that the High Court has inherent power to deal with a contempt of itself summarily and to adopt its own procedure, provided that it gives a fair and reasonable opportunity to the contemnor to defend himself. But the procedure has now been prescribed by Section 15 of the Act in exercise of the powers conferred by Entry 14, List III of the Seventh Schedule of the Constitution. Though the contempt jurisdiction of the Supreme Court and the High Court can be regulated by legislation by appropriate Legislature under Entry 77 of List I and Entry 14 of List III in exercise of which the Parliament has enacted the Act of 1971, the contempt jurisdiction of the Supreme Court and the High Court is given a constitutional foundation by declaring to be 'Courts of Record' under Articles 129 and 215 of the Constitution and, therefore, the inherent power of the Supreme Court and the High Court cannot be taken away by any legislation short of constitutional amendment. In fact, Section 22 of the Act lays down that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law relating to Contempt of Courts. It necessarily follows that the constitutional jurisdiction of the Supreme Court and the High Court under Articles 129 and 215 cannot be curtailed by anything in the Act of 1971…"

26. In *Delhi Judicial Service Association, Tis Hazari Court, Delhi* v. *State of Gujarat*.[7] a three-Judge Bench of this Court relied upon the judgment in the case of *Sukhdev Singh Sodhi* (supra) and held that the Supreme Court had inherent jurisdiction or power to punish for contempt of inferior courts under Article 129 of the Constitution of India.

27. A three-Judge Bench of this Court *In Re : Vinay Chandra Mishra*[8] discussed the law on this point in detail. The Court while holding the respondent guilty for contempt had not only sentenced him to simple imprisonment for a period of 6 weeks which was suspended but also suspended his advocacy for a period of 3 years, relying upon the powers vested in this Court under Article 129 and 142 of the Constitution of India.

28. We may now refer to certain other provisions of Constitution, Entry 77, Union List (List I) of VII Schedule reads as follows:

"77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court."

29. Entry 14, Concurrent List (List III of VII Schedule) reads as follows:

"14. Contempt of court, but not including contempt of the Supreme Court."

30. In exercise of the aforesaid powers the Contempt of Courts Act, 1971 was enacted by Parliament. Section 15 deals with cognizance of criminal contempt and the opening portion of Section 15 clearly provides that the Supreme Court or the High Courts may take action (i) *suo motu* (ii) on a motion moved by the Advocate General in case of High Court or Attorney General/Solicitor General in the case of Supreme Court and (iii) on a petition by any other person with the consent in writing of the Advocate General/Attorney General/Solicitor General as the case may be. Section 17 lays down the procedure to be followed when action is taken on a motion moved by the Advocate General/Attorney General/Solicitor General or on the basis of their consent and Section 17(2) does not deal with *suo motu* contempt petitions. Section 17 (2)(a) of the Contempt of Courts Act will not apply to *suo motu* petitions because that

deals with the proceedings moved on a motion and not *suo motu* proceedings. Section 17(2)(b) deals with contempt initiated on a reference made by the subordinate court. It is only in these cases that the notice is required to be issued along with a copy of the motion. As far as *suo motu* petitions are concerned, in these cases the only requirement of Form-I which has been framed in pursuance of Rule 6 of the Rules of this Court is that the brief nature of the contempt has to be stated therein.

31. The correctness of the judgment in *Vinay Chandra Mishra's case* (supra) was considered by a Constitution Bench of this Court in *Supreme Court Bar Association* v. *Union of India*[9]. We shall be referring to certain portions of that judgment in detail. That being a Constitution Bench judgment, is binding and all other judgments which may have taken a view to the contrary cannot be said to be correct. Before we deal with the judgment itself, it would be appropriate to refer to certain provisions of the Contempt of Courts Act, 1971. Section 2 is the definition clause defining "*contempt of court*", "*civil contempt*', *"criminal contempt*' and "*High Court*'. Sections 3 to 5 deal with innocent publication, fair and accurate reporting of judicial proceedings and fair criticism of judicial act, which do not amount to contempt. Sections 10 and 11 deal with the powers of the High Court to punish for contempt. Section 12(2) provides that no court shall impose a sentence in excess of that specified in sub-section (1) of Section 12. Section 13 provides that no court should impose a sentence under the Act for contempt unless it is satisfied that the contempt is of such a nature that it substantially interferes or tends to substantially interfere with the due course of justice. It also provides that truth can be permitted to be raised as a valid defence if the court is satisfied that the defence has been raised in the public interest and is a *bona fide* defence. Section 14 deals with the powers of the Supreme Court or the High Courts to deal with contempt in the face of the Court. We have already dealt with Section 15 which deals with cognizance of the criminal contempt other than contempt in the face of the Court. Section 17 lays down the procedure after cognizance. It is in the background of this Act that we have to read and analyse the judgment of the Constitution Bench.

32. The Constitution Bench referred to the provisions of Article 129 of the Constitution of India and also Entry 77 of List I of Seventh Schedule and Entry 14 of List III of the Seventh Schedule and, thereafter, held as follows:—

> "18. The language of Entry 77 of List I and Entry 14 of List III of the Seventh Schedule demonstrates that the legislative power of Parliament and of the State Legislature extends to legislate with respect to matters connected with contempt of court by the Supreme Court or the High Court, subject however, to the qualification that such legislation cannot denude, abrogate or nullify, the power of the Supreme Court to punish for contempt under Article 129 or vest that power in some other court."
>
> (emphasis supplied)

33. This Court referring to Article 142 of the Constitution held as follows:—

> "21. It is, thus, seen that the power of this Court in respect of *investigation* or *punishment* of any contempt including contempt of itself, is expressly made "subject to the provisions of any law made in this behalf by Parliament" by Article 142(2). However, the power to punish for contempt being inherent in a court of record, it follows that no act of Parliament can take away that *inherent* jurisdiction of the court of record to punish for contempt and Parliament's power of legislation on the subject cannot, therefore, be so exercised as to stultify the status and dignity of the Supreme Court and/or the High Courts, though such a legislation may serve as a guide for the determination of the nature of punishment which this Court may impose in the case of established contempt. Parliament has not enacted any law dealing with the powers of the Supreme Court with regard to investigation and

punishment of contempt of itself, (we shall refer to Section 15 of the Contempt of Courts Act, 1971, later on) and this Court, therefore, exercises the power to investigate and punish for contempt of itself by virtue of the powers vested in it under Articles 129 and 142(2) of the Constitution of India."

34. This Court then made reference to the provision of the Contempt of Courts Act, 1926, the Contempt of Courts Act, 1952 and the Contempt of Courts Act, 1971 and thereafter held as follows:—

"29. Section 10 of the 1971 Act like Section 2 of the 1926 Act and Section 4 of the 1952 Act recognises the power which a High Court already possesses as a court of record for punishing for contempt of itself, which jurisdiction has now the sanction of the Constitution also by virtue of Article 215. The Act, however, does not deal with the powers of the Supreme Court to try or punish a contemner for committing contempt of the Supreme Court or the courts subordinate to it and the constitutional provision contained in Articles 142(2) and 129 of the Constitution alone deal with the subject."

35. It would also be pertinent to refer to the following observations of the Constitution Bench:—

"38. As already noticed, Parliament by virtue of Entry 77 List I is competent to enact a law relating to the powers of the Supreme Court with regard to contempt of itself and such a law may prescribe the nature of punishment which may be imposed on a contemner by virtue of the provisions of Article 129 read with Article 142(2). Since, no such law has been enacted by Parliament, the *nature of punishment* prescribed under the Contempt of Courts Act, 1971 may act as a guide for the Supreme Court but the extent of punishment as prescribed under that Act can apply only to the High Courts, because the 1971 Act ipso facto does not deal with the contempt jurisdiction of the Supreme Court, except that Section 15 of the Act prescribes *procedural mode* for taking cognizance of criminal contempt by the Supreme Court also. Section 15, however, is not a substantive provision conferring contempt jurisdiction. The judgment in *Sukhdev Singh case*, (AIR 1954 SC 186 : 1954 SCR 454) as regards the *extent* of "maximum punishment" which can be imposed upon a contemner must, therefore, be construed as dealing with the powers of the High Courts only and not of this Court in that behalf. We are, therefore, doubtful of the validity of the argument of the learned Solicitor General that the *extent of punishment* which the Supreme Court can impose in exercise of its inherent powers to punish for contempt of itself and/or of subordinate courts can also be only to the extent prescribed under the Contempt of Courts Act, 1971. We, however, do not express any final opinion on that question since that issue, strictly speaking, does not arise for our decision in this case. The question regarding the restriction or limitation on the *extent* of punishment, which *this* Court may award while exercising its contempt jurisdiction may be decided in a proper case, when so raised."

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"40…Article 129 cannot take over the jurisdiction of the Disciplinary Committee of the Bar Council of the State or the Bar Council of India to punish an advocate by suspending his licence, which punishment can only be imposed after a finding of "professional misconduct" is recorded in the manner prescribed under the Advocates Act and the Rules framed thereunder."

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"43. The power of the Supreme Court to punish for contempt of court, though quite wide, is yet limited and cannot be expanded to include the power to determine whether an advocate is also guilty of "professional misconduct" in a summary manner, giving a go-by to the procedure prescribed under the Advocates

Act. The power to do complete justice under Article 142 is in a way, corrective power, which gives preference to equity over law but it cannot be used to deprive a professional lawyer of the due process contained in the Advocates Act, 1961 by suspending his licence to practice in a summary manner while dealing with a case of contempt of court."

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"57. In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing "professional misconduct", depending upon the gravity or nature of his contumacious conduct, but the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an advocate by suspending his licence or by removal of his name from the roll of the State Bar Council for proven professional misconduct *vests exclusively* in the statutory authorities created under the Advocates Act, 1961, while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts."

36. A careful analysis of the Constitution Bench decision leaves no manner of doubt that Section 15 of the Act is not a substantive provision conferring contempt jurisdiction. The Constitution Bench finally left the question as to whether the maximum sentence prescribed by the Act binds the Supreme Court open. The observations made in Para 38 referred to above clearly indicate that the Constitution Bench was of the view that the punishment prescribed in the Act could only be a guideline and nothing more. Certain observations made in this judgment that the Court exceeded its jurisdiction in *Vinay Chandra Mishra's case* (supra) by taking away the right of practice for a period of 3 years have to be read in the context that the Apex Court held that Article 129 cannot take over the jurisdiction of the Bar Council of the State or the Bar Council of India to punish an advocate. These observations, in our opinion have to be read with the other observations quoted hereinabove which clearly show that the Constitution Bench held that *"Parliament has not enacted any law dealing with the powers of the Supreme Court with regard to investigation and punishment of contempt of itself"*. The Court also held that Section 15 is not a substantive provision conferring contempt jurisdiction and, therefore, is only a procedural section especially in so far as *suo moto* contempts are concerned. It is thus clear that the powers of the Supreme Court to punish for contempt committed of itself is a power not subject to the provisions of the Act. Therefore, the only requirement is to follow a procedure which is just, fair and in accordance with the rules framed by this Court.

37. As far as the observations made in the case of *Pallav Sheth* v. *Custodian*[10] are concerned, this Court in that case was only dealing with the question whether contempt can be initiated after the limitation prescribed in the Contempt of Courts Act has expired and the observations made therein have to be read in that context only. Relevant portion of Para 30 of the *Pallav Seth's case* (supra) reads as follows:

"30. There can be no doubt that both this Court and High Courts are Courts of Records and the Constitution has given them the powers to punish for contempt. The decisions of this Court clearly show that this power cannot be abrogated or stultified. But if the power under Article 129 and Article 215 is absolute can there be any legislation indicating the manner and to the extent that the power can be exercised? If there is any provision of the law which stultifies or abrogates the power under Article 129 and/or Article 215 there can be little doubt that such law should not be regarded as having been validly enacted. It, however, appears to us that providing for the quantum of punishment ow what may or may not be regarded as acts of contempt or even providing for a period of limitation for initiating proceedings for contempt cannot be taken to be a provision which abrogates or

stultifies the contempt jurisdiction under Article 129 or Article 215 of the Constitution."

38. The aforesaid finding clearly indicates that the Court held that any law which stultifies or abrogates the power of the Supreme Court under Article 129 of the Constitution or of the High Courts under Article 215 of the Constitution, could not be said to be validly enacted. It however, went on to hold that providing the quantum of punishment or a period of limitation would not mean that the powers of the Court under Article 129 have been stultified or abrogated. We are not going into the correctness or otherwise of this judgment but it is clear that this judgment only dealt with the issue whether the Parliament could fix a period of limitation to initiate the proceedings under the Act. Without commenting one way or the other on *Pallav Seth's case* (supra) it is clear that the same has not dealt with the powers of this Court to issue *suo motu* notice of contempt.

39. In view of the above discussion we are clearly of the view that the powers of the Supreme Court to initiate contempt are not in any manner limited by the provisions of the Act. This Court is vested with the constitutional powers to deal with the contempt. Section 15 is not the source of the power to issue notice for contempt. It only provides the procedure in which such contempt is to be initiated and this procedure provides that there are three ways of initiating a contempt - (i) *suo motu* (ii) on the motion by the Advocate General/Attorney General/Solicitor General and (iii) on the basis of a petition filed by any other person with the consent in writing of the Advocate General/Attorney General/Solicitor General. As far as *suo motu* petitions are concerned, there is no requirement for taking consent of anybody because the Court is exercising its inherent powers to issue notice for contempt. This is not only clear from the provisions of the Act but also clear from the Rules laid down by this Court.

Objections as to issuance of notice

40. The alleged contemnors have filed applications for discharge of notices issued to them. Vide our order dated 09.12.2019 we had made it clear that we are dealing with both the applications and the main petition together. The main ground for discharge is that notice sent was not in accordance with the provisions of the Contempt of Courts Act. This Court, as mentioned above, has its own Rules and Form I lays down the manner in which notice is to be issued. The same is as follows:

"FORM I

NOTICE TO A PERSON CHARGED WITH CONTEMPT OF COURT

(See rule 6)

IN THE SUPREME COURT OF INDIA

(Original Jurisdiction)

Whereas your attendance is necessary to answer a charge of Contempt of Court by (here briefly state nature of the contempt).

You are hereby required to appear in person (or by Advocate if the Court has so ordered) before this Court at New Delhi on the .... day .... of 20...at 10.30 o'clock in the forenoon.

You shall attend the Court in person on the .... day of .... 20....., and shall continue to attend the Court on all days thereafter to which the case against you stands adjourned and until final orders are passed on the charge against you.

Herein fail not.

Dated this .... day of .... 20....

(SEAL)

REGISTRAR

*To be omitted where the person charged is allowed or ordered to appear by Advocate."

41. The only requirement of the Rules and the Form is that the brief nature of the contempt is to be stated in the Form. There is no requirement of giving all the documents with the Form. A perusal of the order whereby contempt proceedings were initiated clearly shows that the grounds for initiating contempt were reflected in the order itself. This order was admittedly sent to the alleged contemnors. Therefore, in our opinion, the notice was strictly in accordance with Form-1, which only requires that the notice should briefly state the nature of the contempt. Once the order was attached to the notice that became part and parcel of the notice itself. In any event, non-supply of any document would only be an irregularity and not an illegality going to the root of the matter. The only documents which are the basis for issuing notice of contempt are the complaints sent by Shri Vijay Kurle and Shri Rashid Khan Pathan which were annexed to the letter of the Bombay Bar Association and Bombay Incorporated Law Society. The letters of the Bombay Bar Association and Bombay Incorporated Law Society along with all the annexures attached to the said letter have been supplied to the alleged contemnors and they were permitted to file additional replies after receiving all these documents. As mentioned above, this Court had clarified that the action against alleged contemnors is being restricted to the allegations made in the two complaints by Shri Vijay Kurle and Shri Rashid Khan Pathan of which they are admittedly the authors. Since this Court has not relied upon any of the other documents, we do not see how any prejudice has been caused to the alleged contemnors by the non-supply of the documents along with the notice. As per the Rules of this Court, the notice was only to briefly state nature of the contempt and in the order itself reference has been made to the complaints of Shri Vijay Kurle and Shri Rashid Khan Pathan. We accordingly see no merit in the argument of the alleged contemnors that the notice was not in consonance with the Rules of this Court or in consonance with the principles of natural justice or fair procedure. Accordingly, we reject the contention and hold that the notice was a legal and valid notice. Consequently, the applications for discharge of notice are also dismissed.

Whether these proceedings can be termed suo motu?

42. The next contention of the alleged contemnors is that the proceedings in the present case are not *suo motu* proceedings and, therefore, should not have been entertained without the consent of the Attorney General or Solicitor General. The alleged contemnors have placed strong reliance on the judgment of this Court in the case of *Biman Basu* v. *Kallol Guha Thakurta*[11] The issue in that case was whether the High Court had issued notice of contempt *suo motu.* In our view, that judgment has no applicability here. The facts of that case were that a contempt petition was filed by the respondents (in the Supreme Court) alleging that the appellant (in the Supreme Court) had made deliberate and wilful derogatory, defamatory and filthy statements against a Judge of the Calcutta High Court. The Division Bench before whom the matter was placed passed the following order:

"7. Heard.

After hearing Mr. Ali, learned counsel moving this petition and perusing the issue of *Bartaman* dated 5-102003, we are of the view that a rule be issued. Rule is made returnable on 7-11-2003.

This Court, however, makes it clear that the records of this case may be placed before the Hon'ble the Chief Justice for assignment of this rule for hearing before any Bench that the Hon'ble the Chief Justice may think fit and proper."

43. The main issue which arose before this Court was whether the contempt proceedings were initiated against the appellant therein *suo motu* by the High Court or by the respondents. Keeping in view the language of the order passed in the case it

was held that this was not a case where the Court had taken *suo motu* action and therefore relying upon the judgments of this Court in the case of *P.N. Duda* (supra) and in *Bal Thackrey* v. *Harish Pimpalkhute*[12] it was held that the contempt petition could not have been filed without the consent of the Advocate General. The Court further held that from the record it was apparent that the respondent was always shown as the petitioner in the contempt petition and, therefore, there was nothing which indicated that the proceedings had been initiated *suo motu.*

44. As far as the present case is concerned, the order passed by this Court clearly shows that this Court after taking note of the letter sent by the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society, the annexures attached to this letter and after specifically noting the prayers made in the complaints of Shri Vijay Kurle and Shri Rashid Khan Pathan along with the allegations made in both the complaints was of the view that the allegations levelled against the Members of the Bench were scandalous in nature and therefore, notice was issued to the alleged contemnors and against Shri Nedumpara who has since been discharged. The alleged contemnors are basically urging that the order does not use the word "suo motu". In our view, that would not make any difference. The relevant portion of the order dated 27.03.2019 reads as follows:

> "Given the two complaints filed, it is clear that scandalous allegations have been made against the members of this Bench. We, therefore, issue notice of contempt to (1) Shri Vijay Kurle; (2) Shri Rashid Khan Pathan; (3) Shri Nilesh Ojha and (4) Shri Mathews Nedumpara to explain as to why they should not be punished for criminal contempt of the Supreme Court of India, returnable within two weeks from today."

45. When we read the aforesaid order as a whole, it is more than obvious that the Court itself took cognizance of the complaints and the documents thereto as well as the allegations levelled therein.

46. Contempt is basically a matter between the Court and the contemnor. Any person can inform the Court of the contempt committed. If he is to be arrayed as a party then the contempt will be in his name but when the Court does not array him as a party, the Court can on the basis of the information itself take *suo motu* notice of the contempt. In the present case, the Court on the basis of the information itself took *suo motu* note of the contempt and the matter was then placed before Hon'ble the Chief Justice for listing it before the appropriate Bench. The matter has been listed as a *suo motu* contempt petition right from the beginning and dealt with as such.

47. In *Biman Basu's case* (supra) the Court after referring to earlier decisions of this Court held as follows:

> "25. It is true that any person may move the High Court for initiating proceedings for criminal contempt by placing the facts constituting the commission of criminal contempt to the notice of the Court. But once those facts are placed before the Court, it becomes a matter between the Court and the contemner. But such person filing an application or petition does not become a complainant or petitioner in the proceeding. His duty ends with the facts being placed before the Court. The Court may in appropriate cases in its discretion require the private party or litigant moving the Court to render assistance during the course of the proceedings..."
>
> xxx xxx xxx
>
> "28. In the case in hand, it is evident from the record, the respondents were continued to be shown as the petitioners in the contempt case before the High Court and participated throughout as if they were prosecuting the appellant. There is no order reflecting that the Court having taken note of the information made before it, initiated suo motu proceedings on the basis of such information furnished

and required the respondents only to assist the Court till the disposal of the matter. On the contrary, the respondents are shown as the petitioners in the contempt case before the High Court. It is thus clear, it is the respondents who initiated the proceedings and continued the same but without the written consent of the Advocate General as is required in law. The proceedings, therefore, were clearly not maintainable."

48. As pointed out above, in the present case the Bombay Bar Association and the Bombay Incorporated Law Society have never been shown as petitioners. The letter sent by the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society is not addressed to this Court to initiate contempt proceedings. The letters were addressed to the President of India, the Chief Justice of India and the Chief Justice of the High Court of Bombay and the prayer made therein was that the complaints by the Indian Bar Association and Human Rights Security Council should be rejected. There is no prayer for initiating contempt proceedings. These letters were placed in the office of the Judges of this Court and after taking note of the averments made therein they decided to issue notice of contempt. This is nothing but a *suo motu* action on reading the complaints and the letter of the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society and hence this cannot be termed to be a contempt petition requiring the consent of the Attorney General.

Judge in their own Cause

49. We shall now deal with the arguments of the alleged contemnors that the Bench could not have issued the notice without the matter being placed before it and further that this amounted to them acting as judges in their own cause. A number of judgments have been cited in this regard but we need not refer to all of them. Strong reliance is placed by the alleged contemnors on the judgment of Justice Ranganathan in *P.N. Duda's case* (supra) that the practice being followed by the Delhi High Court should be followed in this Court also. We are unable to accept this contention and find no merit in the same. As already observed above, those observations were in the nature of *obiter* and the said observations cannot override the statutory rules.

50. It is true that the Chief Justice is the master of the roster and in normal course a matter can be listed before a Bench only on the basis of orders issued by the Chief Justice. However, here the situation is totally different. The Bench was already dealing with Suo Motu Contempt Petition (Crl.) No. 1 of 2019. The letter of the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society was placed before the Bench. Along with this letter the complaints filed by Shri Vijay Kurle and Shri Rashid Khan Pathan were annexed. The Bench took *suo motu* notice of the allegations made in these two complaints and directed that contempt proceedings be initiated. Thereafter, in accordance with the principles of natural justice and also the principle that the Chief Justice is the master of the roster the Bench directed that the matter may be listed before the Chief Justice for placing it before the appropriate Bench. The Chief Justice, though no doubt, master of the roster, is first amongst the equals and every Judge of the Supreme Court is as much part of this Court as Hon'ble the Chief Justice. The Judges of this Court can exercise their powers under Article 129 of the Constitution which is a constitutional power untrammelled by any rules or convention to the contrary. Even so, the Bench in deference to the principle of master of the roster, after taking cognizance of the scandalous allegations made in the complaints of the alleged contemnors and issuing notice to them directed that the matter be placed before Hon'ble the Chief Justice for listing before an appropriate Bench. This, in our view, is the proper procedure. If an article, letter or any writing or even something visual circulating in electronic, print or social media or in any other forum is brought to the notice of any Judge of this Court which *prima facie* shows that the allegation is contemptuous or scandalises the court then that Judge can definitely

issue notice and thereafter place it before Hon'ble the Chief Justice for listing it before an appropriate Bench.

51. The alleged contemnors have relied upon the judgment *in Divine Retreat Centre* v. *State of Kerala*[13] wherein it was observed that individual writing should be placed before the Chief Justice as to the proposed action on such petitions. It was held:

> "71. ...The individual letters, if any, addressed to a particular judge are required to be placed before the Chief Justice for consideration as to the proposed action on such petitions. Each Judge cannot decide for himself as to what communication should be entertained for setting the law in motion be it in PIL or in any jurisdiction."

52. At the outset, we may note that these observations were made in the context of public interest litigations and not for contempt petitions and the jurisdiction of this Court to punish for contempt of itself is a very wide jurisdiction. Furthermore, it is not as if the letter were addressed to the Members of the Bench.

53. As observed above, the letter sent by the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society was addressed to the President of India, the Chief Justice of this Court, and the Chief Justice of the High Court of Bombay. Presumably, it must have been the Office of the Chief Justice which sent the letters to the Bench. In any event, that will not have any bearing on this case. We are clearly of the view that the Bench was fully justified in taking note of the letter sent by the Bombay Bar Association and the President of the Bombay Incorporated Law Society and the documents annexed thereto which included the complaints sent by Shri Vijay Kurle and Shri Rashid Khan Pathan. After issuing notice the bench directed that the matter be placed before Hon'ble the Chief Justice for placing before the appropriate bench. This is valid and proper procedure and the bench did not act as judge in their own cause. Only notice was issued and thereafter the matter was assigned to this bench.

Source of Information

54. Another argument raised is that the Bench should have disclosed from where it got the information. The alleged contemnors have cited a number of decisions in this regard. Dealing with the issue of disclosure of source of information in *C.K. Daphtary's case* (supra) this Court held as follows:—

> "79....The first respondent said that the source of information had not been disclosed. Para 2 of the petition refers to proceedings in this Court and it was not necessary to have disclosed any further source of information. As far as paras 3 and 4 are concerned, the first respondent admits that he approached members of Parliament to file a motion of impeachment against Mr. Justice Shah. Calling this a "campaign" is only to describe in a word his activities. Whether it should be strictly called a campaign is beside the point. The essential facts mentioned in Para 5 are admitted by the first respondent. Therefore the fact that the source of information was not disclosed does not debar us from taking the facts into consideration. The last sentence of Para 5 viz., "The said pamphlet was, as the petitioners believe, sold or offered for sale to the public by Respondent No. 3" is a matter of belief. Para 6 contains inferences and submissions in respect of which there was no question of disclosing the source of information. Para 7 contains extracts from the booklet or the pamphlet which was attached as an annexure. In view of the document having been attached it was not necessary that the source of information regarding Para 7 should have been disclosed. The allegations in Para 9 of the petition are supported by an affidavit of Mr. B.P. Singh, Advocate, who has verified that the contents in his affidavit are true to his knowledge."

55. We fail to understand how Shri Vijay Kurle can urge that the source of information should be disclosed. His complaint is addressed amongst all others to

Judges of this Court which obviously includes the two Judges who are members of the Bench.

56. In the instant case, the disclosure of the information is made in the order itself where it is clearly recorded that the action has been taken on the basis of the letter sent by the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society to the President of India and the Chief Justice of India in response to the complaints made by the alleged contemnors. The complaints of Shri Vijay Kurle and Shri Rashid Khan Pathan were also attached with the letters and after taking note not only of the letter of the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society but also the prayer clauses of both the complaints sent by the alleged contemnors and the scandalous allegations made in the complaints, the notice was issued. The source of information is the letter sent by the Bombay Bar Association and the President of the Bombay Incorporated Law Society, as is apparent from the order initiating contempt proceedings. Therefore, we find no merit in this plea.

Freedom to criticise

57. Before dealing with these allegations it would be apposite to set out the law with regard to fair criticism of the judgments of the Court. There can be no manner of doubt that every citizen is entitled to criticise the judgments of this Court and Article 19 of the Constitution which guarantees the right of free speech to every citizen of the country must be given the exalted status which it deserves. However, at the same time, we must remember that clause (2) of Article 19 of the Constitution also makes it clear that the right to freedom of speech is subject to existing laws for imposing reasonable restrictions as far as such law relates to contempt of Court. This right of freedom of speech is made subject to the laws of contempt which would not only include Contempt of Courts Act but also the powers of the Supreme Court to punish for contempt under Article 129 and 142(2) of the Constitution. Similar powers are vested with the High Courts.

58. The purpose of having a law of contempt is not to prevent fair criticism but to ensure that the respect and confidence which the people of this country repose in the judicial system is not undermined in any manner whatsoever. If the confidence of the citizenry in the institution of justice is shattered then not only the judiciary, but democracy itself will be under threat. Contempt powers have been very sparingly used by the Courts and rightly so. The shoulders of this Court are broad enough to withstand criticism, even criticism which may transcend the parameters of fair criticism. However, if the criticism is made in a concerted manner to lower the majesty of the institution of the Courts and with a view to tarnish the image, not only of the Judges, but also the Courts, then if such attempts are not checked the results will be disastrous. Section 5 of the Contempt of Courts Act itself provides that publishing of any fair comment on the merits of any case which has been heard and finally decided does not amount to contempt.

59. In *Dr. D.C. Saxena* v. *Hon'ble the Chief Justice of India*[14] after referring to a large number of judgments to which we need not refer, this Court held that though freedom of speech is an essential part of democracy, it is equally necessary for society to regulate such freedom of speech or expression in terms of the exceptions to Article 19 of the Constitution. *Bonafide* criticism of any institution including the judiciary is always welcome. Healthy and constructive criticism of the judgments cannot amount to contempt of Court. However, if the allegations levelled go beyond the ambit of criticism and scandalise the Court then there can be no manner of doubt that such utterances or written words would amount to contempt of Court. This Court *In Re : Arundhati Roy*[15] while dealing with Section 2 of the Act held as follows:

"28. As already held, fair criticism of the conduct of a Judge, the institution of

the judiciary and its functioning may not amount to contempt if it is made in good faith and in public interest. To ascertain the good faith and the public interest, the courts have to see all the surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved. All citizens cannot be permitted to comment upon the conduct of the courts in the name of fair criticism which, if not checked, would destroy the institution itself."

60. The alleged contemnors have relied on certain observations made in the case of *P.N. Duda* (supra). That was a case where a former Judge of the High Court, who was Minister for Law, Justice and Company Affairs in the Central Government, criticised the functioning of the Supreme Court and one of the principal criticisms of this Court was that it was comprised of Judges belonging to the upper echelons of society and therefore, the Court was more sympathetic to industrialists and representatives of elitist culture etc. The Court while discharging the notice held that the speech of the Minister must be read in proper perspective. However, this Court observed that the Minister would have been better advised to avoid certain portions of the speech and held that the speech did not amount to interference with the administration of justice or bringing the administration of justice into disrepute. Dealing with the aforesaid observations in *Dr. D.C. Saxena's case* (supra) this Court held as follows:

"34. In *P.N. Duda* v. *P. Shiv Shankar* [(1988) 3 SCC 167 : 1988 SCC (Cri) 589 : AIR 1988 SC 1208] this Court had held that administration of justice and judges are open to public criticism and public scrutiny. Judges have their accountability to the society and their accountability must be judged by the conscience and oath to their office, i.e., to defend and uphold the Constitution and the laws without fear and favour. Thus the judges must do, in the light given to them to determine, what is right. Any criticism about the judicial system or the judges which hampers the administration of justice or which erodes the faith in the objective approach of the judges and brings administration of justice to ridicule must be prevented. The contempt of court proceedings arise out of that attempt. Judgments can be criticised. Motives to the judges need not be attributed. It brings the administration of justice into disrepute. Faith in the administration of justice is one of the pillars on which democratic institution functions and sustains. In the free market-place of ideas criticism about the judicial system or judges should be welcome so long as such criticism does not impair or hamper the administration of justice. This is how the courts should exercise the powers vested in them and judges to punish a person for an alleged contempt by taking notice of the contempt suo motu or at the behest of the litigant or a lawyer. In that case the speech of the Law Minister in a Seminar organised by the Bar Council and the offending portions therein were held not contemptuous and punishable under the Act. 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."

61. There can be no manner of doubt that any citizen of the country can criticise the judgments delivered by any Court including this Court. However, no party has the right to attribute motives to a Judge or to question the *bona fides* of the Judge or to raise questions with regard to the competence of the Judge. Judges are part and parcel of the justice delivery system. By and large Judges are reluctant to take action under contempt laws when a personal attack is made on them. However, when there is a concerted attack by members of the Bar who profess to be the members of an organization having a large following, then the Court cannot shut its eyes to the slanderous and scandalous allegations made. If such allegations which have not only been communicated to the President of India and the Chief Justice of India, but also

widely circulated on social media are permitted to remain unchallenged then the public will lose faith not only in those particular Judges but also in the entire justice delivery system and this definitely affects the majesty of law.

62. Though the alleged contemnors claim that they are not expressing any solidarity with Shri Mathews Nedumpara nor do they have anything personal against Justice R.F. Nariman, the entire reading of the complaints shows a totally different picture. When we read both the complaints together it is obvious that the alleged contemnors are fighting a proxy battle for Shri Nedumpara. They are raking up certain issues which could have been raised only by Shri Nedumpara and not by the alleged contemnors.

63. Both the complaints are *ex-facie* contemptuous. Highly scurrilous and scandalous allegations have been levelled against the two judges of this Court. In our view, the entire contents of the complaints amount to contempt. Since both the complaints run into more than 250 pages it is not possible to quote the entire complaints and we are dealing with some of the more scandalous allegations levelled in the said complaints. We have grouped certain allegations together.

1st Complaint dt.20.03.2019 by Shri Vijay Kurle

64. On pages 49-51 of the 1st complaint, the following allegations have been made:

> "III) CHARGE # : - PERSONAL BIAS PROCEEDING VITIATED.
>
> The another illegality is regarding conflict of interest & violation of law laid down by Hon'ble Supreme Court in the case of *State of Punjab* v. *Davinder Pal Singh Bhullar*, (2011) 14 SCC 770.
>
> That since last 2 years, Advocate Nedumpatra is posting articles against Advocate Fali S. Nariman. He also filed Writ Petition before Delhi High Court being W.P. (C) No. 2019 of 2019, where he raised the issue of Advocate Fali Nariman practising in Supreme Court where his son Rohington Fali Nariman is a Judge.
>
> Under these circumstances having direct conflict of interest and having prejudice with Advocate Nedumpara, Justice Rohington Fali Nariman was disqualified to hear the case and he should have recused himself from the cases where Advocate Nedumpara is appearing.
>
> xxx xxx xxx
>
> But instead of maintaining dignity & sobriety of the Supreme Court the Respondent Judge Rohington Fali Nariman heard the case and brought the dignity & majesty of Hon'ble Supreme Court into disrepute."

65. The alleged contemnors have alleged that Shri Nedumpara was posting articles against Shri F. S. Nariman, a senior advocate who happens to be the father of Justice R. F. Nariman. It is alleged that therefore there was a direct conflict of interest and Justice R.F Nariman was disqualified from hearing the case involving Shri Nedumpara. We fail to see how there is any conflict of interest. Shri F.S. Nariman, Senior Advocate is a doyen of the Indian Bar and a legal luminary in his own right. Justice R.F. Nariman is his son and a Judge of this Court. That however would not create any conflict of interest between Justice Nariman and Shri Nedumpara because Shri F.S. Nariman and Justice R. F. Nariman are two different entities. The purported article has not been placed on record. In any event, it was Shri Nedumpara who could have raised this defence before the Bench and he, in fact, has filed an affidavit of apology accepting that he has committed contempt. The alleged contemnors have unnecessarily and without any reason questioned the impartiality of Judges of this Court.

66. As far as the allegations made at Page 55 of the first complaint are concerned, we find that the Shri Vijay Kurle could have said what he wanted to say in the first paragraph quoted hereinabove but what is totally unacceptable is the second part of the paragraph where Shri Vijay Kurle assumes the role of a judge and says that *"The*

only irresistible conclusion that can be drawn is that there were no malafides on the part of Advocate Nedumpara and if it were put in notice calling explanation in open Court then would have exposed Justice Nariman in front of advocates and public and that's why a very strange and different method is adopted by Justice Nariman by pronouncing conviction of advocate" This shows that he is fighting a proxy battle for Mr. Nedumpara. What is even more objectionable is the language used thereafter that if Shri Nedumpara was put to notice then it would have exposed Justice Nariman in front of advocates and public. This allegation also is a scandalous allegation. We are not looking into the merits of the decisions. We cannot comment on the merits of the decisions of the Bench headed by Justice Nariman but we must note that after holding Shri Nedumpara guilty he was heard on the point of sentence and thereafter he filed an affidavit which reads as follows:

"AFFIDAVIT

I, Mathews J. Nedumpara, Advocate, aged 60 years, Indian Inhabitant, residing at Harbour Heights, "W" Wing, 12-F, 12th Floor, Sassoon Docks, Colaba, Mumbai-400 005, now in Delhi, do hereby swear and state as follows:—

1. A Bench of this Hon'ble Court comprising Hon'ble Shri Justice Rohinton F. Nariman and Hon'ble Shri Justice Vineet Saran, by judgment and order dated 12th March, 2019, was pleased to hold me guilty for contempt in the face of the Court and list the case for hearing on the question of punishment.
2. I happened to mention the name of Shri Fali S. Nariman to buttress my proposition that even legendary Shri Fali Nariman is of the view that the seniority of a lawyer should be reckoned from the date of his enrolment and nothing else. However, I was misunderstood. I along with some office bearers of the National Lawyers' Campaign for Judicial Transparency and Reforms have instituted Writ Petition No. 2199/2019 in the High Court of Delhi for a declaration that the Explanation to Rule 6 of the Bar Council of India Rules is void inasmuch as it explains that the word "Court" does not mean the entire Court, but the particular Court in which the relative of a lawyer is a Judge. I instituted the said petition only to raise the concern many lawyers share with me regarding the immediate relatives practising in the very same Court where their relative is a Judge. In retrospection I realize that it was an error on my part to have arrayed Shri Fali Nariman as a Respondent to the said petition. I regret the same; no words can sufficiently explain my contrition and regret. I also in retrospection realize that I have erred even during the conduct of the above case before this Hon'ble Court and I probably would not have kept upto what is expected of me as a lawyer in the Bar for 35 years and crossed the age of 60. I feel sorry, express my contrition and tender my unconditional apology, while maintaining that some of the accusations levelled against me in the judgment dated 12th March, 2019 are absolutely wrong, which are, ex facie, black and white, and as incontrovertible as day and night.
3. The apology tendered by me hereinabove be accepted and I may be purged of the contempt.

Solemnly sworn at Delhi Sd/- this 27th day of March, 2019 (Mathews J. Nedumpara)"

67. A close perusal of the affidavit filed by Mr. Nedumpara shows that in retrospect Shri Nedumpara felt that it was an error on his part to have arrayed Shri F.S. Nariman as respondent in the writ petition filed by him in the Delhi High Court. He states that he regrets the same and no words can sufficiently explain his contrition and regret. He also states that he realises that he had erred during the conduct of the case before this Court. The two complaints filed by Shri Vijay Kurle and Shri Rashid Khan Pathan were sent even before Shri Nedumpara had been heard on the issue of sentence. What

the complainants alleged in the complaints is disproved from the apology of Shri Nedumpara submitted to the Court. This unqualified apology of Shri Nedumpara was accepted by the Court. In this background we are unable to find any plausible explanation for Shri Vijay Kurle to have used the words *"exposed Justice Nariman in front of advocates and public*". No lawyer can threaten to expose a judge in front of the advocates and public on the basis of some vague and reckless allegations. This language is highly disrespectful and scandalises the Court and, therefore, amounts to committing contempt of the Court.

68. On Page 60 of the first complaint Shri Vijay Kurle has stated as follows:

> "The threats given by Justice Nariman to Advocate Nedumpara on 5th March, as published in "Bar & Bench" is itself an offence of Contempt on the part of Justice Rohington Fali Nariman."

69. What has been published in Bar & Bench has not been placed on record. Shri Vijay Kurle has filed a large number of documents but has not stated on what basis he has alleged that Shri Nedumpara was threatened by Justice Nariman. Admonishment by a Judge cannot be said to be a threat. Since the alleged contemnors have not placed any material on record to show how Justice Nariman threatened Shri Nedumpara, this itself amounts to making a false accusation against a Judge. Shri Nedumpara in his affidavit has not made any reference to any threats given to him by any Member of the Bench. This clearly shows that the allegation made by Shri Vijay Kurle is false.

70. It is alleged by Shri Vijay Kurle, that Justice Nariman had *"misused his power to use material outside the court record and received by personal knowledge without disclosing its source*" and therefore, his action was against earlier judgments of this Court and amounted to contempt of this Court. Various judgments have been cited but most of them are not at all relevant to the case in hand. Furthermore, even if he wanted to criticise the judgment on this ground, Shri Vijay Kurle could have used temperate language but what has been said at Page 69 of the first letter is highly contemptuous. The said allegations read as follows:

> "The malafides of Justice Rohington Fali Nariman are writ large as can be seen from the fact that the materials relied by him in para 3,4,5,6,7,8 are totally the personal work of Justice Rohington Nariman and as can be easily inferred. It is clear that the most of the material supplied is from Justice S.J. Kathawala of Bombay High Court who in turn is Rohington's close and rival of Adv. Nedumpara."

71. A judge may be right or wrong and a party may criticise the judgment on any ground. However, in the allegations quoted hereinabove various serious charges of *malafide* have been levelled against a sitting Judge of this Court. Further, it is stated that material relied upon by Justice Nariman was supplied by Justice Kathawala of Bombay High Court, who is close to Justice Nariman and also happens to be a rival of Shri Nedumpara. Shri Vijay Kurle has failed to place any material on record to show that the material relied upon by Justice Nariman was supplied by Justice Kathawala. In fact, a perusal of the material shows that the materials relied upon were a matter of public record and were part of orders passed in cases that Shri Nedumpara appeared in or part of petitions filed by Shri Nedumpara himself. There is not an iota of evidence on record to show that Justice Kathawala is close to Justice Nariman. We also fail to understand on what basis the Shri Vijay Kurle has stated that Justice Kathawala is a rival of Shri Nedumpara. There is no question of rivalry between the Bar and the Bench or between a Judge and a lawyer. Justice Nariman in his judgment has relied upon the orders passed by the Bombay High Court in various cases. These are all public documents and we fail to understand how the alleged contemnors assumed that these documents were supplied by Justice Kathawala.

72. Some allegations made on Pages 2-3 of the first complaint are as follows:

"CHARGE 2 # Lack of basic knowledge to interpret the ratio decidendi of any case law.

xxx xxx xxx

CHARGE 3 # Don't know the basic law of criminal jurisprudence and basic law of evidence and acted in denial of whole basis of indian constitutional."

73. Similarly, the allegations made at Pages 71-72 of the first complaint are as follows:

"Hence Justice Rohington Fali Nariman by placing reliance on the Notice in Contempt proceeding, and making it as a basis to draw conclusion of conduct of an advocate knowing fully well that the said matter is still subjudice before sub-ordinate court, have violated Fundamental rights of Advocate Nedumpara and acted against the Constitutional mandate and thereby breached the oath taken as a Supreme Court Judge and is unbecoming of a Judicial officers.

Therefore reliance placed by Justice Rohington Fali Nariman on show cause Contempt notice is illegal and shows his lack of knowledge.

Hence the one-sided blanket reliance by some illiterate Judges having half-backed knowledge of law will broke the fabric of cardinal principles of criminal and civil jurisprudence.

VI) Conspiracy to distroy image and keep advocate away from his clients causing serious prejudices to their subjudice cause ex-face proved:

In the present case Justice Nariman is being aggrieved by Petitions filed by Nedumpara against his father Fali Nariman and also against his close Justice Kathawalla and therefore had taken reference of different irrelevant cases and inadmissible evidences. The object of the Justice Nariman as stated eatlier, is not really to cleanse and purify the legal profession, or to protect dignity and majesty of justice but to silence the advocates who appear for his opponents, so that litigation could be won on a different turf."

74. As far as these allegations are concerned, the Bench was only referring to various cases where action had been initiated against Shri Nedumpara and noted that he is in a "*habit of terrorising Tribunal members and using intemperate language to achieve his ends before several Judges of the Bombay High Court*". Shri Nedumpara filed a discharge application in these proceedings stating that he has nothing to do with these complaints. Therefore, how can the alleged contemnors now raise issues which were never raised by Shri Nedumpara. On Page 71 of the first complaint it has been alleged that by placing reliance on the notice issued in contempt proceedings the learned Judge has violated fundamental rights of Shri Nedumpara and therefore breached his oath taken as a Judge of this Court.

75. The allegations made at Page 72 of the first letter are highly derogatory and scandalous. The Bench placed reliance on a show cause notice in reference to Shri Nedumpara to show that the "*advocate has embarked on a course of conduct which is calculated to defeat the administration of justice in this country*". This in no way reflects lack of knowledge. The language used in the latter portion quoted hereinabove indicating that Justice Nariman is an illiterate Judge having half baked knowledge of law is a scandalous and scurrilous allegation which definitely amounts to contempt of Court.

76. In Charge VI at Page 72, Shri Vijay Kurle has alleged that Justice Nariman wanted to keep advocates away from his Court.

77. The alleged contemnors by saying that the object of Justice Nariman while taking action against Shri Nedumpara was "*not really to cleanse or purify legal profession or to protect the dignity and majesty of justice but to sitence the advocates who appear for his opponents, so that the litigation could be won*

on a different turf" have made allegations that are scandalous and challenge the impartiality of Judges of this Court.

78. Again, in Para 79 for the first letter, the alleged contemnors have stated as follows:

> "However Justice Nariman is trying to create an atmosphere of prejudice against some clients so that no advocate will accept their brief and they will be denied their constitutional right of being represented by a Lawyer of their choice."

79. These allegations that Justice Nariman is wanting to create an atmosphere of prejudice against some clients is a false allegation for which no supporting material has been given by the alleged contemnors in their reply. We do not even understand how the order passed in Writ Petition (C) No. 191 of 2019 or in Suo Motu Contempt Petition No. 1 of 2019 would lead to the conclusion that some clients would be prejudiced as no advocate would accept their brief. There is no basis for this absolutely false allegation which also amounts to contempt of Court.

80. On Page 81 of the first complaint Shri Vijay Kurle has stated as follows:

> "It is settled law that person having half backed knowledge of law should not be allowed to participate in court proceedings [Vide : *N. Natarajan* v. *B.K. Subba Rao*, AIR 2003 SC 541]
>
> Then how the person having half backed knowledge will be allowed to hold the post of Judges in the of the Highest Court of Country i.e. Supreme Court.
>
> This Country had seen the activities of Justice Karnan, where he had passed sentence of punishment against the Judges of Supreme Court. In the present case, the advocate, who is also officer of the Court is being punished by Justice Rohington Nariman & Justice Vineet Saran (both are Justice Karnan in making) in an arbitrary manner at their whim & fancies, rather to satisfy their personal grudges and settle the scores of people who are interested to see Adv. Nedumpara is out of his mission of Transparency. If this is not checked in time then this evil get propagated as tolerance will boost their confidence."

81. These allegations on the face of it are highly contemptuous. Shri Vijay Kurle is saying that both the Judges who comprised the Bench have half baked knowledge of law and they could not have been allowed to hold the post of Judges in the Supreme Court of India. The language used is highly intemperate and scandalises the Court and, therefore, amounts to contempt.

82. The next allegations on Pages 86-87 are as follows:

> "Hence the Observation by Justice Rohington Fali Nariman are Unconstitutional and is Contempt of Supreme Court and also reflects their poor level of understanding and lack of basic knowledge of law.
>
> As per section 52 of Penal Code, 1860 Justice Rohington Fali Nariman is not entitled for any protection of good faith.
>
> Section 52 reads as under;
>
> *"Good faith.- Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention*

33. Furthermore in para 8 of the Judgment dated 12th March, 2019 Justice Rohington Fali Nariman as he felt aggrieved of case against his close Judge of Bombay High Court (Justice S.J. Kathawala) had observed that the prayers of W.P. (L) No. 1180 of 2018 are contemptuous. This is again travesty of Law on two counts:

(i) Said Petition was decided by Division Bench of High Court vide order dated 26.07.2018 and at that time High Court did not find it contemptuous then how Justice Rohington Fali Nariman after a period of 8 months can not comment it to

be contemptuous.

(ii) Secondly the prayers were regarding initiation of Criminal proceeding against Justice S.J. Kathawalla who acted against various Supreme Court Judgments and making such prayers is fundamental right of the victim it cannot be termed as Contempt."

83. Further on Page 124 of the first complaint it is alleged as follows:

"Hence it is clear that Justice Rohington Fali Nariman is a person who neither knows the law nor knows its application i.e. neither Command over shastras nor put it into practice."

84. The alleged contemnors could have criticised the correctness of the judgment, but the allegation that observations of Justice Nariman amount to contempt of Court or show his poor level of understanding and lack of basic understanding of law is not language which a lawyer is expected to use against a sitting Judge of the Supreme Court. Again, in this very quoted portion a totally unfounded allegation has been made that Justice Nariman was aggrieved since allegations had been levelled against his close Judge of the Bombay High Court (Justice S.J. Kathawala). The conclusion drawn by Shri Vijay Kurle is not only incorrect but totally false and appears to have been done with the *mala fide* intention of harming the reputation of Justice Nariman and raising questions with regard to his impartiality or ability. In fact, Writ Petition No.(L)-1180 of 2018 was filed by Shri Nedumpara before the Bombay High Court praying that criminal action under Contempt of Courts Act be initiated against Justice Kathawala. This writ petition was dismissed by the Bombay High Court. The Bombay High Court did not decide whether Shri Nedumpara had committed contempt of Court or not. But the allegations made by Shri Nedumpara were not accepted. This means that the Bombay High Court did not find any merit in the petition of Shri Nedumpara and dismissed the same. Nothing has been placed on record to show that this judgment is under challenge before this Court. The Bombay High Court was not dealing with the contempt proceedings. The Bench has only relied upon the judgment to support his observation that Shri Nedumpara was in the habit of making such accusations against sitting Judges of the Court.

85. We also fail to understand how Shri Vijay Kurle who is a lawyer claims that it is his fundamental right to initiate criminal proceedings against Judges. Some members of the Bar cannot hold the judiciary to ransom by threatening Judges of initiating criminal action. If this trend is not dealt with firmly then any party against whom a case is decided will start filing criminal cases against judges.

86. The relationship between the Bench and the Bar should be a cordial relationship with mutual respect for each other. Lawyers who try to browbeat or threaten judges have to be dealt with firmly and there can be no ill-founded sympathy for such lawyers. Such lawyers do nothing to help the legal fraternity much less the Bar.

87. Shri Vijay Kurle has further made the following observations in Para 35 on page 103 of the first complaint:

"35. In view of the above settled law it is clear that Justice Rohington Fali Nariman is not having basic knowledge of law or he has a tendency to lower down the authority of Hon'ble Supreme Court by treating him above law."

Again, these allegations are not only totally baseless but the allegations themselves lower the majesty of this Court.

88. Shri Vijay Kurle in Para 36 on page 112 of his letter has stated as follows:

"36. Worst part is that Justice Justice Rohington Fali Nariman in para 8 of his order tried give a certificate to Justice Kathawalla that he is being attacked for lawful order. In fact the petition was filed by advocate for observations against an advocate without issuing any notice to him which is are prima-facie illegal and against the settled legal principle by various Supreme Judgments and more

particularly in *Sarwan Singh Lamba's Case* (Supra). Said matter being subjudice should not be commented by Justice Rohington Fali Nariman.

So the Criminal minded Judges by twisting material facts, by misleading legal position and by misinterpreting the settled law of Hon'ble Supreme Court are trying to make the Court as their personal property. Absolute Power corrupts Absolutely. And such type of Judge are running syndicate to extort money for giving favourable orders to the underserving people."

89. We are constrained to observe that Shri Vijay Kurle has totally misread and misquoted the order of Justice R.F. Nariman. In Para 8 of the said order in Writ Petition (C) No. 191 of 2019 after referring to the order passed by a learned Single Judge of the Bombay High Court it is recorded that Shri Nedumpara filed Writ Petition No. L-1180 of 2018 in his own name against the learned Single Judge of the Bombay High Court who has passed the order and the learned Single Judge was arrayed as the sole respondent in the said writ petition. The Court records that the petition was dismissed as not maintainable. Therefore, the allegations made, that the matter was *subjudice* are totally false and misleading. The Court has noted that the matter has been finally decided and no material has been placed on record to show that this judgment has been challenged.

90. What is even more shocking is the next paragraph where it is stated that criminal minded judges by twisting facts and by misleading legal position and misinterpreting the laws of this Court are trying to make the Court as their personal property. In the context in which these allegations have been made it is apparent that though not named, these allegations are against the Judges who constitute the Bench which decided Writ Petition (C) 191 of 2019. No discussion is required to hold that such allegations are scandalous and amount to contempt of Court. Shri Vijay Kurle has the temerity and gall to make the accusations against 2 sitting Judges of this Court alleging that they are criminal minded Judges, that they have twisted material facts and have misinterpreted the settled laws of this Court. We fail to understand what is meant by 'misleading legal position'. The allegations that these Judges are trying to make the Court their personal property and are running a syndicate and passing favourable orders to undeserving people to extort money are scandalous and scurrilous and no great discussion is required to hold that they amount to contempt of Court.

91. In Para 37, on page 113 of the first complaint, Shri Vijay Kurle alleges that Shri Nedumpara wanted prosecution of a learned Judge of the Bombay High Court and also wanted compensation for violation of his fundamental rights. That petition has been dismissed by the Bombay High Court. As far as we know that judgment has not been challenged which clearly indicates that the Bombay High Court did not accept the contention of Shri Nedumpara that the judge was liable to be prosecuted or that Shri Nedumpara was entitled to any compensation. It is surprising that thereafter the alleged contemnors made the following submissions on page 114 of the first letter:

"So observation of Justice Justice Rohington Fali Nariman are prima-facie seems to be the outcome of his frustrated mind or done to help Justice Kathawala of Bombay High Court whose orders are set aside by Higher Benches for his misuse of power with strict & harsh observation. [*Trident Steel and Engineering Co.* v. *Vallourec*, 2018 SCC OnLine Bom 4060]. The said Justice Kathawala who is caught in sting opertation & his corrupt practices are under scrutiny before (Five - Judge Bench of Hon'ble Bombay High Court). Hence it is clear that Justice Rohington Fali Nariman tried to save an accused Judge and in both the eventuality he is unfit to work as a Judge of a Highest Court and is liable to be removed forthwith by using powers under "In-House- Procedure' as done in Justice Karnan's case."

Again, the allegations made are totally scandalous. Alleging that a judge has

passed an order as an outcome of his frustrated mind is, in our opinion, a highly scandalous allegation. The other allegation that the order was passed with a view to help Justice Kathawala is equally scandalous. These allegations also amount to contempt.

92. On Page 93 of the first letter the following allegations have been made:

> "So Division Bench of Hon'ble Bombay High Court which decided the Writ Petition of Mr. Nedumpara did not find it as Contempt. Full Bench of Supreme Court did not find it as Contempt but after 8 months Justice Rohington Fali Nariman call it as contemptuous it not only being judicial impropriety to be abide by views of larger bench but even by brother Judges but also proves ulterior motive of Justice Nariman.
>
> The Petition for prosecution of Judge can never be contempt if not being frivolous. Rather it is duty of the advocate to make complaint of corrupt Judges."

93. Further on Page 134 of the first letter the alleged contemnors have made the following allegations:

> "In present case Justice Nariman had done the same wrong. It is done with malafide intention and for ulterior purposes as ex-facie proved from the record and explanation given in the proceeding prasa.
>
> XOXO) Under these circumstances since Justice Nariman is Judge of a Supreme Court, he does not deserve any leniency..."

94. On Page 135 of the first letter, Shri Vijay Kurle has made the following allegations:

> "In the present case when Justice Rohington Fali Nariman had not taken any action on the spot i.e. on 5th March, 2019 then there was no such urgency to bot to follow the procedure of Section 14 & Section 15 of Contempt of Courts Act 1971 as ruled by Full Bench of Hon'ble Supreme Court in *Dr. L.P. Mishra* v. *State of U.P.*, (1998) 7 SCC 379 (Supra).
>
> But Justice Rohington Fali Nariman had acted against the procedure without any explanation as to what is the urgency to not to follow the procedures mandated under the law. This itself is a ground to infer that he have been actuated by an oblique motive or corrupt practice.
>
> [Vide *R.R. Parekh* v. *High Court of Gujarat*, (2016) 14 SCC 11"

95. The allegations that "*this itself is a ground to infer that he have been actuated by an oblique motive or corrupt practice*" is a totally baseless and unfounded allegation which scandalises this Court and lowers the majesty of this Court. When any person whether he be a party to the proceedings or not criticizes a judgment of a court he could do so as long as that party does not level allegations of malafide, ulterior motives, extraneous reasons etc. In the portions quoted above Shri Vijay Kurle has levelled allegations challenging the impartiality of Judges of this Court and he has also stated that the orders were passed with malafide intention and ulterior purpose. These allegations amount to scandalising the court and therefore there can be no manner of doubt that Shri Vijay Kurle is guilty of having committed contempt of this Court.

96. On Pages 150-154 of the first complaint Shri Vijay Kurle has stated as follows:

> "XIII) #Charge# Passing order with ulterior motive to save accused judge S.J. Kathwala Against whom "Indian Bar Association" got deemed sanction makes justice rohington fali nariman liable for prosecution under Section 218 of Penal Code, 1860.
>
> xxx xxx xxx
>
> This being the position, there was no occasion or reason for Justice Rohington Fali Nariman to make such irrelevant, unlawful and uncalled for observation. It is

clear that said observations are made with ulterior motive to save his friend Justice S.J. Kathawalla and therefore liable to be prosecuted under section 218 of Penal Code, 1860.

XIV) Charge # Inability to interpret the supreme court judgment:

In para 9 of the judgment Justice Rohington Fali Nariman relied upon the Constitution Bench judgment in the case of *Sukhdev Singh Sodhi* v. *Chief Justice S.* Teja Singh, 1954 SCR 454 to interpret that as per said ruling the Judge who is personally attacked has to hear the matter himself. In fact the law laid down in the said judgment is exactly contrary."

97. The allegation that Justice Nariman acted with ulterior motive to save his friend Justice Kathawala for the reasons stated above is a totally scandalous and contemptuous allegation. The next allegation is that Justice Nariman acted in violation of a judgment of this Court in *Sukhdev Singh Sodhi's case* (supra). Without commenting on the correctness or otherwise of the allegations, the following observations under this heading are totally contemptuous:

"This ex-facie proved very poor level of understanding of Justice Rohington Fali Nariman.

But this provision and judgment was conveniently, deliberately ignored by Justice Rohington Fali Nariman or he may not know this basic law which is sufficient to prove his incapacity and poor level of understanding which is sufficient to remove him forthwith from judiciary."

98. The language used by Shri Vijay Kurle that Justice Nariman does not even know the basic law and, therefore, is incapacitated due to his poor level of understanding to be removed forthwith from the judiciary is highly intemperate language which amounts to gross contempt of Court.

99. At Page133 of the first complaint it is alleged as follows:

"In *Kapol Co-op. Bank Ltd.* v. *State of Maharashtra*, 2005 Cri LJ 765 it is ruled that the term "Abuse of Process of Court" means act of bringing frivolous, vexations and oppressive proceedings.

The same is the act of Justice Rohington Fali Nariman by bringing Contempt case against Advocate Nedumpara."

100. Again, at Pages 167-168 of the first complaint following has been observed:

"So it is clear that the process of law is being grossly abused by Justice Rohington Fali Nariman & Justice Vineet Saran under impressin that the Court is their personal & private property.

xxx xxx xxx

Charge # Breach of oath taken as a hon'ble Supreme Court judge by acting partially, with Ill-Will and not upholding the constitution and law."

101. For the reasons stated above the allegation that 2 Judges consider this Court as their personal property is a scandalous allegation and amounts to contempt.

102. In the complaint filed by Shri Vijay Kurle in Para 49 on pages 171-173, there is a reference to the complaint filed by Shri Rashid Khan Pathan and it is stated that the other complaint filed by Human Rights NGO is self-explanatory. The allegations read as follows:

"That the another complaint by Human Right (N.G.O.) in other matter against Justice Rohington Fali Nariman & Justice Vineet Saran, is self-explanatory about incapacity, poor level of understanding, tendency to undermine the authority of Supreme Court and bringing the rule of law into disrepute and committing fraud on power to grant unwarranted relief to the undeserving accused and denying relief to the deserving victim woman.

xxx xxx xxx

That accused Justice Rohington Fali Nariman & Vineet Saran in Criminal Appeal No. 387 of 2019 [*Aarish Asgar Qureshi* v. *Fareed Ahmed Qureshi*, 2019 SCC OnLine SC 306] had with malafide intention to help accused had observed that police report have no evidentiary value for directing enquiry against the accused husband on the application given by wife.

xxx xxx xxx

But accused Judges in a hurry to help accused entertained the appeal against the order directing the compliant and passed order in utter disregard and defiance of law laid down by Hon'ble Supreme Court and also against the statutory provisions of Section 341 of Criminal Procedure Code and acted unconstitutionally."

103. Not only are these allegations scandalous and contemptuous and undermine the authority of this Court, but this clearly shows that the Shri Vijay Kurle was aware of the complaint filed by Shri Rashid Khan Pathan. This clearly indicates that Shri Rashid Khan Pathan had not only sent the complaint to the Hon'ble President of India and the Chief Justice of India but had communicated the same to others including Shri Vijay Kurle and therefore, this complaint was available in the public domain.

2nd Complaint dt.19.03.2019 by Shri Rashid Khan Pathan

104. We now take up the complaint filed by Shri Rashid Khan Pathan, who is said to be the National Secretary of the Human Right Security Council (N.G.O). The basis of the complaint is an order passed by two Judges of this Court (Justice R. F. Nariman and Justice Vineet Saran) in Criminal Appeal No. 387 of 2019. In paragraphs 4 and 6 of this complaint, the complainant made the following allegations:—

Pgs. 4-5

"4. The present Complaint is regarding the misuse of power of Justice Rohinton Fali Nariman & Justice Vineet Saran while quashing the prosecution ordered by Hon'ble Bombay High Court against accused Under Section 340 of Criminal Procedure Code."

xxx xxx xxx

6. The reasoned and lawful order of High Court was set aside by accused Judge for extraneous consideration and in contempt of Constitution Bench judgment of Hon'ble Supreme Court."

105. Criminal Appeal No. 387 of 2019 was filed by a person who was aggrieved by the order whereby the High Court had directed that action be taken against him under Section 340 of the Cr.PC. Vide judgment dt. 26.02.2019 in *Aarish Asgar Qureshi* v. *Fareed Ahmed Qureshi*[16] this court set aside the said order. In that case the respondent before this Court was represented by Shri Nilesh Ojha, alleged contemnor no. 3 herein. It was virtually a private case between two parties having no element of public interest and therefore we do not understand as to why Shri Rashid Khan Pathan was so upset by this order that he filed a complaint in his capacity as National Secretary of the Human Rights Security Council.

106. Even assuming that Shri Rashid Khan Pathan, could criticise the judgment he should have stopped there. But in this case, Shri Rashid Khan Pathan did not stop at criticising the judgment. He has unambiguously attributed motives to the Judges by using phrases such as *"judges deliberately ignored the settled legal position"* or *"deliberately and conveniently ignored*' reference to certain observations, and *"deliberately misinterpreted'* certain judgments cited before the Court. Further, it is alleged that the fact that the Bench acted in defiance of the Constitution Bench judgment of the Court is sufficient to prove the *mala fide* of the accused Judges. First of all, it is not for Shri Rashid Khan Pathan to decide whether the judgment is correct or not. There is a legal procedure established whereby a review petition or a curative petition could be filed. We cannot go into the merits of the judgment but even

assuming that the judgment is not in consonance with the judgment of the Constitution Bench then also that is no ground to allege *mala fide* against the Judges comprising the Bench. He has also made allegations that the Judges have breached the oath of office and acted in a biased manner.

107. One of the reasons given by Shri Rashid Khan Pathan for filing the complaint is that he had filed a complaint against Shri Fali S. Nariman, Senior Advocate of this Court, alleging antinational activities being committed by Shri Fali S. Nariman. In that case, Shri Rashid Khan Pathan was represented by Shri Nilesh Ojha, alleged contemnor no. 3. On this ground, it is averred that Justice Nariman should not have heard the matter. The complaint in question is stated to have been filed on 19.02.2019. No material has been placed on record to show whether notice, if any, was issued on this complaint. The judgment in question was delivered on 26.02.2019 and there was no request by Shri Nilesh Ojha that any of the Judges should recuse from the hearing of the matter. There is no material to show that the factum of this complaint was brought to the notice of the Hon'ble Bench. Even if that had been brought to the notice, we find that this should not be a sufficient ground for recusal. If Judges start recusing on any such frivolous grounds, it would lead to forum hunting. If a litigant wants to avoid any Judge, he can easily ensure that a complaint, frivolous or otherwise, is filed against a Judge or a member of his family and then ask for recusal of the Judge. We cannot permit the judiciary to be held ransom at the hands of such litigants or lawyers.

108. There are other parts of the complaint by Shri Rashid Khan Pathan that we would like to highlight:—

Pg.16

"11) xxx

So the observations of Justice Rohinton Fali Nariman & Justice Vineet Sareen are not only per-incuriam but Contempt of law laid down by Full Bench of Hon'ble Supreme Court and also reflects their lack of basic knowledge."

Pg. 20

"But while passing the final order, the reference to said observations were deliberately and conveniently ignored by the accused Judges more particularly by Justice Rohinton Fali Nariman."

Pg. 33

"This judgement was relied and referred by respondent Judges in their judgment dated 26th February, 2019 but deliberately misinterpreted it with a view to set aside the lawful order thereby giving undue advantage to accused."

Pg. 34

"But the Respondent Judges deliberately ignored the settled legal position by Supreme Court and various High Courts."

Pg. 39

"Both these judgments were relied by Counsel for wife and are in the compilation filed in the Supreme Court. These judgments are also referred by Ld. Sessions Judge in its order dated 12th December, 2018. Said order is annexed with Appeal before Hon'ble Supreme Court at Page No. 172- 194 and abovesaid two judgments are referred in para 21 (Page No. 185 of S.L.P.) & Para 22 (Page No. 186 of S.L.P.)

But Respondent Judges deliberately ignored the said legal position settled by Hon'ble Supreme Court and Therefore the said order dated 26th February, 2019 is not only per-incurriam but Contempt of Hon'ble Supreme Court."

Pg. 43

"But the Respondent Judges deliberately ignored to reproduce these paras in their order with ulterior motive to help the accused.

Moreover how the said case law is either applicable or not applicable is not discussed in the judgment except referring it in a cursory manner."

Pg. 52

"But Justice Rohinton Fali Nariman acted in utter disregard and difiance of Constitution Bench's judgment even if it was brought to his notice.

This is sufficient to prove the malafides of the accused Judges i.e. Justice Rohinton Fali Nariman & Justice Vineet Saran."

Pg. 62

"But here the Respondent Judges breach the oath taken as a Judge by acting contrary to law and in a biased manner and therefore they forfeited their right to sit on the chair of highest Court of the Country."

Pg. 71

"38). Poor level of understanding of a judge:—

xxx xxx xxx"

Pg. 77

"45). Under these circumstance Justice Rohington Fali Nariman having knowledge of personal enmity between his father and Adv. Nilesh Ojha, instead of recusing himself, heard the case represented by Adv. Nilesh Ojha and out of his earlier prejudices passed the illegal order by willful disregard and defiance of the various law laid down by the Hon'ble Supreme Court."

109. The allegations in the portions which have been quoted above allege that the Bench passed orders in wilful disobedience of law and committed contempt of court, that the judges deliberately and conveniently ignored certain portions of the judgment cited, that they deliberately misinterpreted the orders, that they deliberately ignored the settled legal position, that the judges acted with ulterior motive to help the accused, and that all this is sufficient to prove the *malafides* of the two judges whom Shri Rashid Khan Pathan describes as accused. These allegations are not only false but have been made only with a view to ensure that Justice Nariman should have recused himself from hearing the case in which he was still to hear Shri Nedumpara on the question of punishment. Further there is an allegation that Justice Nariman had the knowledge of personal enmity between his father and Shri Nilesh Ojha. The language used is not only objectionable, but by questioning the impartiality, integrity, ability of the Judges and by saying that the judges deliberately acted in a particular manner and raising allegations of malafide against them Shri Rashid Khan Pathan has also committed contempt of Court.

110. We have already extracted large portions of the letters. Both the letters on their face are totally contemptuous in nature. No litigant has a right to attribute motives to a Judge. No litigant has a right to question the integrity of a Judge. No litigant has a right to even question the ability of a Judge. When the ability, integrity and dignity of the Judges are questioned, this is an attack on the institution. It is an attack on the majesty of law and lowers the impression of the Courts in the public eye. The allegations in the complaints are scurrilous and scandalous. Shri Vijay Kurle and Shri Rashid Khan Pathan do not deny that they have sent these letters. They, in fact, justify the sending of these letters. There is not even a word of regret in any of the affidavits filed by them.

111. We now examine the context in which these allegations have been made. The first complaint by Shri Vijay Kurle dated 20.03.2019 is basically in relation to the order dated 12.03.2019. Shri Nedumpara was held guilty of contempt vide order dated 12.03.2019. Notice was issued to him for being heard on the issue of punishment. This notice was made returnable within two weeks and the record shows that this notice was actually made returnable on 27.03.2019. In the meantime, both Shri Vijay Kurle

and Shri Rashid Khan Pathan sent these complaints praying that action be taken against the Members of the Bench. This, in our opinion, is the grossest form of contempt because the intention was to intimidate the Judges so that they should desist from taking action against Shri Nedumpara. Shri Nedumpara in his affidavit filed in this Court stated that he barely knew Shri Vijay Kurle and Shri Nilesh Ojha. According to him, he did not know Shri Rashid Khan Pathan at all. On the basis of the statement we have discharged Shri Nedumpara. He, in fact, stated that he came to know about these complaints only after notice was issued and his colleague Mrs. Amin took out the complaints filed by Shri Vijay Kurle and Shri Rashid Khan Pathan from the social media.

112. In the complaint filed by Shri Vijay Kurle there are references to many documents and allegations that certain issues raised in the Court were ignored. The order dated 12.03.2019 convicting Shri Nedumpara which is the fulcrum of the complaint of Shri Vijay Kurle was passed without issuing notice to Shri Nedumpara. Shri Vijay Kurle alleges ignorance of law and failure to comply with various Constitution Bench judgments without even caring to ascertain whether these judgments were actually cited before the Bench or not. There can be no manner of doubt that this complaint by Shri Vijay Kurle was filed with a view to intimidate the Judges so that no action against Shri Nedumpara is taken.

113. Coming to the complaint of Shri Rashid Khan Pathan. The same relates to the case in which Shri Nilesh Ojha was a counsel for the respondent. Any party who loses a matter in a Court may turn out to be disgruntled and may feel that justice had not been done to it. The judgment in *Aarish Asgar Qureshi* (supra) was delivered on 26.02.2019. Shri Rashid Khan Pathan in his complaint made reference to various cases which, according to him, were cited before the Bench. He urges that these cases were ignored or misinterpreted by the Bench. The question is as to how Shri Rashid Khan Pathan came to know about these facts. The only source of information could be Shri Nilesh Ojha.

114. No doubt, any citizen can comment or criticise the judgment of this Court. However, that citizen must have some standing or knowledge before challenging the ability, capability, knowledge, honesty, integrity, and impartiality of a Judge of the highest court of the land. We are informed that Shri Vijay Kurle has hardly 7 years standing at the Bar. His complaint is full of mistakes and he has not even cared to check the spelling of the name of the Judge who he claims has no knowledge of law. His professional credentials are not known and we fail to understand how can he adorn the robes of a Judge to pass judgment on the Judges of the highest court, that too by using highly intemperate language and language which casts a doubt not only on the ability of the Judges but scandalises the Court and lowers the dignity and reputation of this Court in the eyes of the general public. These sort of scandalous allegations have to be dealt with sternly and nipped in the bud. As far as Shri Rashid Khan Pathan is concerned, he professes to be the National Secretary of an NGO. Other than that, it does not even appear that he is a lawyer. What was the public interest in raking up issues with regard to a litigation which had no element of public interest? It deals mainly with quashing of the proceedings initiated by the Bombay High Court against a party under Section 340 of the CrPC. There is no explanation as to what the case of *Aarish Asgar Qureshi* (supra) has got to do with this case. It is not as if somebody has been put behind bars or the human rights of any person had been violated. Shri Rashid Khan Pathan is basically waging a war against the Members of the Bench and against this Court at the instance of Shri Nilesh Ojha, if not Shri Nedumpara because in his complaint he states that Shri Nilesh Ojha was the lawyer for the respondent before the Court and could be the only person who could have supplied the material to Shri Rashid Khan Pathan.

Alleged Contemnor No. 3-Shri Nilesh Ojha

115. This brings us to Shri Nilesh Ojha, alleged contemnor no. 3. At the outset, we may point out that Mr. Nedumpara in his discharge application has very clearly disassociated himself from the letters and has stated that he barely knows Shri Vijay Kurle and Shri Nilesh Ojha and has also stated that he has no concern with the communication sent by them. This is not the stand of alleged contemnor no. 3, Mr. Nilesh Ojha. He is the National President of the Indian Bar Association of which Mr. Vijay Kurle is the State President. During these entire proceedings he has relied upon a technical objection that he has not signed the letters, but the tenor of his written submission as well as the various affidavits again show that he has not disassociated from what has been said in the complaint. In fact, he has tried to justify the same. The cat comes out of the bag when we go through Para 12.41 of the discharge application filed by Shri Nilesh Ojha. The following averments are extremely relevant:

> "12.41. That, the entire letter dated 23.03.2019 sent by Adv. Milind Sathe nowhere states that which part of Complaint given by me, Adv. Vijay Kurle,& Rashid Khan Pathan is wrong or incorrect..."

116. This clearly indicates that the letters sent by Shri Vijay Kurle and Rashid Khan Pathan were sent with the knowledge and consent of Shri Nilesh Ojha.

117. We may also now refer to some other facts. The complaint of Rashid Khan Pathan is based on the case which was argued by Shri Nilesh Ojha. He has made various allegations that some arguments were raised by Shri Nilesh Ojha which were not considered by the Bench or were brushed aside. He could have come to know about this only if Shri Nilesh Ojha had told him and therefore, it cannot be believed that Shri Nilesh Ojha was not aware or did not support what was said in the complaint of Shri Rashid Khan Pathan. The conduct of Shri Nilesh Ojha even while arguing the matter was to support each and every thing said in the complaints filed by Shri Vijay Kurle and Shri Rashid Khan Pathan. He may not have signed the complaint but we have no doubt in our mind that both these complaints were sent in coordination with each other. In fact, Shri Vijay Kurle in his complaint refers to the complaint made by Shri Rashid Khan Pathan. If the complaint of Shri Rashid Khan Pathan is addressed only to the President of India and the Chief Justice of India, which was sent on 19.03.2019 how could Shri Vijay Kurle on 20.03.2019 make reference to the allegations in the complaint made by Shri Rashid Khan Pathan and support the same unless he had read them.

118. As far as the complaint of Shri Vijay Kurle is concerned, it is nothing but a proxy battle for Shri Nedumpara. If Shri Nedumpara did not know Shri Vijay Kurle, how could such a detailed complaint running into 183 pages have been filed by Shri Vijay Kurle on 20.03.2019 when the matter of Shri Nedumpara was still pending in this Court. This Court convicted Shri Nedumpara for contempt of Court by judgment dated 12.03.2019 and directed Shri Nedumpara to appear so that punishment could be imposed on him for contempt of Court. The matter was listed on 27.03.2019. In our opinion, both these complaints were sent to the President of India with a view to browbeat this Court so that this Court is terrorised into not taking action against Shri Nedumpara. In a matter which was still pending in so far as imposition of punishment was concerned, Shri Vijay Kurle and Shri Rashid Khan Pathan had no business sending these communications. These communications were widely circulated on social media, as is apparent from the affidavit of Mrs. Rohini M. Amin filed in the present case where she has stated that she obtained a copy of the complaint from the social media. Shri Rashid Khan Pathan had addressed his complaint only to the President of India and the Chief Justice of India. As far as the complaint of Shri Vijay Kurle is concerned, it is addressed to many other persons including all Judges of the Supreme Court, all Judges of all the High Courts, all State Bar Councils and the Bar Council of India. Obviously, the President of India or the Chief Justice of India did not put this

complaint on social media and only Shri Rashid Khan Pathan could have done so. It was also obvious that this was done only with the active connivance and with the consent of Shri Nilesh Ojha since he is the President of the Indian Bar Association. It is only when notice of contempt was issued, that Shri Nedumpara stated that he does not know Shri Vijay Kurle, Shri Nilesh Ojha and Shri Rashid Khan Pathan and totally disassociated himself from the complaints. As far as Shri Nilesh Ojha is concerned, he says that he has not sent the complaint nor the same was issued with his knowledge. However, till date Shri Nilesh Ojha has not sent any communication to anybody or in the public domain that he has disassociated himself with the complaint of Shri Vijay Kurle. Shri Nilesh Ojha is the President of the Indian Bar Association. The complaint is sent by Shri Vijay Kurle who is the State President of the Maharashtra and Goa Unit of Indian Bar Association. This was a complaint by Shri Vijay Kurle not in person but in his official capacity as State President of the Maharashtra and Goa Unit of the Indian Bar Association. Shri Nilesh Ojha is the President of the Indian Bar Association. When a member of the body of lawyers sends such a vitriolic communication making scandalous allegations against Judges the head of such body cannot shirk responsibility for the same. The head should either immediately send a contradiction or otherwise it has to be presumed that the complaint has been sent with his knowledge, consent and approval.

119. In view of the facts discussed above, we are of the clear view that the complaint sent by Shri Vijay Kurle was in connivance and at the behest of Shri Nilesh Ojha. Therefore, we have no doubt in our mind that all three i.e. Shri Vijay Kurle, Shri Rashid Khan Pathan and Shri Nilesh Ojha were working in tandem and making scurrilous and scandalous allegations against the Members of the Bench, probably with the intention that the Members of the Bench would thereafter not take action against Shri Nedumpara.

Defence of Truth

120. Though not so much in the oral arguments but in the written arguments the alleged contemnors have also raised the plea of truth as a defence. Truth as a defence is available to any person charged with contempt of Court. However, on going through all the written arguments and the pleadings, other than saying that the Judges had misinterpreted the judgments of this Court or had ignored them or that Justice R.F. Nariman was biased, there is no material placed on record to support this defence. The allegations are also scurrilous and scandalous and such allegations cannot be permitted to be made against the Judges of highest Court of the country.

121. Keeping in view the aforesaid discussion, we hold all three alleged contemnors i.e. Shri Vijay Kurle, Shri Rashid Khan Pathan, and Shri Nilesh Ojha, guilty of contempt.

122. We place on record our appreciation for the valuable assistance rendered by Shri Siddharth Luthra, amicus curiae. We also reject all the baseless allegations levelled against him by the contemnors.

123. The matter be now listed on 01.05.2020 for hearing the contemnors on the issue of sentence, through video conferencing.

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[1] Pgs. 9-10, *The Law of Contempt : Contempt of Courts and Legislatures*, Fifth Edn., LexisNexis Butterworths Wadhwa, Nagpur (2013)

[2] 1954 SCR 454

[3] (1971) 1 SCC 626

[4] (1988) 3 SCC 167

[5] ILR (1974) 1 Del 1

[6] 1993 Supp (1) SCC 529 : (1992) 1 Scale 416

[7] (1991) 4 SCC 406

[8] (1995) 2 SCC 584

[9] (1998) 4 SCC 409

[10] (2001) 7 SCC 549

[11] (2010) 8 SCC 673

[12] (2005) 1 SCC 254

[13] (2008) 3 SCC 542

[14] (1996) 5 SCC 216

[15] (2002) 3 SCC 343

[16] (2019) 18 SCC 172 : (2019) 4 Scale 606

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(BEFORE ARUN MISHRA, B.R. GAVAI AND KRISHNA MURARI, JJ.)

PRASHANT BHUSHAN AND ANOTHER, IN RE . . Alleged Contemnors.

Suo Motu Contempt Petition (Crl.) No. 1 of 2020, decided on August 14, 2020

A. **Contempt of Court — Criminal Contempt — Exercise of contempt jurisdiction — Caution, care, ambit and scope — A special jurisdiction, which has to be exercised sparingly and with caution — Balancing of, with right to offer healthy and constructive criticism, which is fair in spirit must be left unimpaired in the interest of the institution of the judiciary itself**

— ***(a) Contempt jurisdiction when available*** — It can be exercised: (i) when an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions, or (ii) when a statement tends to undermine the dignity and authority of the court, or (iii) when a statement is calculated in order to malign the image of judiciary, or (iv) when the authority of the court is itself under attack — The word "authority" does not mean the coercive power of the Judges, but a deference and respect which is paid to them and their acts, from an opinion of their justice and integrity — If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs For this purpose that the courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalising them and obstructing them from discharging their duties without fear or favour A tendency to scandalise the court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt Thus it is the duty of court to exercise contempt jurisdiction for such hostile criticism

— ***(b) Contempt jurisdiction when not available*** (i) Contempt jurisdiction would not be available when a statement is made against a Judge as an individual, or (ii) While exercising the right of fair criticism under Art. 19(1) of the Constitution, if a citizen bona fide exceeds the right in the public interest, the court would be slow in exercising the contempt jurisdiction and show magnanimity

— ***(c) Public interest and fair criticism in good faith*** Fair criticism may not amount to contempt, if it is made in good faith and in public interest For ascertaining the good faith and the public interest, the courts have to see all the surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved — The right to offer healthy and constructive criticism, which is fair in spirit must be left unimpaired in the interest of the institution itself — Critics are instruments of reform but not those actuated by malice but those who are inspired by public weal Constructive public criticism

even if it slightly oversteps its limits thus has fruitful play in preserving democratic health of public institutions

— (d) Balance between right and restrictions The right under Art. 19(1) and the reasonable restriction under Art. 19(2) of the Constitution must be properly balanced If a citizen while exercising his right under Art. 19(1)(a) of the Constitution exceeds the limits and makes a statement, which tends to scandalise the Judges and institution of administration of justice, such an action would come in the ambit of contempt of court — Constitution of India, Arts. 129, 215, 142, 14, 19 and 21 (Paras 52 to 63, 34 and 35)

B. **Contempt of Court — Exercise of Contempt Jurisdiction — Wise economy of use of contempt jurisdiction — Magnanimous attitude or action in respect of contempt of court — Approach of court — An action for contempt of court should not be frequently or lightly taken by court**

— The judiciary cannot be immune from criticism — Fourth estate which is necessary instrumentality in strengthening the forces of democracy, should be given free play within responsible limits even when the focus of its critical attention is the court, including the highest court — It may be better in many cases for the judiciary to adopt a magnanimously charitable attitude, even when utterly uncharitable and unfair criticism of its operations is made out of bona fide concern for improvement

— However, when that criticism is based on obvious distortion or gross misstatement and made in a manner which seems designed to lower respect for the judiciary and destroy public confidence in it, it cannot be ignored — The court should act with seriousness and severity, where justice is jeopardised by a gross and/or unfounded attack on the Judges, where the attack is calculated to obstruct or destroy the judicial process — If the court considers, after evaluating the totality of factors, 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

The welfare of the people is the supreme law and this can be achieved only when justice is administered lawfully, judicially, without fear or favour and without being hampered and thwarted and this cannot be effective unless respect for it is fostered and maintained To punish an advocate for contempt of court must be regarded as an extreme measure, but to preserve the proceedings of the courts from being deflected or interfered with, and to keep the streams of justice pure, serene and undefiled, it becomes the duty of the court to punish the contemnor in order to preserve its dignity — Doctrines and Maxims — Salus Populi Suprema Lex — "The welfare of the people is the supreme law" — Application (Paras 43 to 49)

S. Mulgaokar, In re, (1978) 3 SCC 339 : 1978 SCC (Cri) 402, *followed in law*

P.N. Duda v. *P. Shiv Shanker*, (1988) 3 SCC 167 : 1988 SCC (Cri) 589, *affirmed in law*

Pritam Pal v. *High Court of M.P.*, 1993 Supp (1) SCC 529 : 1993 SCC (Cri) 356, *affirmed*

R. v. *Nicholls*, (1911) 12 CLR 280 (Aust); *Special Reference from the Bahama Islands, In re*, 1893 AC 138 (PC), *cited*

Phillimore Committee Report on Contempt of Court in the United Kingdom, (1974) bund. S. 794, paras 143-45, pp. 61-62; "Newspapers on Contempt of Court", (1935) 48 Harv LR 885 at p. 898, *cited*

C. Contempt of Court — Criminal Contempt — Scandalise or lower authority of court — Meaning and ingredients

— A publication which attacks on individual Judges or the court as a whole with or without reference to particular case, casting unwarranted and defamatory aspersions upon the character or ability of the Judges would come within the term of scandalising the court — It is not necessary that there should in fact be an actual interference with the course of administration of justice but that it is enough if the offending publication is likely or if it tends in any way to interfere with the proper administration of law

— When the conduct of a person tends to bring the authority and administration of the law into disrespect or disregard, the same would amount to scandalising the court

— A scurrilous attack on a Judge in respect of a judgment or past conduct has an adverse effect on the due administration of justice — This sort of attack in a country like ours has the inevitable effect of undermining the confidence of the public in the Judiciary and if the confidence in the Judiciary goes, the due administration of justice definitely suffers (Paras 22 to 31)

Brahma Prakash Sharma v. *State of U.P.*, 1953 SCR 1169 : AIR 1954 SC 10 : 1954 Cri LJ 238; *Hira Lal Dixit* v. *State of U.P.*, (1955) 1 SCR 677 : AIR 1954 SC 743; *E.M. Sankaran Namboodripad* v. *T. Narayanan Nambiar*, (1970) 2 SCC 325 : 1970 SCC (Cri) 451; *C.K. Daphtary* v. *O.P. Gupta*, (1971) 1 SCC 626 : 1971 SCC (Cri) 286, *followed*

D. Contempt of Court — Criminal Contempt — Scandalise or lower authority of court — Vilification of a Judge functioning as a Judge — Vilification and criticism of a Judge functioning as a Judge even in purely administrative or non-adjudicatory matters, held, amounts to criminal contempt — A Judge's functions may be divisible, but his integrity and authority are not divisible in the context of administration of justice — An unwarranted attack on him for corrupt administration is as potent in doing public harm as an attack on his adjudicatory function — Adjudication of disputes between parties is not the only function of a Judge — A Judge is required to discharge various other functions including disciplinary control — The exercise of power in both the cases is in due course of judicial administration (Paras 32 to 38)

Baradakanta Mishra v. *High Court of Orissa*, (1974) 1 SCC 374 : 1974 SCC (Cri) 128, *followed*

R. v. *Almon*, 1765 Wilm 243 : 97 ER 94, *held, approved*

State of W.B. v. *Nripendra Nath Bagchi*, AIR 1966 SC 447 : (1966) 1 SCR 771; *R.* v. *Gray*, (1900) 2 QB 36; *High Court of Orissa* v. *Baradakanta Misra*, 1973 SCC OnLine Ori 167 : AIR 1973 Ori 244, *cited*

Convicting Contemnor 1 and discharging Contemnor 2, the Supreme Court

Held :

Criticism of a Judge functioning as a Judge even in purely administrative or non-adjudicatory matters amounts to "criminal contempt"

The Judges apart from adjudication of causes from the seat of justice are also required to discharge various functions including the disciplinary control. The

Judge of the superior court in whom the disciplinary control is vested functions as much as a Judge in such matters, as when he hears and disposes of cases before him, though the procedures may be different or the place where he sits may be different. In both the cases, the powers are exercised in due course of judicial administration. If superior courts neglect to discipline subordinate courts, they will fail in an essential function of judicial administration and bring the whole administration of justice into contempt and disrepute. Mere function of adjudication between parties is not the whole of administration of justice for any court. (Paras 32 and 33)

Baradakanta Mishra v. *High Court of Orissa*, (1974) 1 SCC 374 : 1974 SCC (Cri) 128. *followed*

State of W.B. v. *Nripendra Nath Bagchi*, AIR 1966 SC 447 : (1966) 1 SCR 771. *cited*

When proceedings in contempt are taken for vilification of a Judge, the question that the Court will ask itself is, whether the vilification is of the Judge as a Judge or it is the vilification of the Judge as an individual. In the latter case, the Judge is left to his private remedies and the Court will have no power to commit for contempt. However, in the former case, the Court will proceed to exercise the jurisdiction with scrupulous care and in cases which are clear and beyond reasonable doubt. The jurisdiction is not intended to uphold the personal dignity of the Judges. However, if the attack on the Judge functioning as a Judge substantially affects administration of justice, it becomes a public mischief punishable for contempt and it does not matter whether such an attack is based on what a Judge is alleged to have done in the exercise of his administrative responsibilities. A Judge's functions may be divisible, but his integrity and authority are not divisible in the context of administration of justice. An unwarranted attack on him for corrupt administration is as potent in doing public harm as an attack on his adjudicatory function. (Para 37)

A vilificatory criticism of a Judge functioning as a Judge even in purely administrative or non-adjudicatory matters amounts to "criminal contempt". (Para 38)

Baradakanta Mishra v. *High Court of Orissa*, (1974) 1 SCC 374 : 1974 SCC (Cri) 128. *followed*

R. v. *Almon*, 1765 Wilm 243 : 97 ER 94. *held, approved*

State of W.B. v. *Nripendra Nath Bagchi*, AIR 1966 SC 447 : (1966) 1 SCR 771; *High Court of Orissa* v. *Baradakanta Misra*, 1973 SCC OnLine Ori 167 : AIR 1973 Ori 244, *cited*

Contempt of court — Magnanimous attitude or action for contempt of court

The judiciary cannot be immune from criticism. However, when that criticism is based on obvious distortion or gross misstatement and made in a manner which seems designed to lower respect for the judiciary and destroy public confidence in it, it cannot be ignored. An action for contempt of court should not be frequently or lightly taken. But, at the same time, the Court should not abstain from using this weapon even when its use is needed to correct standards of behaviour in a grossly and repeatedly erring quarter. It may be better in many cases for the judiciary to adopt a magnanimously charitable attitude, even when utterly uncharitable and unfair criticism of its operations is made out of bona fide concern for improvement. However, when there appears some scheme and design to bring about results which must damage confidence in our judicial system and demoralise Judges of the highest court by making malicious attacks, anyone interested in maintaining high standards of fearless, impartial and unbending justice will feel perturbed. When the question is of injury to an institution, such as the highest court of justice in the land, one cannot overlook its effects upon national honour and prestige in the comity

of nations. If fearless and impartial courts of justice are the bulwark of a healthy democracy, confidence in them cannot be permitted to be impaired by malicious attacks upon them. (Paras 40 to 43)

S. Mulgaokar, In re, (1978) 3 SCC 339 : 1978 SCC (Cri) 402, *followed in law*

Baradakanta Mishra v. *High Court of Orissa*, (1974) 1 SCC 374 : 1974 SCC (Cri) 128, *referred to*

A wise economy of use of the contempt power by the Court is the first rule. The Court should act with seriousness and severity, where justice is jeopardised by a gross and/or unfounded attack on the Judges, where the attack is calculated to obstruct or destroy the judicial process. Otherwise, the Court should ignore, by a majestic liberalism, trifling and venial offences. The dogs may bark, the caravan will pass. The constitutional values of free criticism, including the fourth estate and the need for a fearless curial process and its presiding functionary, the Judge must be harmonised and a happy balance has to be struck between the two. Confusion between personal protection of a libelled Judge and prevention of obstruction of public justice and the community's confidence in that great process is to be avoided. It must be clearly kept in mind because the former is not contempt, the latter is. Fourth estate which is an indispensable intermediary between the State and the people and necessary instrumentality in strengthening the forces of democracy, should be given free play within responsible limits even when the focus of its critical attention is the court, including the highest court. The Judges should not be hypersensitive even where distortions and criticisms overstep the limits, but they should deflate vulgar denunciation by dignified bearing, condescending indifference and repudiation by judicial rectitude. If the court considers, after evaluating the totality of factors, 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. (Paras 46 and 47)

S. Mulgaokar, In re, (1978) 3 SCC 339 : 1978 SCC (Cri) 402, *followed in law*

Phillimore Committee Report on Contempt of Court in the United Kingdom, (1974) Cmnd. 5794, paras 143-45, pp. 61-62; "Newspapers on Contempt of Court", (1935) 48 Harv LR 885 at p. 898, *cited*

R. v. *Nicholls*, (1911) 12 CLR 280 (Aust); *Special Reference from the Bahama Islands, In re*, 1893 AC 138 (PC), *cited*

The maxim *salus populi suprema lex*, that is "the welfare of the people is the supreme law" adequately enunciates the idea of law. The welfare of the people is the supreme law and this can be achieved only when justice is administered lawfully, judicially, without fear or favour and without being hampered and thwarted and this cannot be effective unless respect for it is fostered and maintained. To punish an advocate for contempt of court must be regarded as an extreme measure, but to preserve the proceedings of the courts from being deflected or interfered with, and to keep the streams of justice pure, serene and undefiled, it becomes the duty of the court to punish the contemnor in order to preserve its dignity. (Paras 49 and 50)

P.N. Duda v. *P. Shiv Shanker*, (1988) 3 SCC 167 : 1988 SCC (Cri) 589, *affirmed in law*

Pritam Pal v. *High Court of M.P.*, 1993 Supp (1) SCC 529 : 1993 SCC (Cri) 356, *affirmed*

Contempt Jurisdiction in a democracy — Rationale behind

The judiciary is the guardian of the rule of law and is the central pillar of the democratic State. In our country, the written Constitution is above all individuals and institutions and the judiciary has a special and additional duty to perform i.e. to oversee that all individuals and institutions including the executive and the legislature, act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties, which is essential to peaceful and orderly development of the society. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilised life in the society. For this purpose that the courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalising them and obstructing them from discharging their duties without fear or favour. When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual Judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. 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 disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded. (Para 52)

Vinay Chandra Mishra, In re, (1995) 2 SCC 584, *followed*

Constructive and fair criticism

A citizen is entitled to bring to the notice of the public at large the infirmities from which any institution including the judiciary suffers from. The right to offer healthy and constructive criticism, which is fair in spirit must be left unimpaired in the interest of the institution itself. Critics are instruments of reform but not those actuated by malice but those who are inspired by public weal. Constructive public criticism even if it slightly oversteps its limits thus has fruitful play in preserving democratic health of public institutions. (Para 54)

Vinay Chandra Mishra, In re, (1995) 2 SCC 584; *D.C. Saxena* v. *Chief Justice of India*, (1996) 5 SCC 216, *followed*

Criminal contempt — Hostile criticism of Judiciary or Judges as Judges

Hostile criticism of Judges as Judges or judiciary would amount to scandalising the Court. Any personal attack upon a Judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the Judge as a Judge brings the court or Judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. Any caricature of a Judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. Imputing partiality, corruption, bias, improper motives to a Judge is scandalisation of the court and would be contempt of the court. The gravamen of

the offence is that of lowering his dignity or authority or an affront to the majesty of justice. Section 2(*c*) of the Contempt of Courts Act, 1971 defines "criminal contempt" in wider articulation. A tendency to scandalise the court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt. (Para 56)

D.C. Saxena v. *Chief Justice of India*, (1996) 5 SCC 216, *followed*

Exercise of contempt jurisdiction — Caution, care, ambit and scope — A special jurisdiction, has to be exercised sparingly and with caution

The contempt jurisdiction, which is a special jurisdiction has to be exercised sparingly and with caution, whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised, when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. This jurisdiction is not to be exercised to protect the dignity of an individual Judge, but to protect the administration of justice from being maligned. In the general interest of the community, it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. No such act can be permitted, which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice. (Para 58)

Supreme Court Bar Assn. v. *Union of India*, (1998) 4 SCC 409, *followed*

Fair criticism of the conduct of a Judge, the institution of the judiciary and its functioning may not amount to contempt, if it is made in good faith and in public interest. For ascertaining the good faith and the public interest, the courts have to see all the surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved. (Para 60)

Arundhati Roy, In re, (2002) 3 SCC 343, *affirmed*

A citizen while exercising right under Article 19(1)(*a*) of the Constitution is entitled to make a fair criticism of a Judge, judiciary and its functioning. However, the right under Article 19(1) is subject to restriction under Article 19(2) of the Constitution. An attempt has to be made to properly balance the right under Article 19(1) and the reasonable restriction under Article 19(2). If a citizen while exercising his right under Article 19(1) exceeds the limits and makes a statement, which tends to scandalise the Judges and institution of administration of justice, such an action would come in the ambit of contempt of court. If a citizen makes a statement which tends to undermine the dignity and authority of the court, the same would come in the ambit of "criminal contempt". When such a statement tends to shake the public confidence in the judicial institutions, the same would also come within the ambit of "criminal contempt". (Para 61)

No doubt, that when a statement is made against a Judge as an individual, the contempt jurisdiction would not be available. However, when the statement is made against a Judge as a Judge and which has an adverse effect in the administration of justice, the Court would certainly be entitled to invoke the contempt jurisdiction.

No doubt, that while exercising the right of fair criticism under Article 19(1), if a citizen bona fide exceeds the right in the public interest, the court would be slow in exercising the contempt jurisdiction and show magnanimity. However, when such a statement is calculated in order to malign the image of judiciary, the Court would not remain a silent spectator. When the authority of the court is itself under attack, the court would not be an onlooker. The word "authority" does not mean the coercive power of the Judges, but a deference and respect which is paid to them and their acts, from an opinion of their justice and integrity. (Paras 62, 34 and 35)

Baradakanta Mishra v. *High Court of Orissa*, (1974) 1 SCC 374 : 1974 SCC (Cri) 128. *followed*

R. v. *Almon*, 1765 Wilm 243 : 97 ER 94. *held, approved*

If a constructive criticism is made in order to enable systemic correction in the system, the court would not invoke the contempt jurisdiction. However, the Court will act with seriousness and severity where justice is jeopardised by a gross and/or unfounded attack on the Judges and where the attack is calculated to obstruct or destroy the judicial process. After evaluating the totality of factors, if the Court considers the attack on the Judge or Judges to be 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. (Para 63)

S. Mulgaokar, In re, (1978) 3 SCC 339 : 1978 SCC (Cri) 402, *followed*

Baradakanta Mishra v. *High Court of Orissa*, (1974) 1 SCC 374 : 1974 SCC (Cri) 128. *relied on*

National Lawyers Campaign for Judicial Transparency & Reforms v. *Union of India*, (2020) 16 SCC 687; *Vijay Kurle, In re*, (2021) 13 SCC 616 : 2020 SCC OnLine SC 407. *affirmed*

R. v. *Almon*, 1765 Wilm 243 : 97 ER 94. *approved*

Prashant Bhushan v. *Jaydev Rajnikant Joshi*, 2020 SCC OnLine SC 691; *Prashant Bhushan, In re*, 2020 SCC OnLine SC 588. *referred to*

E. **Constitution of India — Arts. 129, 215 and 142 and Sch. VII List I Entry 77 and List III Entry 14 — Criminal contempt proceedings — Initiation of suo motu criminal contempt proceedings under Art. 129 by Supreme Court without consent of Attorney General, held, maintainable — S. 15 of the Contempt of Courts Act, 1971 is not the sole source of the power to initiate contempt proceedings — Although the law of contempt is largely governed by the Contempt of Courts Act, 1971, the High Courts and the Supreme Court are vested with constitutional jurisdiction and power to deal with contempt under Arts. 215 and 129 of the Constitution — This situation results in giving scope for "judicial self-dealing" — Though Art. 142(2) could be subject to any law made by Parliament, there is no such restriction as far as Art. 129 is concerned**

Inherent powers As far as the suo motu proceedings are concerned, there is no requirement for taking consent of anybody, including the Attorney General because the court is exercising its inherent powers to issue notice for contempt Court is vested with the constitutional powers to deal with the contempt

— Parliamentary legislation, if any, will be subject to inherent powers — Language of Sch. VII List I Entry 77 and List III Entry 14 of the Constitution demonstrates that Parliament's power to make a law on contempt of Supreme Court or High Court is subject to qualification that such legislation cannot denude, abrogate or nullify, the power of the Supreme Court to punish for contempt under Art. 129 or vest that power in some other court Parliament has not enacted any such law dealing with the powers of the Supreme Court

No violation of Rules framed by Supreme Court Consent of Attorney General or the Solicitor General is not necessary for initiating suo motu contempt proceedings under R. 3 of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975

No violation of natural justice Once the court takes cognizance, the matter is purely between the court and the contemnor — The only requirement is that, the procedure followed is required to be just and fair and in accordance with the principles of natural justice — In the present case, the notice issued to the alleged contemnors clearly mentions the tweets on the basis of which the Court is proceeding suo motu — Contemnor 1 has also clearly understood the basis on which the Court is proceeding against him as is evident from the elaborate affidavit-in-reply filed by him — Contempt of Courts Act, 1971 — S. 15 — Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975 — R. 3 — Suo motu initiation/exercise of contempt proceedings (Paras 17 and 18)

Delhi Judicial Service Assn. v. *State of Gujarat*, (1991) 4 SCC 406: *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409, *followed*

Sukhdev Singh Sodhi v. *High Court of PEPSU*, 1954 SCR 454 : AIR 1954 SC 186 : 1954 Cri LJ 460: *C.K. Daphtary* v. *O.P. Gupta*, (1971) 1 SCC 626 : 1971 SCC (Cri) 286: *Vinay Chandra Mishra, In re*, (1995) 2 SCC 584, *explained* and *relied on*

P.N. Duda v. *P. Shiv Shanker*, (1988) 3 SCC 167 : 1988 SCC (Cri) 589: *Vijay Kurle, In re*, (2021) 13 SCC 616 : 2020 SCC OnLine SC 407: *Pritam Pal* v. *High Court of M.P.*, 1993 Supp (1) SCC 529 : 1993 SCC (Cri) 356 *affirmed*

Pallav Sheth v. *Custodian*, (2001) 7 SCC 549, *distinguished*

Pollard, In re, (1868) LR 2 PC 106; *Vallabhadas Jairam, In re*, ILR (1903) 27 Bom 394 : 1903 SCC OnLine Bom 5; *Ebrahim Mamoojee Parekh* v. *King Emperor*, 1926 SCC OnLine Rang 12 : ILR (1926) 4 Rang 257: *C.K. Daphtary* v. *O.P. Gupta*, (1971) 1 SCC 626 : 1971 SCC (Cri) 286: *G.N. Verma* v. *Hargovind Dayal*, 1974 SCC OnLine All 344 : AIR 1975 All 52: *Anil Kumar Gupta* v. *K. Suba Rao*, 1973 SCC OnLine Del 158 : ILR (1974) 1 Del 1, *cited*

F. **Contempt of Court — Object — Generally — Summary jurisdiction exercised by superior courts — Purpose — Preventing interference with the course of justice and for maintaining the authority of law as administered in the courts — The object is to give protection to public whose interest would be affected if the authority of the court is lowered and the sense of confidence which people have in the administration of justice by it is weakened — It is not to afford protection to Judges personally from imputations to which they may be exposed as individuals (Paras 20 and 21)**

Brahma Prakash Sharma v. *State of U.P.*, 1953 SCR 1169 : AIR 1954 SC 10 : 1954 Cri LJ 238, *followed*

Read & Huggonson, In re, (1742) 2 Atk 469 : 26 ER 683, *cited*

G. Contempt of Court — Criminal Contempt — Scandalise or lower authority of court — False, scandalous and malicious remarks against Judges of Supreme Court, past 4 Chief Justices of India and the functioning of the institution of Supreme Court — Criminal contempt of court evident from analysis of both the tweets in question made by contemnor — Criticism in tweets, held, was neither fair nor made in good faith, hence it is clearly outside the bounds of fair criticism which is permissible (*see* Shortnote *A*) — It was targeted against Judges and Chief Justices of India as Judges of the Supreme Court and not in their individual capacity — The tweets made false accusation of non-functioning of Court and destruction of democracy — The tweets published had millions as audience — Tweets were published by an advocate having 30 yrs' practice in Supreme Court — Contemnor 1 being responsible for tweets convicted for contempt of court — Contemnor 2 website discharged as it had no control on individuals making postings on its website and it had suspended the contemptuous tweets after Court took cognizance of same

— (a) First tweet criticised CJI in his capacity as Chief Justice of India i.e. the administrative head of judiciary of the country — The first part of the first tweet states, that "CJI rides a 50 lakh motorcycle belonging to a BJP leader at Raj Bhavan, Nagpur without a mask or helmet" — This part of the tweet could be said to be a criticism made against the CJI as an individual and not against the CJI as Chief Justice of India However, the second part of the tweet states, "at a time when he keeps the SC in lockdown mode denying citizens their fundamental rights to access justice" Undisputedly, the said part of the statement criticises the CJI in his capacity as the Chief Justice of India i.e. the administrative head of the judiciary of the country The Court is unable to accept the contention of the alleged Contemnor 1, that the said statement was a bona fide criticism made by him on account of his anguish arising out of physical non-functioning of the courts — His contention, that on account of non-physical functioning of Supreme Court for more than three months, the fundamental rights of citizens were not being addressed or taken up for redressal, is false to his own knowledge — Contemnor 1 made such a scandalous and malicious statement having himself availed the right of access to justice during the said period, not only as a lawyer but also as a litigant (Paras 66 to 69)

— (b) Second tweet was against the entire Supreme Court and last four Chief Justices of India — Firstly, it would be noted, that the date on which the CJI is alleged to have taken a ride on a motorbike is during the period when the Supreme Court was closed for summer vacation In any case, even during said period, Vacation Benches were regularly functioning — On account of COVID-19 pandemic, physical functioning of the Court was suspended — However, immediately after suspension of physical hearing, Court started functioning through videoconferencing — During the said period i.e. from 23-3-2020 till 4-8-2020, 879 sittings of various Benches took place, 12,748 matters were heard and 686 writ petitions were dealt with Contemnor 1 has himself appeared on various occasions in number of matters through

videoconferencing and even in his personal capacity approached the court in a petition under Art. 32 of the Constitution — Thus the statement that CJI has kept the SC in lockdown mode denying citizens their fundamental rights to access justice is patently false (Paras 70 to 73)

— (c) Attending circumstances and factors affecting good faith — (i) Second tweet was not made in good faith It reached millions of people and such huge extent of publication is a factor which goes against contemnor while considering his good faith (ii) Secondly, the scurrilous allegations, which are malicious in nature and have the tendency to scandalise the court are not expected from a lawyer of 30 yrs' standing — Tweets thus, were not fair criticism of the functioning of the judiciary, made bona fide in the public interest (iii) Thirdly, the tweets tend to shake the trust, faith and confidence of the citizens of the country in the judicial system, when such confidence and faith is the sine qua non for existence of rule of law Thus the tweets are an attempt to shake the very foundation of democracy — (iv) Fourthly, if the Court fails to protect itself from such malicious insinuations there is a possibility of other Judges getting an impression that they may not be protected from malicious attacks as well (Paras 74 and 75)

— (d) Duty and role of Supreme Court as protector of democracy and fundamental rights Supreme Court is a protector of the fundamental rights of the citizens, as also is endowed with a duty to keep the other pillars of democracy i.e. the executive and the legislature, within the constitutional bounds — However, when there appears some scheme and design to bring about results which have the tendency of damaging the confidence in our judicial system and demoralise the Judges of the highest court by making malicious attacks, those interested in maintaining high standards of fearless, impartial and unbending justice will have to stand firmly — If such an attack is not dealt with, with requisite degree of firmness, it may affect the national honour and prestige in the comity of nations — Fearless and impartial courts of justice are the bulwark of a healthy democracy and the confidence in them cannot be permitted to be impaired by malicious attacks upon them (Para 78)

(e) Urgency of conviction by exercise of summary jurisdiction 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 sought to be shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded — Scurrilous/Malicious attacks by Contemnor 1 are not only against one or two Judges but the entire Supreme Court in its functioning of the last six years Such an attack which tends to create disaffection and disrespect for the authority of the court cannot be ignored — Whenever men's allegiance to the law is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice, and calls out for a more rapid and immediate redress than any other obstruction whatsoever, not for the sake of the Judges, as private individuals, but because they are the channels

by which the justice is conveyed to the people — Information Technology, Internet, Computer and Cyber Laws — Intermediary Service Provider (ISP) — Material contemptuous of court posted by end-user — ISP when may be held liable for contempt of court (Para 79)

SS-D/65482/CR

Advocates who appeared in this case :

K.K. Venugopal, Attorney General, Dushyant Dave and Sajan Poovayya, Senior Advocates (Ms Kamini Jaiswal, Manu Kulkarni, Priyadarshi Benerjee, Ms Hima Lawrence and Rishi Aneja, Advocates), for the appearing parties.

Prashant Bhushan, in-Person.

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JUDGMENT

1. A petition came to be filed in this Court by one Mahek Maheshwari bringing to the notice of this Court, a tweet made by Mr Prashant Bhushan, Advocate, alleged Contemnor 1 praying therein to initiate contempt proceedings against the alleged contemnors for wilfully and deliberately using hate/scandalous speech against this Court and entire judicial system. The Registry placed the said petition on the administrative side of this Court seeking direction as to whether it should be listed for hearing or not, as consent of the learned Attorney General for India had not been obtained by the said Shri Maheshwari to file the said petition. After examining the matter on the administrative side, this Court on the administrative side directed the matter to be listed on the judicial side to pass appropriate orders. Accordingly, the petition was placed before us on 22-7-2020. On the said date, we passed the following order[1]: (*Prashant Bhushan, In re case*[1], SCC OnLine SC paras 1-7)

> "*1.* This petition was placed before us on the administrative side whether it should be listed for hearing or not as permission of the Attorney General for India has not been obtained by the petitioner to file this petition. After examining the matter on administrative side, we have directed the matter to be listed before the Court to pass appropriate orders. We have gone through the petition. We find that the tweet in question, made against the Chief Justice of India, is to the following effect:
>
> > 'CJI rides a 50 lakh motorcycle belonging to a BJP leader at Raj Bhavan Nagpur, without a mask or helmet, at a time when he keeps the SC in Lockdown mode denying citizens their fundamental right to access justice!'
>
> *2.* Apart from that, another tweet has been published today in *The Times of India* which was made by Shri Prashant Bhushan on 27-6-2020, when he tweeted,
>
> > "When historians in future look back at the last 6 years to see how democracy has been destroyed in India even without a formal

1 *Prashant Bhushan, In re*, 2020 SCC OnLine SC 588

Emergency, they will particularly mark the role of the Supreme Court in this destruction, & more particularly the role of the last 4 CJIs."

3. We are, prima facie, of the view that the aforesaid statements on Twitter have brought the administration of justice in disrepute and are capable of undermining the dignity and authority of the institution of Supreme Court in general and the office of the Chief Justice of India in particular, in the eyes of public at large.

4. We take suo motu cognizance of the aforesaid tweet also apart from the tweet quoted above and suo motu register the proceedings.

5. We issue notice to the Attorney General for India and to Mr Prashant Bhushan, Advocate also.

6. Shri Sajan Poovayya, learned Senior Counsel has appeared along with Mr Priyadarshi Banerjee and Mr Manu Kulkarni, learned counsel appearing on behalf of the Twitter, and submitted that the Twitter Inc., California, USA is the correct description on which the tweets were made by Mr Prashant Bhushan. Let the reply be also filed by them.

7. List on 5-8-2020."

2. In response to the notice issued by this Court, both the alleged contemnors have filed their respective affidavit-in-reply. Mr Prashant Bhushan, the alleged Contemnor 1, has filed a detailed affidavit running into 134 pages, which along with the Annexures runs into 463 pages.

3. The main contention of the alleged Contemnor 1 is, that insofar as the first tweet is concerned, it was made primarily to underline his anguish at the non-physical functioning of the Supreme Court for the last more than three months, as a result of which fundamental rights of citizens, such as those in detention, those destitute and poor, and others facing serious and urgent grievances were not being addressed or taken up for redressal. It is contended, that it was made to highlight the incongruity of the situation where the Chief Justice of India on one hand keeps the court virtually in lockdown due to COVID fears, with hardly any cases being heard and those heard, also by an unsatisfactory process through videoconferencing and on the other hand is seen in a public place with several people around him without a mask. It is his submission, that expressing his anguish by highlighting the said incongruity and the attendant facts, the first tweet cannot be said to constitute contempt of court. It is submitted, that if it is regarded as a contempt, it would stifle free speech and would constitute an unreasonable restriction on the right of a citizen under Article 19(1)(*a*) of the Constitution.

4. Insofar as the second tweet dated 27-6-2020 is concerned, it is his submission, that the said tweet has three distinct elements, each of which is his bona fide opinion about the state of affairs in the country in the past six years and the role of the Supreme Court and in particular the role of the last 4 Chief Justices of India. It is submitted, that the first part of the tweet contains his considered opinion, that democracy has been substantially destroyed in India during the last six years. The second part is his opinion, that the Supreme

Court has played a substantial role in allowing the destruction of the democracy and the third part is his opinion regarding the role of the last 4 Chief Justices in particular in allowing it. It is his submission, that such an expression of opinion, however outspoken, disagreeable or however unpalatable to some, cannot constitute contempt of court. It is his contention, that it is the essence of a democracy that all institutions, including the judiciary, function for the citizens and the people of this country and they have every right to freely and fairly discuss the state of affairs of an institution and build public opinion in order to reform the institution.

5. It is further contended, that the Chief Justice is not the Supreme Court and that raising issues of concern regarding the manner in which a CJI conducts himself during court vacations, or raising issues of grave concern regarding the manner in which four Chief Justices of India have used, or failed to use, their powers as "Master of the Roster" to allow the spread of authoritarianism, majoritarianism, stifling of dissent, widespread political incarceration and so on, cannot and does not amount to "scandalising or lowering the authority of the court". It is submitted, that the Court cannot be equated with a Chief Justice, or even a succession of four CJIs. It is submitted, that to bona fide critique the actions of a CJI, or a succession of CJIs, cannot and does not scandalise the court, nor does it lower the authority of the Court. It is his submission, that to assume or suggest that the CJI is the Supreme Court and the Supreme Court is the CJI is to undermine the institution of the Supreme Court of India.

6. Insofar as alleged Contemnor 2, Twitter Inc. is concerned, in the affidavit-in-reply filed on its behalf it is stated, that it is a global website providing micro-blogging platform for self-expression of its users and to communicate. It is further stated, that the alleged Contemnor 2 has not authored or published the tweets in question and the same have been authored and published by alleged Contemnor 1. It is also submitted, that it is merely an "intermediary" within the meaning as provided under the Information Technology Act, 2000 and thus is not the author or originator of the tweets posted on its platform. In this background it has been submitted, that the alleged Contemnor 2 has no editorial control on the tweets and merely acts as a display board. It is also submitted, that under Section 79 of the Information Technology Act, 2000 the alleged Contemnor 2 has been provided safe harbour as an intermediary for any objectional posts on its platform posted by its users. It is lastly submitted, that to show its bona fides, the alleged Contemnor 2 after the order dated 22-7-2020[1] of this Court, taking cognizance of the impugned tweets, blocked the access to the said tweets and disabled the same. In this premise it has been submitted, that alleged Contemnor 2 be discharged from the present proceedings.

7. We have extensively heard Shri Dushyant Dave, learned Senior Counsel appearing on behalf of the alleged Contemnor 1 and Shri Sajan Poovayya, learned Senior Counsel appearing on behalf of the alleged Contemnor 2.

1 *Prashant Bhushan, In re*, 2020 SCC OnLine SC 588

8. Shri Dave, learned Senior Counsel appearing on behalf of the alleged Contemnor 1 raised a preliminary objection. He submitted, that since the present proceedings are initiated on the basis of the petition filed by Mr Maheshwari, the same cannot be treated as a suo motu contempt petition. He submitted, that unless there was a consent of the learned Attorney General for India, the proceedings could not have been initiated on the basis of complaint of Mr Maheshwari.

9. Relying on the definition of "criminal contempt" as is found in the Contempt of Courts Act, 1971, Shri Dushyant Dave, learned Senior Counsel, submits, that the order issuing notice does not state that any act of the alleged Contemnor 1 scandalises or tends to scandalise or lowers or tends to lower the authority of any court. Neither does it mention, that any of his act prejudices or interferes or tends to interfere with, 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 manner. He therefore submits, that, as such, the proceedings initiated by this Court cannot continue.

10. Relying on the judgment of the Constitution Bench of this Court in *Brahma Prakash Sharma* v. *State of U.P.*[2], Shri Dave submits, that what should weigh with the Court is that, whether the reflection on the conduct or character of a Judge is within the limits of fair and reasonable criticism and whether it is mere libel or defamation of the Judge. It is submitted, that if it is a mere defamatory attack on the Judge and is not calculated to interfere with the due course of justice or the proper administration of the law by such court, it is not proper to proceed by way of contempt. He would submit, that in the present case, at the most, it can be said that the allegations in the tweets are only against the present CJI and the past three CJIs and that too, in their individual capacity and as such, in no way they can be said to be calculated to interfere with the due course of justice or the proper administration of the law by Court and therefore, it is not proper to continue with the present contempt proceedings.

11. He submits, that in such a situation, the question is not to be determined solely with reference to the language or contents of the statement made. All the surrounding facts and circumstances under which the statement was made and the degree of publicity which was given to it would be relevant circumstances. He submits, that insofar as the first tweet is concerned, the said was an expression of anguish by the alleged Contemnor 1 on account of non-functioning of the physical courts for the last more than three months and thereby, denying the right to justice to the litigants. Insofar as the second tweet is concerned, in the submission of Shri Dave, that the said was an expression of his opinion that on account of the action or inaction of the four CJIs that contributed to the destruction of democracy in the country, without a formal emergency.

2 1953 SCR 1169 : AIR 1954 SC 10 : 1954 Cri LJ 238

12. Relying on the Constitution Bench judgment of this Court in *Baradakanta Mishra* v. *High Court of Orissa*[3], the learned Senior Counsel submits, that when proceedings in contempt are taken for vilification of the Judge, the question which the court has to ask is whether the vilification is of the Judge as a Judge or it is the vilification of the Judge as an individual. He submits, that if the vilification of the Judge is as an individual, then he is left to his private remedies and the Court has no power to punish for contempt. It is submitted, that however, in the former case, the Court will proceed to exercise the jurisdiction with scrupulous care and in cases which are clear and beyond reasonable doubt. It is submitted, in the present case, the vilification, if any, is against the CJI as an individual and not as a CJI of the Supreme Court and as such, the proceedings of the Court would not be tenable.

13. Relying on the observations made by Krishna Iyer, J. in *S. Mulgaokar, In re*[4], the learned Senior Counsel submits, that the Court should be willing to ignore, by a majestic liberalism, trifling and venial offences. It is submitted, that the Court will not be prompted to act as a result of an easy irritability. Rather, it shall take a noetic look at the conspectus of features and be guided by a constellation of constitutional and other considerations when it chooses to use, or desist from using, its power of contempt. He submits, that this Court had held, that to criticise the Judge fairly, albeit fiercely, is no crime but a necessary right, twice blessed in a democracy. He submits, that where freedom of expression, fairly exercised, subserves public interest in reasonable measure, public justice cannot gag it or manacle it.

14. Shri Dave, learned Senior Counsel, submits, that in *P.N. Duda* v. *P. Shiv Shanker*[5], the then Minister of Law, Justice and Company Affairs P. Shiv Shankar had made a speech making fierce allegations to the effect, that the Supreme Court was composed of elements from the elite class, that because they had their "unconcealed sympathy for the haves" they interpreted the expression "compensation" in the manner they did. He submits, that the Supreme Court held, that the said was an expression of opinion about an institutional pattern. It is submitted, that even in spite of such serious allegations made, the Court found that the case of proceeding for contempt was not made out.

15. Lastly, Shri Dave submits, that taking into consideration the fact, that the alleged Contemnor 1 in his practice at the Supreme Court and the Delhi High Court had consistently taken up many issues of public interest concerning the health of democracy and its institutions and in particular the functioning of the judiciary and especially its accountability, this Court should not proceed against him.

16. The legal position is no more res integra.

17. Insofar as the contention of the learned Senior Counsel appearing for the alleged Contemnor 1, that in the present case, the Court could not have

3 (1974) 1 SCC 374 : 1974 SCC (Cri) 128
4 (1978) 3 SCC 339 : 1978 SCC (Cri) 402
5 (1988) 3 SCC 167 : 1988 SCC (Cri) 589

initiated suo motu proceedings and could have proceeded on the petition filed by Mr Mahek Maheshwari only after the consent was obtained from the learned Attorney General for India is concerned, very recently, a Bench of this Court has considered identical submissions in *Vijay Kurle, In re*[6]. The Bench has considered various judgments of this Court on the issue, in detail. Therefore, it will be apposite to refer to the following paragraphs of the judgment wherein the earlier law has been discussed in extenso: (SCC paras 7-40)

"***Powers of the Supreme Court***

7. Before we deal with the objections individually, we need to understand what are the powers of the Supreme Court of India in relation to dealing with contempt of the Supreme Court in the light of Articles 129 and 142 of the Constitution of India when read in conjunction with the Contempt of Courts Act, 1971. According to the alleged contemnors, the Contempt of Courts Act is the final word in the matter and if the procedure prescribed under the Contempt of Courts Act has not been followed then the proceedings have to be dropped. On the other hand, Shri Sidharth Luthra, learned Amicus Curiae while making reference to a large number of decisions contends that the Supreme Court being a court of record is not bound by the provisions of the Contempt of Courts Act. The only requirement is that the procedure followed is just and fair and in accordance with the principles of natural justice.

8. Article 129 of the Constitution of India reads as follows:

> '**129.** ***Supreme Court to be a court of record.***—The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.'

A bare reading of Article 129 clearly shows that this Court being a court of record shall have all the powers of such a court of record including the power to punish for contempt of itself. This is a constitutional power which cannot be taken away or in any manner abridged by statute.

9. Article 142 of the Constitution of India reads as follows:

> '**142.** ***Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.***—(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.
>
> (2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.'

6 (2021) 13 SCC 616 : 2020 SCC OnLine SC 407

Article 142 also provides that this Court can punish any person for contempt of itself but this power is subject to the provisions of any law made by Parliament.

10. A comparison of the provisions of Article 129 and clause (2) of Article 142 clearly shows that whereas the Founding Fathers felt that the powers under clause (2) of Article 142 could be subject to any law made by Parliament, there is no such restriction as far as Article 129 is concerned. The power under clause (2) of Article 142 is not the primary source of power of court of record which is Article 129 and there is no such restriction in Article 129.

11. Samaraditya Pal in *The Law of Contempt*[†] has very succinctly stated the legal position as follows:

> 'Although the law of contempt is largely governed by the 1971 Act, it is now settled law in India that the High Courts and the Supreme Court derive their jurisdiction and power from Articles 215 and 129 of the Constitution. This situation results in giving scope for "judicial self-dealing." '

12. The High Courts also enjoy similar powers like the Supreme Court under Article 215 of the Constitution. The main argument of the alleged contemnors is that notice should have been issued in terms of the provisions of the Contempt of Courts Act and any violation of the Contempt of Courts Act would vitiate the entire proceedings. We do not accept this argument. In view of the fact that the power to punish for contempt of itself is a constitutional power vested in this Court, such power cannot be abridged or taken away even by legislative enactment.

13. To appreciate the rival contention, we shall have to make reference to a number of decisions relied upon by both the parties.

14. The first judgment on the point is *Sukhdev Singh Sodhi* v. *High Court of PEPSU*[7]. It would be pertinent to mention that the said judgment was given in the context of the Contempt of Courts Act, 1952. The issue before this Court in the said case was whether contempt proceedings could be said to be the proceedings under the Criminal Procedure Code, 1973 (CrPC) and the Supreme Court had the power to transfer the proceedings from one court to another under CrPC. Rejecting the prayer for transfer, this Court held as follows: (AIR p. 190, para 24)

> '*24.* ... We hold therefore that the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemnor is made aware of the charge against him and given a fair and reasonable opportunity to defend himself. This rule was laid down by the Privy

† Ed.: The Law of Contempt: Contempt of Courts and Legislatures, 5th Edn., LexisNexis Butterworths Wadhwa, Nagpur (2013), pp. 9-10

7 1951 SCR 454 : AIR 1954 SC 186 : 1954 Cri LJ 460

Council in *Pollard, In re*[8], PC at p. 120 and was followed in India and in Burma in *Vallabhadas Jairam, In re*[9], ILR Bom at p. 399 and *Ebrahim Mamoojee Parekh* v. *King Emperor*[10], ILR Rang at pp. 259-61. In our view that is still the law.'

15. A Constitution Bench of this Court in *C.K. Daphtary* v. *O.P. Gupta*[11] was dealing with a case where the contemnor had published a pamphlet casting scurrilous aspersions on two Judges of this Court. During the course of argument, the contemnor raised a plea that all the evidence has not been furnished to him and made a request that the petitioner be asked to furnish the "pamphlet" or "book" annexed to the petition. The Court rejected this argument holding that the booklet/pamphlet had been annexed to the petition in original and the Court had directed that the matter be decided on affidavits.

16. In respect of the absence of a specific charge being framed, the Court held that a specific charge was not required to be framed and the only requirement was that a fair procedure should be followed. Dealing with the Contempt of Courts Act, 1952 this Court held as follows: (*C.K. Daphtary case*[11], SCC p. 642, para 58)

> '*58*. We are here also not concerned with any law made by Parliament. Article 129 shows that the Supreme Court has all the powers of a court of record, including the power to punish for contempt of itself; and Article 142(2) goes further and enables us to investigate any contempt of this Court.'

17. Thereafter, this Court approved the observations in *Sukhdev Singh Sodhi case*[7] and held as follows: (*C.K. Daphtary case*[11], SCC p. 648, para 78)

> '*78*. In our view that is still the law. It is in accordance with the practice of this Court that a notice was issued to the respondents and opportunity given to them to file affidavits stating facts and their contentions. At one stage, after arguments had begun Respondent 1 asked for postponement of the case to engage some lawyers who were engaged in fighting elections. We refused adjournment because we were of the view that the request was not reasonable and was made with a view to delay matters. We may mention that the first respondent fully argued his case for a number of days. The procedure adopted by us is the usual procedure followed in all cases.'

18. According to the alleged contemnors, both the aforesaid judgments are per incuriam after coming into force of the Contempt of Courts Act, 1971. They are definitely not per incuriam because they have been decided

8 (1868) LR 2 PC 106
9 ILR (1903) 27 Bom 394 : 1903 SCC OnLine Bom 5
10 1926 SCC OnLine Rang 12 : ILR (1926) 4 Rang 257
11 (1971) 1 SCC 626 : 1971 SCC (Cri) 286
7 *Sukhdev Singh Sodhi* v. *High Court of PEPSU*, 1954 SCR 454 : AIR 1954 SC 186 : 1954 Cri LJ 460

on the basis of the law which admittedly existed, but for the purposes of this case, we shall treat the argument of the alleged contemnors to be that the judgments are no longer good law and do not bind this Court. It has been contended by the alleged contemnors that both the aforesaid cases are overruled by later judgments. We shall now refer to some of the decisions cited by the parties.

19. In *P.N. Duda* v. *P. Shiv Shanker*[5] the respondent, Shri P. Shiv Shiv Shanker, who was a former Judge of the High Court and was the Minister for Law, Justice and Company Affairs delivered a speech which was said to be contemptuous. A petition was filed by the petitioner P.N. Duda who was an advocate of this Court but this Court declined to initiate contempt proceedings. At the outset, we may note that while giving the reasons for not initiating contempt, though this Court held that the contempt petition was not maintainable, it went into the merits of the speech delivered by Shri P. Shiv Shanker and held that there was no imminent danger of interference with the administration of the justice and bringing administration into disrepute. It was held that Shri P. Shiv Shanker was not guilty of contempt of this Court. Having held so, the Court went on to decide whether the petition could have been entertained on behalf of Shri Duda. In the said petition, Shri Duda had written a letter to the Attorney General seeking consent for initiating contempt proceedings against Shri P. Shiv Shanker. A copy of the said letter was also sent to the Solicitor General of India. While seeking consent, the petitioner had also stated that the Attorney General may be embarrassed to give consent for prosecution of the Law Minister and in view of the said allegations, the Attorney General felt that the credibility and authority of the office of the Attorney General was undermined and therefore did not deny or grant sanction for prosecution. The Court held that the petitioner could not move the Court for initiating contempt proceedings against the respondent without consent of the Attorney General and the Solicitor General. The relevant portion of the judgment reads as follows: (SCC pp. 193-94, para 39)

> '39. The question of contempt of court came up for consideration in *C.K. Daphtary* v. *O.P. Gupta*[11]. In that case a petition under Article 129 of the Constitution was filed by Shri C.K. Daphtary and three other advocates bringing to the notice of this Court alleged contempt committed by the respondents. There this Court held that under Article 129 of the Constitution this Court had the power to punish for contempt of itself and under Article 143(2) it could investigate any such contempt. This Court reiterated that the Constitution made this Court the guardian of fundamental rights. This Court further held that under the existing law of contempt of court any publication which was calculated to interfere with the due course of justice or proper administration of law would amount to contempt of court. A

5 (1988) 3 SCC 167 : 1988 SCC (Cri) 589
11 (1971) 1 SCC 626 : 1971 SCC (Cri) 286

scurrilous attack on a Judge, in respect of a judgment or past conduct has in our country the inevitable effect of undermining the confidence of the public in the Judiciary; and if confidence in Judiciary goes administration of justice definitely suffers. In that case a pamphlet was alleged to have contained statements amounting to contempt of the court. As the Attorney General did not move in the matter, the President of the Supreme Court Bar and the other petitioners chose to bring the matter to the notice of the court. It was alleged that the said President and the other members of the Bar have no locus standi. This Court held that the court could issue a notice suo motu. The President of the Supreme Court Bar and other petitioners were perfectly entitled to bring to the notice of the court any contempt of the court. The first respondent referred to Lord Shawcross Committee's recommendation in UK that 'proceedings should be instituted only if the Attorney General in his discretion considers them necessary'. This was only a recommendation made in the light of circumstances prevailing in England. But that is not the law in India, this Court reiterated. It has to be borne that decision was rendered on 19-3-1971[1] and the present Act in India was passed on 24-12-1971. Therefore that decision cannot be of any assistance. We have noticed Sanyal Committee's recommendations in India as to why the Attorney General should be associated with it, and thereafter in UK there was report of Phillimore Committee in 1974. In India the reason for having the consent of the Attorney General was examined and explained by Sanyal Committee Report as noticed before.'

20. The alleged contemnors contended that the last portion of the aforesaid paragraph shows that the judgment in *C.K. Daphtary case*[11] having been delivered prior to the enactment of Contempt of Courts Act, 1971 is no longer applicable. We may, however, point out that in the very next paragraph in the same judgment, it was held as follows: (*P.N. Duda case*[5], SCC p. 194, para 40)

'*40*. Our attention was drawn by Shri Ganguly to a decision of the Allahabad High Court in *G.N. Verma* v. *Hargovind Dayal*[12] where the Division Bench reiterated that Rules which provide for the manner in which proceedings for contempt of court should be taken continue to apply even after the enactment of the Contempt of Courts Act, 1971. Therefore cognizance could be taken suo motu and information contained in the application by a private individual could be utilised. As we have mentioned hereinbefore indubitably cognizance could be taken suo motu by the court but members of the public have also the right to move the court. That right of bringing to the notice of the court

11 *C.K. Daphtary* v. *O.P. Gupta*, (1971) 1 SCC 626 : 1971 SCC (Cri) 286
5 *P.N. Duda* v. *P. Shiv Shanker*, (1988) 3 SCC 167 : 1988 SCC (Cri) 589
12 1974 SCC OnLine All 344 : AIR 1975 All 52

is dependent upon consent being given either by the Attorney General or the Solicitor General and if that consent is withheld without reasons or without consideration of that right granted to any other person under Section 15 of the Act that could be investigated in an application made to the court.'

21. The alleged contemnors rely on certain observations in the concurring judgment of Ranganathan, J. in the same judgment wherein he has approved the following passage from a judgment of the Delhi High Court in *Anil Kumar Gupta* v. *K. Suba Rao*[13]: (SCC OnLine Del)

'*54*. ... The office is to take note that in future if any information is lodged even in the form of a petition inviting this Court to take action under the Contempt of Courts Act or Article 215 of the Constitution, where the informant is not one of the persons named in Section 15 of the said Act, it should not be styled as a petition and should not be placed for admission on the judicial side. Such a petition should be placed before the Chief Justice for orders in Chambers and the Chief Justice may decide either by himself or in consultation with the other Judges of the Court whether to take any cognizance of the information. The office is directed to strike off the information as "Criminal Original No. 51 of 1973" and to file it.'

Thereafter Ranganathan, J. made the following observations: (*P.N. Duda case*[5], SCC p. 201, para 54)

'*54*. ... I think that the direction given by the Delhi High Court sets out the proper procedure in such cases and may be adopted, at least in future, as a practice direction or as a rule, by this Court and other High Courts.'

22. Relying upon the aforesaid observations in the judgment delivered by Ranganathan, J. it is submitted that the petition could not have been placed for admission on the judicial side but should have been placed before the Chief Justice and not before any other Bench. We are not at all in agreement with the submission. What Ranganathan, J. observed is an obiter and not the finding of the Bench and this is not the procedure prescribed under the Rules of this Court.

23. This Court has framed rules in this regard known as the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975 (for short "the Rules") and relevant portion of Rule 3 of the Rules reads as follows:

'**3.** In case of contempt other than the contempt referred to in Rule 2, the Court may take action

(*a*) suo motu, or

(*b*) on a petition made by Attorney General, or Solicitor General, or

13 1973 SCC OnLine Del 158 : ILR (1974) 1 Del 1

5 *P.N. Duda* v. *P. Shiv Shanker*, (1988) 3 SCC 167 : 1988 SCC (Cri) 589

(*c*) on a petition made by any person, and in the case of a criminal contempt with the consent in writing of the Attorney General or the Solicitor General.'

24. A bare perusal of Rule 3 shows that there are 3 ways for initiating contempt proceedings. The first is suo motu, the second is on a petition made by the Attorney General or the Solicitor General, and the third is on the basis of a petition made by any person and where criminal contempt is involved then the consent of the Attorney General or the Solicitor General is necessary. Rules 4 and 5 prescribe for the manner of filing of a petition under Rules 3(*b*) and 3(*c*). Rule 4 lays down the requirements of a petition to be filed under Rules 3(*b*) and 3(*c*) and Rule 5 requires that every petition under Rule 3(*b*) or Rule 3(*c*) shall be placed before the court for preliminary hearing. Rule 6 requires notice to the person charged to be in terms of Form I. Rule 6 reads as follows:

'**6.** (**1**) Notice to the person charged shall be in Form I. The person charged shall, unless otherwise ordered, appear in person before the Court as directed on the date fixed for hearing of the proceeding, and shall continue to remain present during hearing till the proceeding is finally disposed of by order of the Court.

(2) When action is instituted on petition, a copy of the petition along with the annexure and affidavits shall be served upon the person charged.'

25. These Rules have been framed by the Supreme Court in exercise of the powers vested in it under Section 23 of the Contempt of Courts Act, 1971 and they have been notified with the approval of the Hon'ble the President of India.

26. In *Pritam Pal* v. *High Court of M.P.*[14], a two-Judge Bench of this Court held as follows: (SCC pp. 539-40, para 15)

'*15*. Prior to the Contempt of Courts Act, 1971, it was held that the High Court has inherent power to deal with a contempt of itself summarily and to adopt its own procedure, provided that it gives a fair and reasonable opportunity to the contemnor to defend himself. But the procedure has now been prescribed by Section 15 of the Act in exercise of the powers conferred by Entry 14, List III of the Seventh Schedule to the Constitution. Though the contempt jurisdiction of the Supreme Court and the High Court can be regulated by legislation by appropriate legislature under Entry 77 of List I and Entry 14 of List III in exercise of which Parliament has enacted the 1971 Act, the contempt jurisdiction of the Supreme Court and the High Court is given a constitutional foundation by declaring to be "courts of record" under Articles 129 and 215 of the Constitution and, therefore, the inherent power of the Supreme Court and the High Court cannot be taken away by any legislation short of constitutional amendment. In fact, Section 22 of the Act lays down that the provisions of this Act

14 1993 Supp (1) SCC 529 : 1993 SCC (Cri) 356

shall be in addition to and not in derogation of the provisions of any other law relating to contempt of courts. It necessarily follows that the constitutional jurisdiction of the Supreme Court and the High Court under Articles 129 and 215 cannot be curtailed by anything in the 1971 Act.'

27. In *Delhi Judicial Service Assn.* v. *State of Gujarat*[15], a three-Judge Bench of this Court relied upon the judgment in *Sukhdev Singh Sodhi*[7] and held that the Supreme Court had inherent jurisdiction or power to punish for contempt of inferior courts under Article 129 of the Constitution of India.

28. A three-Judge Bench of this Court in *Vinay Chandra Mishra, In re*[16] discussed the law on this point in detail. The Court while holding the respondent guilty for contempt had not only sentenced him to simple imprisonment for a period of 6 weeks which was suspended but also suspended his advocacy for a period of 3 years, relying upon the powers vested in this Court under Articles 129 and 142 of the Constitution of India.

29. We may now refer to certain other provisions of the Constitution.

29.1. Entry 77, Union List (List I) of VII Schedule reads as follows:

'**77.** Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court.'

29.2. Entry 14, Concurrent List (List III of VII Schedule) reads as follows:

'**14.** Contempt of court, but not including contempt of the Supreme Court.'

30. In exercise of the aforesaid powers, the Contempt of Courts Act, 1971 was enacted by Parliament. Section 15 deals with cognizance of criminal contempt and the opening portion of Section 15 clearly provides that the Supreme Court or the High Courts may take action (*i*) suo motu, (*ii*) on a motion moved by the Advocate General in case of the High Court or Attorney General/Solicitor General in the case of Supreme Court, and (*iii*) on a petition by any other person with the consent in writing of the Advocate General/Attorney General/Solicitor General, as the case may be. Section 17 lays down the procedure to be followed when action is taken on a motion moved by the Advocate General/Attorney General/ Solicitor General or on the basis of their consent and Section 17(2) does not deal with suo motu contempt petitions. Section 17(2)(*a*) of the Contempt of Courts Act will not apply to suo motu petitions because that deals with the proceedings moved on a motion and not suo motu proceedings. Section 17(2)(*b*) deals with contempt initiated on a reference made by the subordinate court. It is only in these cases that the notice is required to be issued along with a copy of the motion. As far as suo motu petitions are

15 (1991) 1 SCC 406
7 *Sukhdev Singh Sodhi* v. *High Court of Punjab*, 1954 SCR 454 : AIR 1954 SC 186 : 1954 Cri LJ 460
16 (1995) 2 SCC 584

concerned, in these cases the only requirement of Form I which has been framed in pursuance of Rule 6 of the Rules of this Court is that the brief nature of the contempt has to be stated therein.

31. The correctness of the judgment in *Vinay Chandra Misra case*[16] was considered by a Constitution Bench of this Court in *Supreme Court Bar Assn.* v. *Union of India*[17]. We shall be referring to certain portions of that judgment in detail. That being a Constitution Bench judgment, is binding and all other judgments which may have taken a view to the contrary cannot be said to be correct.

32. Before we deal with the judgment itself, it would be appropriate to refer to certain provisions of the Contempt of Courts Act, 1971:

32.1. Section 2 is the definition clause defining "contempt of court", "civil contempt", "criminal contempt" and "High Court".

32.2. Sections 3 to 5 deal with innocent publication, fair and accurate reporting of judicial proceedings and fair criticism of judicial act, which do not amount to contempt.

32.3. Sections 10 and 11 deal with the powers of the High Court to punish for contempt.

32.4. Section 12(2) provides that no court shall impose a sentence in excess of that specified in sub-section (1) of Section 12.

32.5. Section 13 provides that no court should impose a sentence under the Act for contempt unless it is satisfied that the contempt is of such a nature that it substantially interferes or tends to substantially interfere with the due course of justice. It also provides that truth can be permitted to be raised as a valid defence if the court is satisfied that the defence has been raised in the public interest and is a bona fide defence.

32.6. Section 14 deals with the powers of the Supreme Court or the High Courts to deal with contempt in the face of the Court. We have already dealt with Section 15 which deals with cognizance of the criminal contempt other than contempt in the face of the Court.

32.7. Section 17 lays down the procedure after cognizance.

33. It is in the background of this Act that we have to read and analyse the judgment of the Constitution Bench.

34. The Constitution Bench referred to the provisions of Article 129 of the Constitution of India and also Schedule VII List I Entry 77 and Schedule VII List III Entry 14 and, thereafter, held as follows: (*Supreme Court Bar Assn. case*[17], SCC p. 421, para 18)

> '*18*. The language of Entry 77 of List I and Entry 14 of List III of the Seventh Schedule demonstrates that the legislative power of Parliament and of the State Legislature extends to legislate with respect to matters connected with contempt of court by the Supreme Court or the High Court, *subject however, to the qualification that such legislation cannot denude, abrogate or nullify, the power of the*

16 *Vinay Chandra Mishra, In re*, (1995) 2 SCC 584
17 (1998) 4 SCC 409

Supreme Court to punish for contempt under Article 129 or vest that power in some other court.'

35. This Court referring to Article 142 of the Constitution held as follows: (*Supreme Court Bar Assn. case*[17], SCC p. 421, para 21)

'*21*. It is, thus, seen that the power of this Court in respect of **investigation** or **punishment** of any contempt including contempt of itself, is expressly made 'subject to the provisions of any law made in this behalf by Parliament' by Article 142(2). However, the power to punish for contempt being inherent in a court of record, it follows that no act of Parliament can take away that **inherent** jurisdiction of the court of record to punish for contempt and Parliament's power of legislation on the subject cannot, therefore, be so exercised as to stultify the status and dignity of the Supreme Court and/or the High Courts, though such a legislation may serve as a guide for the determination of the nature of punishment which this Court may impose in the case of established contempt. Parliament has not enacted any law dealing with the powers of the Supreme Court with regard to investigation and punishment of contempt of itself (we shall refer to Section 15 of the Contempt of Courts Act, 1971, later on) and this Court, therefore, exercises the power to investigate and punish for contempt of itself by virtue of the powers vested in it under Articles 129 and 142(2) of the Constitution of India.'

36. This Court then made reference to the provision of the Contempt of Courts Act, 1926, the Contempt of Courts Act, 1952 and the Contempt of Courts Act, 1971 and thereafter held as follows: (*Supreme Court Bar Assn. case*[17], SCC pp. 425-26, para 29)

'29. Section 10 of the 1971 Act like Section 2 of the 1926 Act and Section 4 of the 1952 Act recognises the power which a High Court already possesses as a court of record for punishing for contempt of itself, which jurisdiction has now the sanction of the Constitution also by virtue of Article 215. The Act, however, does not deal with the powers of the Supreme Court to try or punish a contemnor for committing contempt of the Supreme Court or the courts subordinate to it and the constitutional provision contained in Articles 142(2) and 129 of the Constitution alone deal with the subject.'

37. It would also be pertinent to refer to the following observations of the Constitution Bench: (*Supreme Court Bar Assn. case*[17], SCC pp. 428-30 & 438, paras 38, 40, 43 & 57)

'*38*. As already noticed, Parliament by virtue of Entry 77 List I is competent to enact a law relating to the powers of the Supreme Court with regard to contempt of itself and such a law may prescribe the nature of punishment which may be imposed on a contemnor

17 *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409

* **Ed.**: The word between two asterisks has been emphasised in original.

by virtue of the provisions of Article 129 read with Article 142(2). Since, no such law has been enacted by Parliament, the ***nature of punishment*** prescribed under the Contempt of Courts Act, 1971 may act as a guide for the Supreme Court but the extent of punishment as prescribed under that Act can apply only to the High Courts, because the 1971 Act ipso facto does not deal with the contempt jurisdiction of the Supreme Court, except that Section 15 of the Act prescribes ***procedural mode*** for taking cognizance of criminal contempt by the Supreme Court also. Section 15, however, is not a substantive provision conferring contempt jurisdiction. The judgment in *Sukhdev Singh case*[7] as regards the **extent** of "maximum punishment" which can be imposed upon a contemnor must, therefore, be construed as dealing with the powers of the High Courts only and not of this Court in that behalf. We are, therefore, doubtful of the validity of the argument of the learned Solicitor General that the ***extent of punishment*** which the Supreme Court can impose in exercise of its inherent powers to punish for contempt of itself and/or of subordinate courts can also be only to the extent prescribed under the Contempt of Courts Act, 1971. We, however, do not express any final opinion on that question since that issue, strictly speaking, does not arise for our decision in this case. The question regarding the restriction or limitation on the **extent** of punishment, which "*this** Court may award while exercising its contempt jurisdiction may be decided in a proper case, when so raised.

* * *

40. ... Article 129 cannot take over the jurisdiction of the Disciplinary Committee of the Bar Council of the State or the Bar Council of India to punish an advocate by suspending his licence, which punishment can only be imposed after a finding of "professional misconduct" is recorded in the manner prescribed under the Advocates Act and the Rules framed thereunder.

* * *

43. ... The power of the Supreme Court to punish for contempt of court, though quite wide, is yet limited and cannot be expanded to include the power to determine whether an advocate is also guilty of "professional misconduct" in a summary manner, giving a go-by to the procedure prescribed under the Advocates Act. The power to do complete justice under Article 142 is in a way, corrective power, which gives preference to equity over law but it cannot be used to deprive a professional lawyer of the due process contained in the Advocates Act,

** **Ed.:** The words between two asterisks have been emphasised in original.

7 *Sukhdev Singh Sodhi* v. *High Court of Punjab*, 1954 SCR 454 : AIR 1954 SC 186 : 1954 Cri LJ 460

* **Ed.:** The word between two asterisks has been emphasised in original.

1961 by suspending his licence to practice in a summary manner while dealing with a case of contempt of court.

* * *

57. In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing "professional misconduct", depending upon the gravity or nature of his contumacious conduct, but the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an advocate by suspending his licence or by removal of his name from the roll of the State Bar Council for proven professional misconduct "***vests exclusively*** in the statutory authorities created under the Advocates Act, 1961, while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts.'

38. A careful analysis of the Constitution Bench decision[17] leaves no manner of doubt that Section 15 of the Act is not a substantive provision conferring contempt jurisdiction. The Constitution Bench finally left the question as to whether the maximum sentence prescribed by the Act binds the Supreme Court open. The observations made in para 38 referred to above clearly indicate that the Constitution Bench was of the view that the punishment prescribed in the Act could only be a guideline and nothing more. Certain observations made in this judgment that the Court exceeded its jurisdiction in *Vinay Chandra Misra case*[16] by taking away the right of practice for a period of 3 years have to be read in the context that the Supreme Court held that Article 129 cannot take over the jurisdiction of the Bar Council of the State or the Bar Council of India to punish an advocate. These observations, in our opinion have to be read with the other observations quoted hereinabove which clearly show that the Constitution Bench held that: (*Supreme Court Bar Assn. case*[17], SCC p. 421, para 21)

> '*21. ... Parliament has not enacted any law dealing with the powers of the Supreme Court with regard to investigation and punishment of contempt of itself,...*'

The Court also held that Section 15 is not a substantive provision conferring contempt jurisdiction and, therefore, is only a procedural section especially insofar as suo motu contempts are concerned. It is thus clear that the powers of the Supreme Court to punish for contempt committed of itself is a power not subject to the provisions of the Act. Therefore, the only requirement is to follow a procedure which is just, fair and in accordance with the rules framed by this Court.

** **Ed.**: The words between two asterisks have been emphasised in original.

17 *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409

16 *Vinay Chandra Mishra, In re*, (1995) 2 SCC 584

39. As far as the observations made in *Pallav Sheth* v. *Custodian*[18] are concerned, this Court in that case was only dealing with the question whether contempt can be initiated after the limitation prescribed in the Contempt of Courts Act has expired and the observations made therein have to be read in that context only. Relevant portion of para 30 of *Pallav Sheth case*[18] reads as follows: (SCC p. 566)

> "*30*. There can be no doubt that both this Court and High Courts are courts of record and the Constitution has given them the powers to punish for contempt. The decisions of this Court clearly show that this power cannot be abrogated or stultified. But if the power under Article 129 and Article 215 is absolute, can there be any legislation indicating the manner and to the extent that the power can be exercised? If there is any provision of the law which stultifies or abrogates the power under Article 129 and/or Article 215 there can be little doubt that such law should not be regarded as having been validly enacted. It, however, appears to us that providing for the quantum of punishment or what may or may not be regarded as acts of contempt or even providing for a period of limitation for initiating proceedings for contempt cannot be taken to be a provision which abrogates or stultifies the contempt jurisdiction under Article 129 or Article 215 of the Constitution."

The aforesaid finding clearly indicates that the Court held that any law which stultifies or abrogates the power of the Supreme Court under Article 129 of the Constitution or of the High Courts under Article 215 of the Constitution, could not be said to be validly enacted. It, however, went on to hold that providing the quantum of punishment or a period of limitation would not mean that the powers of the Court under Article 129 have been stultified or abrogated. We are not going into the correctness or otherwise of this judgment but it is clear that this judgment only dealt with the issue whether Parliament could fix a period of limitation to initiate the proceedings under the Act. Without commenting one way or the other on *Pallav Sheth case*[18] it is clear that the same has not dealt with the powers of this Court to issue suo motu notice of contempt.

40. In view of the above discussion, we are clearly of the view that the powers of the Supreme Court to initiate contempt are not in any manner limited by the provisions of the Act. This Court is vested with the constitutional powers to deal with the contempt. Section 15 is not the source of the power to issue notice for contempt. It only provides the procedure in which such contempt is to be initiated and this procedure provides that there are three ways of initiating a contempt:

(*i*) suo motu,

(*ii*) on the motion by the Advocate General/Attorney General/ Solicitor General, and

18 (2001) 7 SCC 549

(*iii*) on the basis of a petition filed by any other person with the consent in writing of the Advocate General/Attorney General/Solicitor General.

As far as suo motu petitions are concerned, there is no requirement for taking consent of anybody because the Court is exercising its inherent powers to issue notice for contempt. This is not only clear from the provisions of the Act but also clear from the Rules laid down by this Court." (emphasis supplied)

18. From the perusal of various judgments of this Court, including those of the Constitution Benches, it could be seen, that the source of power of this Court for proceeding for an action of contempt is under Article 129. It has further been held, that power of this Court to initiate contempt is not in any manner limited by the provisions of the Contempt of Courts Act, 1971. It has been held, that the Court is vested with the constitutional powers to deal with the contempt and Section 15 is not the source of the power to issue notice for contempt. It only provides the procedure in which such contempt is to be initiated. It has been held, that insofar as suo motu petitions are concerned, the Court can very well initiate the proceedings suo motu on the basis of information received by it. The only requirement is that the procedure as prescribed in the judgment of *P.N. Duda*[5] has to be followed. In the present case, the same has undoubtedly been followed. It is also equally settled, that as far as the suo motu petitions are concerned, there is no requirement for taking consent of anybody, including the learned Attorney General because the Court is exercising its inherent powers to issue notice for contempt. It is equally well settled, that once the Court takes cognizance, the matter is purely between the Court and the contemnor. The only requirement is that, the procedure followed is required to be just and fair and in accordance with the principles of natural justice. In the present case, the notice issued to the alleged contemnors clearly mentions the tweets on the basis of which the Court is proceeding suo motu. The alleged Contemnor 1 has also clearly understood the basis on which the Court is proceeding against him as is evident from the elaborate affidavit-in-reply filed by him.

19. Before we advert to the facts of the present case, let us examine the legal position as is enunciated in the various judgments of this Court.

20. In *Brahma Prakash Sharma*[2], the Constitution Bench observed thus: (AIR p. 13, para 8)

"8. It admits of no dispute that the summary jurisdiction exercised by superior courts in punishing contempt of their authority exists for the purpose of preventing interference with the course of justice and for maintaining the authority of law as is administered in the courts. It would be only repeating what has been said so often by various Judges that the object of contempt proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individuals;

5 *P.N. Duda* v. *P. Shiv Shanker*, (1988) 3 SCC 167 : 1988 SCC (Cri) 589
2 *Brahma Prakash Sharma* v. *State of U.P.*, 1953 SCR 1169 : AIR 1954 SC 10 : 1954 Cri LJ 238

it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice by it is weakened."

21. It could thus be seen, that the Constitution Bench has held, that the summary jurisdiction exercised by superior courts in punishing contempt of their authority exists for the purpose of preventing interference with the course of justice and for maintaining the authority of law as is administered in the courts; that the object of contempt proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individuals. It has been held, that it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice by it is weakened. The Constitution Bench further observed: (*Brahma Prakash Sharma case*[2], AIR p. 13, para 9)

"9. There are indeed innumerable ways by which attempts can be made to hinder or obstruct the due administration of justice in courts. One type of such interference is found in cases where there is an act or publication which 'amounts to scandalising the court itself' an expression which is familiar to English lawyers since the days of Lord Hardwicke[19]. This scandalising might manifest itself in various ways but, in substance, it is an attack on individual Judges or the court as a whole with or without reference to particular cases casting unwarranted and defamatory aspersions upon the character or ability of the Judges. Such conduct is punished as contempt for this reason that it tends to create distrust in the popular mind and impair confidence of people in the courts which are of prime importance to the litigants in the protection of their rights and liberties."

22. The Constitution Bench thus holds, that a publication which attacks on individual Judges or the court as a whole with or without reference to particular case, casting unwarranted and defamatory aspersions upon the character or ability of the Judges, would come within the term of scandalising the Court. It is held, that such a conduct tends to create distrust in the popular mind and impair the confidence of the people in the courts, which are of prime importance to the litigants in the protection of their rights and liberties. It has been held, that it is not necessary to prove affirmatively, that there has been an actual interference with the administration of justice by reason of such defamatory statement and it is enough if it is likely, or tends in any way, to interfere with the proper administration of justice.

23. In *Hira Lal Dixit* v. *State of U.P.*[20], the Constitution Bench was considering (at AIR p. 745, para 2) a leaflet distributed in the court premises printed and published by the said Hira Lal Dixit. He was the applicant in one

2 *Brahma Prakash Sharma* v. *State of U.P.*, 1953 SCR 1169 : AIR 1954 SC 10 : 1954 Cri LJ 238
19 Vide *Read & Huggonson, In re*, (1742) 2 Atk 469 at p. 471 : 26 ER 683
20 (1955) 1 SCR 677 : AIR 1954 SC 743

of the writ petitions which had been filed in the Supreme Court challenging the validity of the U.P. Road Transport Act, 1951. The leaflet though contained a graphic account of the harassment and indignity said to have been meted out to the writer by the State Officers and the then State Minister of Transport in connection with the cancellation and eventual restoration of his licence in respect of a passenger bus, also contained the following passage:

> "2. ... 'The public has full and firm faith in the Supreme Court, but sources that are in the know say that the Government acts with partiality in the matter of appointment of those Hon'ble Judges as Ambassadors, Governors, High Commissioners, etc. who give judgments against Government but this has so far not made any difference in the firmness and justice of the Hon'ble Judges.' "

24. It will be relevant to refer to the following observation of the Constitution Bench in the said case: (*Hira Lal Dixit case*[20], AIR p. 746, para 5)

> "5. The learned counsel for the respondent, Hira Lal Dixit, maintained that the passage in question was perfectly innocuous and only expressed a laudatory sentiment towards the Court and that such flattery could not possibly have the slightest effect on the minds of the Judges of this august tribunal. We do not think flattery was the sole or even the main object with which this passage was written or with which it was published at the time when the hearing of the appeals was in progress. It no doubt begins with a declaration of public faith in this Court but this is immediately followed by other words connected with the earlier words by the significant conjunction "but".
>
> The words that follow are to the effect that sources that are in the know say that the Government acts with partiality in the matter of appointment of those Judges as Ambassadors, Governors, High Commissioners, etc. who give judgments against the Government. The plain meaning of these words is that the Judges who decide against the Government do not get these high appointments. The necessary implication of these words is that the Judges who decide in favour of the Government are rewarded by the Government with these appointments. The attitude of the Government is thus depicted surely with a purpose and that purpose cannot but be to raise in the minds of the reader a feeling that the Government, by holding out high hopes of future employment, encourages the Judges to give decisions in its favour.
>
> This insinuation is made manifest by the words that follow, namely, 'this has so far not made any difference in the firmness and justice of the Hon'ble Judges'. The linking up of these words with the preceding words by the conjunction "but" brings into relief the real significance and true meaning of the earlier words. The passage read as a whole clearly amounts to this:
>
> 'Government disfavours Judges who give decisions against it but favours those Judges with high appointments who decide in its favour:

20 *Hira Lal Dixit* v. *State of U.P.*, (1955) 1 SCR 677 : AIR 1954 SC 713

that although this is calculated to tempt Judges to give judgments in favour of the Government it has "so far" not made any difference in the firmness and justice of the Judges."

The words "so far" are significant. What, we ask, was the purpose of writing this passage and what was the object of the distribution of the leaflet in the Court premises at a time when the Court was in the midst of hearing the appeals? Surely, there was hidden in the offending passage a warning that although the Judges have "so far" remained firm and resisted the temptation of deciding cases in favour of Government in expectation of getting high appointments, nevertheless, if they decide in favour of the Government on this occasion knowledgeable people will know that they had succumbed to the temptation and had given judgment in favour of the Government in expectation of future reward in the shape of high appointments of the kind mentioned in the passage.

The object of writing this paragraph and particularly of publishing it at the time it was actually done was quite clearly to affect the minds of the Judges and to deflect them from the strict performance of their duties. The offending passage and the time and place of its publication certainly tended to hinder or obstruct the due administration of justice and is a contempt of Court."

25. A perusal of the aforesaid observation of the Constitution Bench in *Hira Lal Dixit case*[20] would reveal, that though the said passage/paragraph begins with a statement, that "the public has full and firm faith in the Supreme Court..." and ends with, "but this has "so far" not made any difference in the firmness and justice of the Hon'ble Judges", the Court found, that if the statement in the said passage/paragraph was read in entirety and the timing and the manner in which it was published, it was clear, that it was done to affect the minds of the Judges and to deflect them from the strict performance of their duties. The Court came to the conclusion, that the offending passage and the time and place of its publication certainly tended to hinder or obstruct the due administration of justice and was a contempt of Court.

26. While holding him guilty and rejecting his qualified apology, the Constitution Bench observed thus: (*Hira Lal Dixit case*[20], AIR pp. 746-47, para 7)

"7. It is well established, as was said by this Court in *Brahma Prakash Sharma case*[2], that it is not necessary that there should in fact be an actual interference with the course of administration of justice but that it is enough if the offending publication is likely or if it tends in any way to interfere with the proper administration of law. Such insinuations as are implicit in the passage in question are derogatory to the dignity of the Court and are calculated to undermine the confidence of the people in the integrity of the Judges.

20 *Hira Lal Dixit* v. *State of U.P.*, (1955) 1 SCR 677 : AIR 1954 SC 743
2 *Brahma Prakash Sharma* v. *State of U.P.*, 1953 SCR 1169 : AIR 1954 SC 10 : 1954 Cri LJ 238

Whether the passage is read as fulsome flattery of the Judges of this Court or is read as containing the insinuations mentioned above or the rest of the leaflet which contains an attack on a party to the pending proceedings is taken separately it is equally contemptuous of the Court in that the object of writing it and the time and place of its publication were, or were calculated, to deflect the Court from performing its strict duty, either by flattery or by a veiled threat or warning or by creating prejudice in its mind against the State. We are, therefore, clearly of opinion and we hold that the respondent Hira Lal Dixit by writing the leaflet and in particular the passage in question and by publishing it at the time and place he did has committed a gross contempt of this Court and the qualified apology contained in his affidavit and repeated by him through his counsel cannot be taken as sufficient amends for his misconduct."

27. A perusal of the aforesaid paragraph would show, that this Court reiterating the law as laid down in *Brahma Prakash Sharma*[2] held, that it is not necessary that there should in fact be an actual interference with the course of administration of justice but that it is enough if the offending publication is likely or if it tends in any way to interfere with the proper administration of law. Such insinuations as are implicit in the passage in question are derogatory to the dignity of the Court and are calculated to undermine the confidence of the people in the integrity of the Judges. It is further held, that whether the passage is read as fulsome flattery of the Judges of this Court or is read as containing the insinuations or the rest of the leaflet which contains an attack on a party to the pending proceedings is taken separately, it is equally contemptuous of the Court inasmuch as, the object of writing it and the time and place of its publication were calculated to deflect the Court from performing its strict duty, either by flattery or by a veiled threat or warning or by creating prejudice in its mind against the State.

28. This Court in *E.M. Sankaran Namboodripad* v. *T. Narayanan Nambiar*[21] was considering the appeal by the appellant therein, who was a former Chief Minister, against his conviction and sentence by the Kerala High Court for contempt of court. The said appellant had said in the press conference that the 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 rich man and a poor ill-dressed and illiterate person, the Judge instinctively favours the former. He had further stated that the election of Judges would be a better arrangement. There were certain other statements made by him in the press conference. Hidayatullah, C.J. observed thus: (SCC pp. 331-32, para 6)

"6. The law of contempt stems from the right of the courts to punish by imprisonment or fines persons guilty of words or acts which either obstruct or tend to obstruct the administration of justice. This right is exercised in India by all courts when contempt is committed in facie curiae and by the superior courts on their own behalf or on behalf of courts subordinate to

2 *Brahma Prakash Sharma* v. *State of U.P.*, 1953 SCR 1169 : AIR 1954 SC 10 : 1954 Cri LJ 238
21 (1970) 2 SCC 325 : 1970 SCC (Cri) 451

them even if committed outside the courts. Formerly, it was regarded as inherent in the powers of a court of record and now by the Constitution of India, it is a part of the powers of the Supreme Court and the High Courts. There are many kinds of contempts. The chief forms of contempt are insult to Judges, attacks upon them, comment on pending proceedings with a tendency to prejudice fair trial, obstruction to officers of courts, witnesses or the parties, abusing the process of the court, breach of duty by officers connected with the court and scandalising the Judges or the courts. The last form occurs, generally speaking, when the conduct of a person tends to bring the authority and administration of the law into disrespect or disregard. In this conduct are included all acts which bring the court into disrepute or disrespect or which offend its dignity, affront its majesty or challenge its authority. Such contempt may be committed in respect of a Single Judge or a single court but may, in certain circumstances, be committed in respect of the whole of the judiciary or judicial system. The question is whether in the circumstances of this case the offence was committed."

29. Hidayatullah, C.J. observed that, when the conduct of a person tends to bring the authority and administration of the law into disrespect or disregard, the same would amount to scandalising the Court. This conduct includes all acts which bring the court into disrepute or disrespect or which offend its dignity, affront its majesty or challenge its authority. Upholding the conviction, this Court observed thus: (*E.M. Sankaran Namboodripad case*[21], SCC p. 339, para 34)

"*34.* ... On the other hand, we cannot ignore the occasion (a press conference), the belief of the people in his word as a Chief Minister and the ready ear which many in his party and outside would give to him. The mischief that his words would cause need not be assessed to find him guilty. The law punishes not only acts which do in fact interfere with the courts and administration of justice but also those which have that tendency, that is to say, are likely to produce a particular result. Judged from the angle of courts and administration of justice, there is not a semblance of doubt in our minds that the appellant was guilty of contempt of court."

30. In *C.K. Daphtary* v. *O.P. Gupta*[11] this Court was considering a motion made under Article 129 of the Constitution by the President of the Bar Association and some other advocates. By the said motion, the petitioners therein had brought to the notice of this Court the pamphlet printed and published by Respondent 1 therein, wherein scurrilous aspersions were made against the Judges of this Court. It will be relevant to refer to the following observations of this Court: (SCC p. 642, para 56)

"*56.* ... We are unable to agree with him that a scurrilous attack on a Judge in respect of a judgment or past conduct has no adverse effect on the due administration of justice. This sort of attack in a country like ours has the inevitable effect of undermining the confidence of the public in

21 *E.M. Sankaran Namboodripad* v. *T. Narayanan Nambiar*, (1970) 2 SCC 325 : 1970 SCC (Cri) 451
11 (1971) 1 SCC 626 : 1971 SCC (Cri) 286

the Judiciary. If confidence in the Judiciary goes, the due administration of justice definitely suffers."

31. It could thus be seen, that it has been clearly held by the Constitution Bench, that a scurrilous attack on a Judge in respect of a judgment or past conduct has an adverse effect on the due administration of justice. The Constitution Bench has unambiguously held, that this sort of attack in a country like ours has the inevitable effect of undermining the confidence of the public in the Judiciary and if the confidence in the Judiciary goes, the due administration of justice definitely suffers. In the said case, after holding the contemnor O.P. Gupta guilty for contempt, this Court refused to accept the apology tendered by him finding that the apology coupled with fresh abuses can hardly be taken note of. However, taking a lenient view, this Court sentenced him to suffer simple imprisonment for two months.

32. In *Baradakanta Mishra*[3], a disgruntled judicial officer aggrieved by the adverse orders of the High Court on the administrative side made vilificatory allegations in a purported appeal to the Governor. Considering the contention of the appellant, that the allegations made against the Judges pertained to the acts of the Judge in administrative capacity and not acting in judicial capacity, the Constitution Bench observed thus: (SCC pp. 393-95, paras 43-47)

"*43*. We have not been referred to any comprehensive definition of the expression "administration of justice". But historically, and in the minds of the people, administration of justice is exclusively associated with the courts of justice constitutionally established. Such courts have been established throughout the land by several statutes. The Presiding Judge of a Court embodies in himself the Court, and when engaged in the task of administering justice is assisted by a complement of clerks and ministerial officers whose duty it is to protect and maintain the records, prepare the writs, serve the processes, etc. The acts in which they are engaged are acts in aid of administration of justice by the Presiding Judge. The power of appointment of clerks and ministerial officers involves administrative control by the Presiding Judge over them and though such control is described as administrative to distinguish it from the duties of a Judge sitting in the seat of justice, such control is exercised by the Judge as a Judge in the course of judicial administration. Judicial administration is an integrated function of the Judge and cannot suffer any dissection so far as maintenance of high standards of rectitude in judicial administration is concerned. The whole set up of a court is for the purpose of administration of justice, and the control which the Judge exercises over his assistants has also the object of maintaining the purity of administration of justice. These observations apply to all courts of justice in the land whether they are regarded as superior or inferior courts of justice.

44. Courts of justice have, in accordance with their constitution, to perform multifarious functions for due administration of justice. Any lapse

3 *Baradakanta Mishra* v. *High Court of Orissa*, (1974) 1 SCC 374 : 1974 SCC (Cri) 128

from the strict standards of rectitude in performing these functions is bound to affect administration of justice which is a term of wider import than mere adjudication of causes from the seat of justice.

45. In a country which has a hierarchy of courts one above the other, it is usual to find that the one which is above is entrusted with disciplinary control over the one below it. Such control is devised with a view to ensure that the lower court functions properly in its judicial administration. A Judge can foul judicial administration by misdemeanours while engaged in the exercise of the functions of a Judge. It is therefore, as important for the superior court, to be vigilant about the conduct and behaviour of the Subordinate Judge as a Judge, as it is to administer the law, because both functions are essential for administration of justice. The Judge of the superior court in whom this disciplinary control is vested functions as much as a Judge in such matters as when he hears and disposes of cases before him. The procedures may be different. The place where he sits may be different. But the powers are exercised in both instances in due course of judicial administration. If superior courts neglect to discipline subordinate courts, they will fail in an essential function of judicial administration and bring the whole administration of justice into contempt and disrepute. The mere function of adjudication between parties is not the whole of administration of justice for any court. It is important to remember that disciplinary control is vested in the Court and not in a Judge as a private individual. Control, therefore, is a function as conducive to proper administration of justice as laying down the law or doing justice between the parties.

46. What is commonly described as an administrative function has been, when vested in the High Court, consistently regarded by the statutes as a function in the administration of justice. Take for example the letters patent for the High Court of Calcutta, Bombay and Madras. Clause 8 thereof authorises and empowers the Chief Justice from time to time as occasion may require 'to appoint so many and such clerks and other ministerial officers it shall be found necessary *for the administration of justice* and the due execution of all the powers and authorities granted and committed to the said High Court by these letters patent'. It is obvious that this authority of the Chief Justice to appoint clerks and ministerial officers for the administration of justice implies an authority to control them in the interest of administration of justice. This controlling function which is commonly described as an administrative function is designed with the primary object of securing administration of justice. Therefore, when the Chief Justice appoints ministerial officers and assumes disciplinary control over them, that is a function which though described as administrative is really in the course of administration of justice. Similarly Section 9 of the High Courts Act, 1861 while conferring on the High Courts several types of jurisdictions and powers says that all such jurisdictions and powers are 'for and in relation to the *administration of justice* in the Presidency for which it is established'. Section 106 of the Government of India Act,

1915 similarly shows that the several jurisdictions of the High Court and all their powers and authority are 'in relation to *the administration of justice including power to appoint clerks and other ministerial officers of the Court*'. Section 223 of the Government of India Act, 1935 preserves the jurisdictions of the existing High Courts and the respective powers of the Judges thereof in relation *to the administration of justice* in the Court. Section 224 of that Act declares that the High Court shall have superintendence over all courts in India for the time being subject to its appellate jurisdiction and this superintendence, it is now settled, extends both to administrative and judicial functions of the subordinate courts. When we come to our Constitution we find that whereas Articles 225 and 227 preserve and to some extent extend these powers in relation to administration of justice, Article 235 vests in the High Court the control over District Courts and courts subordinate thereto. In *State of W.B.* v. *Nripendra Nath Bagchi*[22] this Court has pointed out that control under Article 235 is control over the conduct and discipline of the Judges. That is a function which, as we have already seen, is undoubtedly connected with administration of justice. The disciplinary control over the misdemeanours of the subordinate judiciary in their judicial administration is a function which the High Court must exercise in the interest of administration of justice. It is a function which is essential for the administration of justice in the wide connotation it has received and, therefore, when the High Court functions in a disciplinary capacity, it only does so in furtherance of administration of justice.

47. We thus reach the conclusion that the courts of justice in a State from the highest to the lowest are by their constitution entrusted with functions directly connected with the administration of justice, and it is the expectation and confidence of all those who have or are likely to have business therein that the courts perform all their functions on a high level of rectitude without fear or favour, affection or ill-will." (emphasis in original)

33. It could thus be seen, that the Constitution Bench holds, that the Judges apart from adjudication of causes from the seat of justice are also required to discharge various functions including the disciplinary control. It has been held, that the Judge of the superior court in whom the disciplinary control is vested functions as much as a Judge in such matters, as when he hears and disposes of cases before him, though the procedures may be different or the place where he sits may be different. It has been held, that in both the cases, the powers are exercised in due course of judicial administration. It has been held, that if superior courts neglect to discipline subordinate courts, they will fail in an essential function of judicial administration and bring the whole administration of justice into contempt and disrepute. It has been held, that mere function of adjudication between parties is not the whole of administration of justice for any court.

22 AIR 1966 SC 447 : (1966) 1 SCR 771

34. Quoting the opinion of Wilmot, C.J. in *R.* v. *Almon*[23], the Constitution Bench observed thus: (*Baradakanta Mishra case*[3], SCC pp. 395-96, para 48)

> "*48.* ... Further explaining what he meant by the words "authority of the Court", he observed 'the word "authority" is frequently used to express both the right of declaring the law, which is properly called jurisdiction, and of enforcing obedience to it, in which sense it is equivalent to the word power: but by the word "authority", I do not mean that coercive power of the Judges, but the deference and respect which is paid to them and their acts, from an opinion of their justice and integrity'.‡"

35. The Constitution Bench in *Baradakanta Mishra case*[3] therefore approves the opinion of Wilmot, C.J., that by the word "authority", it is not meant as coercive power of the Judges, but the deference and respect which is paid to them and their acts, from an opinion of their justice and integrity.

36. It may also be relevant to refer to the following observations of the Constitution Bench in *Baradakanta Mishra case*[3]: (SCC p. 396, paras 49-50)

> "*49.* Scandalisation of the Court is a species of contempt and may take several forms. A common form is the vilification of the Judge. When proceedings in contempt are taken for such vilification the question which the Court has to ask is whether the vilification is of the Judge as a Judge (see *R.* v. *Gray*[24], QB at p. 40) or it is the vilification of the Judge as an individual. If the latter the Judge is left to his private remedies and the Court has no power to commit for contempt. If the former, the Court will proceed to exercise the jurisdiction with scrupulous care and in cases which are clear and beyond reasonable doubt. Secondly, the Court will have also to consider the degree of harm caused as affecting administration of justice and, if it is slight and beneath notice, Courts will not punish for contempt. This salutary practice is adopted by Section 13 of the Contempt of Courts Act, 1971. The jurisdiction is not intended to uphold the personal dignity of the Judges. That must rest on surer foundations. Judges rely on their conduct itself to be its own vindication.
>
> *50.* But if the attack on the Judge functioning as a Judge substantially affects administration of justice it becomes a public mischief punishable for contempt, and it matters not whether such an attack is based on what a Judge is alleged to have done in the exercise of his administrative responsibilities. A Judge's functions may be divisible, but his integrity and authority are not divisible in the context of administration of justice. An unwarranted attack on him for corrupt administration is as potent in doing public harm as an attack on his adjudicatory function."

23 1765 Wilm 243 : 97 ER 94

3 *Baradakanta Mishra* v. *High Court of Orissa*, (1974) 1 SCC 374 : 1974 SCC (Cri) 128

‡ As observed in *R.* v. *Almon*, 97 ER 94, p. 100.

24 (1900) 2 QB 36

37. As rightly pointed out by Shri Dave, the Constitution Bench in *Baradakanta Mishra*[3] holds, that when proceedings in contempt are taken for vilification of a Judge, the question that the Court will ask itself is, whether the vilification is of the Judge as a Judge or it is the vilification of the Judge as an individual. In the latter case, the Judge is left to his private remedies and the Court will have no power to commit for contempt. However, in the former case, the Court will proceed to exercise the jurisdiction with scrupulous care and in cases which are clear and beyond reasonable doubt. It has been held, that the jurisdiction is not intended to uphold the personal dignity of the Judges. However, if the attack on the Judge functioning as a Judge substantially affects administration of justice, it becomes a public mischief punishable for contempt and it does not matter whether such an attack is based on what a Judge is alleged to have done in the exercise of his administrative responsibilities. It has been held, a Judge's functions may be divisible, but his integrity and authority are not divisible in the context of administration of justice. It has been held, an unwarranted attack on him for corrupt administration is as potent in doing public harm as an attack on his adjudicatory function.

38. The Constitution Bench came to the conclusion, that a vilificatory criticism of a Judge functioning as a Judge even in purely administrative or non-adjudicatory matters amounts to "criminal contempt".

39. Upholding the conviction as recorded[25] by the High Court, taking into consideration the peculiar facts, the Constitution Bench modified the sentence by directing him to pay a fine of Rs 1000 or in default to suffer simple imprisonment for three months.

40. Shri Dave has strongly relied on the concurring opinion of Krishna Iyer, J. in *Baradakanta Mishra*[3] in the following paragraph: (SCC pp. 411-12, para 88)

> "*88.* Even so, if Judges have frailties after all they are human they need to be corrected by independent criticism. If the judicature has serious shortcomings which demand systemic correction through socially-oriented reform initiated through constructive criticism, the contempt power should not be an interdict. All this, far from undermining the confidence of the public in Courts, enhances it and, in the last analysis, cannot be repressed by indiscriminate resort to contempt power. Even bodies like the Law Commission or the Law Institute and researchers, legal and sociological, may run "contempt" risks because their professional work sometimes involves unpleasant criticism of Judges, judicial processes and the system itself and thus hover perilously around the periphery of the law if widely construed. Creative legal journalism and activist statesmanship for judicial reform cannot be jeopardised by an undefined apprehension of contempt action."

41. Relying on the above paragraph, it is his submission, that the Judges also have frailties. According to him, what the alleged contemnor has done is to bring to the notice of this Court the serious shortcomings, which

3 *Baradakanta Mishra* v. *High Court of Orissa*, (1974) 1 SCC 374 : 1974 SCC (Cri) 128
25 *High Court of Orissa* v. *Baradakanta Misra*, 1973 SCC OnLine Ori 167 : AIR 1973 Ori 244

demand systemic correction. According to him, what he has done is far from undermining the confidence of the public in court but enhances it and therefore, cannot be repressed by indiscriminate resort to contempt power. We will deal with this submission in the later part of our judgment.

42. Shri Dave has strongly relied on the judgment of this Court in *S. Mulgaokar, In re*[4]. It will be relevant to refer to the following observations in the judgment of Beg, C.J.: (SCC pp. 347-48, para 16)

> "*16*. The 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 the judiciary and destroy public confidence in it, it cannot be ignored. I am not one of those who think that an action for contempt of court, which is discretionary, should be frequently or lightly taken. But, at the same time, I do not think that we should abstain from using this weapon even when its use is needed to correct standards of behaviour in a grossly and repeatedly erring quarter. It may be better in many cases for the judiciary to adopt a magnanimously charitable attitude even when utterly uncharitable and unfair criticism of its operations is made out of bona fide concern for improvement. But, when there appears some scheme and design to bring about results which must damage confidence in our judicial system and demoralise Judges of the highest court by making malicious attacks, anyone interested in maintaining high standards of fearless, impartial, and unbending justice will feel perturbed. I sincerely hope that my own undisguised perturbation at what has been taking place recently is unnecessary. One may be able to live in a world of yogic detachment when unjustified abuses are hurled at one's self personally, but, when the question is of injury to an institution, such as the highest court of justice in the land, one cannot overlook its effects upon national honour and prestige in the comity of nations. Indeed, it becomes a matter deserving consideration of all serious-minded people who are interested in seeing that democracy does not flounder or fail in our country. If fearless and impartial courts of justice are the bulwark of a healthy democracy, confidence in them cannot be permitted to be impaired by malicious attacks upon them. However, as we have not proceeded further in this case, I do not think that it would be fair to characterise anything written or said in the *Indian Express* as really malicious or ill-intentioned and I do not do so. We have recorded no decision on that although the possible constructions on what was written there have been indicated above."

43. The learned Chief Justice states, that the judiciary cannot be immune from criticism. However, when that criticism is based on obvious distortion or gross misstatement and made in a manner which seems designed to lower respect for the judiciary and destroy public confidence in it, it cannot be ignored. He opines, that an action for contempt of court should not be frequently or lightly taken. But, at the same time, the Court should not abstain from using

4 (1978) 3 SCC 339 : 1978 SCC (Cri) 402

this weapon even when its use is needed to correct standards of behaviour in a grossly and repeatedly erring quarter. The learned Chief Justice further observed, that it may be better in many cases for the judiciary to adopt a magnanimously charitable attitude, even when utterly uncharitable and unfair criticism of its operations is made out of bona fide concern for improvement. However, when there appears some scheme and design to bring about results which must damage confidence in our judicial system and demoralise Judges of the highest court by making malicious attacks, anyone interested in maintaining high standards of fearless, impartial and unbending justice will feel perturbed. He opines, that when the question is of injury to an institution, such as the highest court of justice in the land, one cannot overlook its effects upon national honour and prestige in the comity of nations. He opined, that if fearless and impartial courts of justice are the bulwark of a healthy democracy, confidence in them cannot be permitted to be impaired by malicious attacks upon them.

44. The aforesaid observations are important though the court, for different reasons, did not decide to proceed against the alleged contemnor.

45. It will be relevant to refer to the following observations of Krishna Iyer, J. in *S. Mulgaokar, In re*[4]: (SCC pp. 351-53, paras 26-33)

> "26. What then are the complex of considerations dissuasive of punitive action? To be exhaustive is a baffling project; to be pontifical is to be impractical; to be flexible is to be realistic. What, then, are these broad guidelines — not a complete inventory, but precedentially validated judicial norms?
>
> *27.* The *first* rule in this branch of contempt power is a wise economy of use by the Court of this branch of its jurisdiction. The Court will act with seriousness and severity where justice is jeopardised by a gross and/or unfounded attack on the Judges, where the attack is calculated to obstruct or destroy the judicial process. The Court is willing to ignore, by a majestic liberalism, trifling and venial offences — the dogs may bark, the caravan will pass. The Court will not be prompted to act as a result of an easy irritability. Much rather, it shall take a noetic look at the conspectus of features and be guided by a constellation of constitutional and other considerations when it chooses to use, or desist from using, its power of contempt.
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> *28.* The *second* principle must be to harmonise the constitutional values of free criticism, the Fourth Estate included, and the need for a fearless curial process and its presiding functionary, the Judge. A happy balance has to be struck, the benefit of the doubt being given generously against the Judge, slurring over marginal deviations but severely proving the supremacy of the law over pugnacious, vicious, unrepentant and malignant contemnors, be they the powerful press, gang-up of vested interests, veteran columnists of Olympian establishmentarians. Not because the Judge, the human symbol of a high value, is personally armoured by a regal privilege

4 (1978) 3 SCC 339 : 1978 SCC (Cri) 402

but because 'be you — the contemnor — ever so high, the law — the People's expression of justice — is above you'. Curial courage overpowers arrogant might even as judicial benignity forgives errant or exaggerated critics. Indeed, to criticise the Judge fairly, albeit fiercely, is no crime but a necessary right, twice blessed in a democracy. For, it blesseth him that gives and him that takes. Where freedom of expression, fairly exercised, subserves public interest in reasonable measure, public justice cannot gag it or manacle it, constitutionally speaking. A free people are the ultimate guarantors of fearless justice. Such is the cornerstone of our Constitution; such is the touchstone of our Contempt Power, oriented on the confluence of free speech and fair justice which is the scriptural essence of our Fundamental Law. Speaking of the social philosophy and philosophy of law in an integrated manner as applicable to contempt of court, there is no conceptual polarity but a delicate balance, and judicial "sapience" draws the line. As it happens, our Constitution-makers foresaw the need for balancing all these competing interests. Section 2(*c*) of the Contempt of Courts Act, 1971 provides:

> '**2. (*c*) "criminal contempt"** means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which
>
> (*i*) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court;'

This is an extremely wide definition. But, it cannot be read apart from the conspectus of the constitutional provisions within which the Founding Fathers of the Constitution intended all past and future statutes to have meaning. All laws relating to contempt of court had, according to the provisions of Article 19(2), to be "reasonable restrictions" on the exercise of the right of free speech. The courts were given the power — and, indeed, the responsibility — to harmonise conflicting aims, interests and values. This is in sharp contrast to the *Phillimore Committee Report on Contempt of Court in the United Kingdom*[26] which did not recommend the defence of public interest in contempt cases.

29. The *third* principle is to avoid confusion between personal protection of a libelled Judge and prevention of obstruction of public justice and the community's confidence in that great process. The former is *not* contempt, the latter *is*, although overlapping spaces abound.

30. Because the law of contempt exists to protect public confidence in the administration of justice, the offence will not be committed by attacks upon the personal reputation of individual Judges as such. As Professor Goodhart has put it [See "Newspapers on Contempt of Court"[27]]:

26 (1974) Cmnd. 5794, paras 143-45, pp. 61-62
27 (1935) 48 Harv LR 885 at p. 898

> 'Scandalising the court means any hostile criticism of the Judge as Judge; any personal attack upon him, unconnected with the office he holds, is dealt with under the ordinary rules of slander and libel.'

Similarly, Griffith, C.J. has said in the Australian case of *Nicholls*[28] that:

> 'In one sense, no doubt, every defamatory publication concerning a Judge may be said to bring him into contempt as that term is used in the law of libel, but it does not follow that everything said of a Judge calculated to bring him into contempt in that sense amounts to contempt of court.'

Thus in *Special Reference from the Bahama Islands, In re*[29] the Privy Council advised that a contempt had not been committed through a publication in the Nassau Guardian concerning the resident Chief Justice, who had himself previously criticised local sanitary conditions. Though couched in highly sarcastic terms the publication did not refer to the Chief Justice in his official, as opposed to personal, capacity. Thus while it might have been a libel it was not a contempt.

31. The *fourth* functional canon which channels discretionary exercise of the contempt power is that the fourth estate which is an indispensable intermediary between the State and the people and necessary instrumentality in strengthening the forces of democracy, should be given free play within responsible limits even when the focus of its critical attention is the court, including the highest court.

32. The *fifth* normative guideline for the Judges to observe in this jurisdiction is *not* to be hypersensitive even where distortions and criticisms overstep the limits, but to deflate vulgar denunciation by dignified bearing, condescending indifference and repudiation by judicial rectitude.

33. The *sixth* consideration is that, after evaluating the totality of factors, 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." (emphasis in original)

46. It could thus be seen, that Justice Krishna Iyer, in his inimitable style, has observed, that a wise economy of use of the contempt power by the Court is the first rule. The Court should act with seriousness and severity, where justice is jeopardised by a gross and/or unfounded attack on the Judges, where the attack is calculated to obstruct or destroy the judicial process. Otherwise, the Court should ignore, by a majestic liberalism, trifling and venial offences. He says the dogs may bark, the caravan will pass. He further opines, that the constitutional values of free criticism, including the fourth estate and the need for a fearless curial process and its presiding functionary, the Judge must be

28 *R. v. Nicholls*, (1911) 12 CLR 280 at p. 285 (Aust)
29 1893 AC 138 (PC)

harmonised and a happy balance has to be struck between the two. He opined, that confusion between personal protection of a libelled Judge and prevention of obstruction of public justice and the community's confidence in that great process is to be avoided. It must be clearly kept in mind because the former is not contempt, the latter is. He further observed, that the fourth estate which is an indispensable intermediary between the State and the people and necessary instrumentality in strengthening the forces of democracy, should be given free play within responsible limits even when the focus of its critical attention is the court, including the highest court. He opined, that the Judges should not be hypersensitive even where distortions and criticisms overstep the limits, but they should deflate vulgar denunciation by dignified bearing, condescending indifference and repudiation by judicial rectitude.

47. He opined, that if the court considers, after evaluating the totality of factors, 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.

48. Though in *P.N. Duda*[5] this Court, in the facts of the said case, held, that if the speech of the Minister is read in entirety, it cannot be said that by some portions, which were selectively taken from different parts of the speech it could be held that the faith in the administration of justice was shaken due to the criticism made by the Minister; it will be relevant to refer to the following observations of this Court: (SCC pp. 177-78, para 9)

> "9. ... Any criticism about the judicial system or the Judges which hampers the administration of justice or which erodes the faith in the objective approach of Judges and brings administration of justice into ridicule must be prevented. The contempt of court proceedings arise out of that attempt. Judgments can be criticised; the motives of the Judges need not be attributed, it brings the administration of justice into deep disrepute. Faith in the administration of justice is one of the pillars through which democratic institution functions and sustains. In the free market place of ideas criticisms about the judicial system or Judges should be welcomed, so long as such criticisms do not impair or hamper the administration of justice. This is how courts should approach the powers vested in them as Judges to punish a person for an alleged contempt, be it by taking notice of the matter suo motu or at the behest of the litigant or a lawyer."

49. In *Pritam Pal* v. *High Court of M.P.*[14], this Court was considering an appeal filed by an advocate, who after failing to get a favourable judgment in his own writ petition had moved a contempt petition against the Judges of the High Court, who had dismissed his petition, therein casting scurrilous aspersions against their conduct in the discharge of their judicial function which bore reflections on their integrity, honesty and judicial impartiality. The High Court

5 *P.N. Duda* v. *P. Shiv Shanker*, (1988) 3 SCC 167 : 1988 SCC (Cri) 589
14 1993 Supp (1) SCC 529 : 1993 SCC (Cri) 356

invoking the jurisdiction under Article 215 of the Constitution had initiated suo motu proceedings against him and had convicted him for having committed criminal contempt. While dismissing the appeal, this Court observed thus: (SCC p. 549, paras 60-61)

> "*60.* The maxim *salus populi suprema lex*, that is 'the welfare of the people is the supreme law' adequately enunciates the idea of law. This can be achieved only when justice is administered lawfully, judicially, without fear or favour and without being hampered and thwarted, and this cannot be effective unless respect for it is fostered and maintained.
>
> *61.* To punish an advocate for contempt of court, no doubt, must be regarded as an extreme measure, but to preserve the proceedings of the courts from being deflected or interfered with, and to keep the streams of justice pure, serene and undefiled, it becomes the duty of the Court, though painful, to punish the contemnor in order to preserve its dignity. No one can claim immunity from the operation of the law of contempt, if his act or conduct in relation to court or court proceedings interferes with or is calculated to obstruct the due course of justice."

50. This Court held, that the welfare of the people is the supreme law and this can be achieved only when justice is administered lawfully, judicially, without fear or favour and without being hampered and thwarted and this cannot be effective unless respect for it is fostered and maintained. It has been held, that to punish an advocate for contempt of court must be regarded as an extreme measure, but to preserve the proceedings of the courts from being deflected or interfered with, and to keep the streams of justice pure, serene and undefiled, it becomes the duty of the court to punish the contemnor in order to preserve its dignity.

51. In *Vinay Chandra Mishra, In re*[16], this Court had taken suo motu cognizance on the basis of the letter addressed by one of the Judges of the Allahabad High Court to the Acting Chief Justice of the said court, which was in turn forwarded to the Chief Justice of India. It was noticed, that the contemnor had gone to the extent of abusing the learned Judge beyond all limits. This Court observed thus: (SCC pp. 616-17, para 39)

> "*39.* The rule of law is the foundation of a democratic society. The judiciary is the guardian of the rule of law. Hence judiciary is not only the third pillar, but the central pillar of the democratic State. In a democracy like ours, where there is a written Constitution which is above all individuals and institutions and where the power of judicial review is vested in the superior courts, the judiciary has a special and additional duty to perform viz. to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. If the judiciary is to

16 (1995) 2 SCC 584

perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilised life in the society. It is for this purpose that the courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalising them and obstructing them from discharging their duties without fear or favour. When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual Judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. 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 disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded."

52. This Court holds, that the judiciary is the guardian of the rule of law and is the central pillar of the democratic State. It holds, that in our country, the written Constitution is above all individuals and institutions and the judiciary has a special and additional duty to perform i.e. to oversee that all individuals and institutions including the executive and the legislature, act within the framework of not only the law but also the fundamental law of the land. It further holds, that this duty is apart from the function of adjudicating the disputes between the parties, which is essential to peaceful and orderly development of the society. It holds, that if the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. It has been held, that otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilised life in the society. It has been held, for this purpose that the courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalising them and obstructing them from discharging their duties without fear or favour. It has been held, that when the court exercises this power, it does not do so to vindicate the dignity and honour of the individual Judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. It has been held, 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 disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded.

53. In *D.C. Saxena* v. *Chief Justice of India*[30], a writ petition was filed under Article 32 by way of a PIL making scurrilous imputations against the CJI. This Court observed thus: (SCC p. 243, para 33)

> "*33.* A citizen is entitled to bring to the notice of the public at large the infirmities from which any institution including the judiciary suffers from. Indeed, the right to offer healthy and constructive criticism which is fair in spirit must be left unimpaired in the interest of the institution itself. Critics are instruments of reform but not those actuated by malice but those who are inspired by public weal. Bona fide criticism of any system or institution including the judiciary is aimed at inducing the administration of the system or institution to look inward and improve its public image. Courts, the instrumentalities of the State are subject to the Constitution and the laws and are not above criticism. Healthy and constructive criticism are tools to augment its forensic tools for improving its functions. A harmonious blend and balanced existence of free speech and fearless justice counsel that law ought to be astute to criticism. Constructive public criticism even if it slightly oversteps its limits thus has fruitful play in preserving democratic health of public institutions. Section 5 of the Act accords protection to such fair criticism and saves from contempt of court. The best way to sustain the dignity and respect for the office of Judge is to deserve respect from the public at large by fearlessness and objectivity of the approach to the issues arising for decision, quality of the judgment, restraint, dignity and decorum a Judge observes in judicial conduct off and on the Bench and rectitude."

54. It has been held, that a citizen is entitled to bring to the notice of the public at large the infirmities from which any institution including the judiciary suffers from. It has been further held, that the right to offer healthy and constructive criticism, which is fair in spirit must be left unimpaired in the interest of the institution itself. It has been held, that critics are instruments of reform but not those actuated by malice but those who are inspired by public weal. It has also been held, that constructive public criticism even if it slightly oversteps its limits thus has fruitful play in preserving democratic health of public institutions.

55. This Court further observed thus: (*D.C. Saxena case*[30], SCC p. 247, para 40)

> "*40.* Scandalising the court, therefore, would mean hostile criticism of Judges as Judges or judiciary. Any personal attack upon a Judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the Judge as a Judge brings the court or Judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. Any caricature of a Judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It would, therefore, be scandalising the Judge as a Judge, in

30 (1996) 5 SCC 216

other words, imputing partiality, corruption, bias, improper motives to a Judge is scandalisation of the court and would be contempt of the court. Even imputation of lack of impartiality or fairness to a Judge in the discharge of his official duties amounts to contempt. The gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. When the contemnor challenges the authority of the court, he interferes with the performance of duties of Judge's office or judicial process or administration of justice or generation or production of tendency bringing the Judge or judiciary into contempt. Section 2(*c*) of the Act, therefore, defines criminal contempt in wider articulation that any publication, whether by words, spoken or written, or by signs, or by visible representations, or otherwise of any matter or the doing of any other act whatsoever which scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; 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, is a criminal contempt. Therefore, a tendency to scandalise the court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt. The offending act apart, any tendency if it may lead to or tends to lower the authority of the court is a criminal contempt. Any conduct of the contemnor which has the tendency or produces a tendency to bring the Judge or court into contempt or tends to lower the authority of the court would also be contempt of the court."

56. It could thus be seen, that it has been held by this Court, that hostile criticism of Judges as Judges or judiciary would amount to scandalising the court. It has been held, that any personal attack upon a Judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the Judge as a Judge brings the court or Judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. This Court further observed, that any caricature of a Judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It has been held, that imputing partiality, corruption, bias, improper motives to a Judge is scandalisation of the court and would be contempt of the court. It has been held, that the gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. This Court held, that Section 2(*c*) of the Act defines "criminal contempt" in wider articulation. It has been held, that a tendency to scandalise the court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt.

57. The Constitution Bench of this Court in *Supreme Court Bar Assn.* v. *Union of India*[17], held thus: (SCC pp. 429-30, para 42)

> "42. The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It is an unusual type of jurisdiction combining "the jury, the Judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual Judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemnor and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice."

58. The observations of the Constitution Bench reiterate the legal position that the contempt jurisdiction, which is a special jurisdiction has to be exercised sparingly and with caution, whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised, when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. This jurisdiction is not to be exercised to protect the dignity of an individual Judge, but to protect the administration of justice from being maligned. It is reiterated, that in the general interest of the community, it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. It has been reiterated, that no such act can be permitted, which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice.

59. In *Arundhati Roy, In re*[31], this Court observed thus: (SCC p. 372, para 28)

> "28. As already held, fair criticism of the conduct of a Judge, the institution of the judiciary and its functioning may not amount to contempt if it is made in good faith and in public interest. To ascertain the good faith and the public interest, the courts have to see all the

17 (1998) 4 SCC 409
31 (2002) 3 SCC 343

surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved. All citizens cannot be permitted to comment upon the conduct of the courts in the name of fair criticism which, if not checked, would destroy the institution itself."

60. This Court reiterated the position, that fair criticism of the conduct of a Judge, the institution of the judiciary and its functioning may not amount to contempt, if it is made in good faith and in public interest. For ascertaining the good faith and the public interest, the courts have to see all the surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved.

61. It could thus be seen, that it is well settled that a citizen while exercising right under Article 19(1) is entitled to make a fair criticism of a Judge, judiciary and its functioning. However, the right under Article 19(1) is subject to restriction under clause (2) of Article 19. An attempt has to be made to properly balance the right under Article 19(1) and the reasonable restriction under clause (2) of Article 19. If a citizen while exercising his right under Article 19(1) exceeds the limits and makes a statement, which tends to scandalise the Judges and institution of administration of justice, such an action would come in the ambit of contempt of court. If a citizen makes a statement which tends to undermine the dignity and authority of this Court, the same would come in the ambit of "criminal contempt". When such a statement tends to shake the public confidence in the judicial institutions, the same would also come within the ambit of "criminal contempt".

62. No doubt, that when a statement is made against a Judge as an individual, the contempt jurisdiction would not be available. However, when the statement is made against a Judge as a Judge and which has an adverse effect in the administration of justice, the Court would certainly be entitled to invoke the contempt jurisdiction. No doubt, that while exercising the right of fair criticism under Article 19(1), if a citizen bona fide exceeds the right in the public interest, this Court would be slow in exercising the contempt jurisdiction and show magnanimity. However, when such a statement is calculated in order to malign the image of judiciary, the Court would not remain a silent spectator. When the authority of this Court is itself under attack, the Court would not be an onlooker. The word "authority" as explained[23] by Wilmot, C.J. and approved by the Constitution Bench of this Court in *Baradakanta Mishra*[3] does not mean the coercive power of the Judges, but a deference and respect which is paid to them and their acts, from an opinion of their justice and integrity.

63. As submitted by Shri Dave, relying on the observation made by Krishna Iyer, J., in *Baradakanta Mishra*[3], if a constructive criticism is made in order to enable systemic correction in the system, the Court would not invoke the contempt jurisdiction. However, as observed by the same learned Judge in *S. Mulgaokar, In re*[4], the Court will act with seriousness and severity where justice

23 *R. v. Almon*, 1765 Wilm 243 : 97 ER 94

3 *Baradakanta Mishra v. High Court of Orissa*, (1974) 1 SCC 374 : 1974 SCC (Cri) 128

4 (1978) 3 SCC 339 : 1978 SCC (Cri) 402

is jeopardised by a gross and/or unfounded attack on the Judges and where the attack is calculated to obstruct or destroy the judicial process. Krishna Iyer, J. further observed, that after evaluating the totality of factors, if the Court considers the attack on the Judge or Judges to be 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.

64. In the light of these guiding principles, let us analyse the tweets, admittedly, made by the alleged Contemnor 1 which have given rise to this proceeding.

65. After analysing the tweets, the questions that we will have to pose is, as to whether the said tweets are entitled to protection under Article 19(1) of the Constitution as a fair criticism of the system, made in good faith in the larger public interest or not.

66. We have reproduced both the tweets in the order dated 22-7-2020[1], which is reproduced in the beginning. The first part of the first tweet states, that "(NC) CJI rides a 50 lakh motorcycle belonging to a BJP leader at Raj Bhavan, Nagpur without a mask or helmet". This part of the tweet could be said to be a criticism made against the CJI as an individual and not against the CJI as CJI. However, the second part of the tweet states, "at a time when he keeps the SC in lockdown mode denying citizens their fundamental right to access justice". Undisputedly, the said part of the statement criticises the CJI in his capacity as the Chief Justice of India i.e. the administrative head of the judiciary of the country. The impression that the said part of the tweet attempts to give to a layman is, that the CJI is riding a 50 lakh motorcycle belonging to a BJP leader at Raj Bhavan, Nagpur without a mask or helmet, at a time when he has kept the SC in lockdown mode denying citizens their fundamental right to access justice. The said tweet is capable of giving an impression to a layman, that the CJI is enjoying his ride on a motorbike worth Rs 50 lakh belonging to a BJP leader, at a time when he has kept the Supreme Court in lockdown mode denying citizens their fundamental right to access justice.

67. Firstly, it would be noted, that the date on which the CJI is alleged to have taken a ride on a motorbike is during the period when the Supreme Court was on a summer vacation. In any case, even during the said period, the vacation Benches of the Court were regularly functioning. The impression that the said tweet intends to give is that the CJI as the head of the Indian judiciary has kept the Supreme Court in lockdown mode, thereby denying citizens their fundamental right to access justice. In any case, the statement, that the Supreme Court is in lockdown is factually incorrect even to the knowledge of the alleged Contemnor 1. It is a common knowledge, that on account of COVID-19 pandemic the physical functioning of the Court was required to be suspended. This was in order to avoid mass gathering in the Supreme Court and to prevent outbreak of pandemic. However, immediately after suspension of physical hearing, the Court started functioning through videoconferencing. From 23-3-2020 till 4-8-2020, various Benches of the Court have been sitting regularly and discharging their duties through videoconferencing. The total

1 *Prashant Bhushan, In re*, 2020 SCC OnLine SC 588

number of sittings that the various Benches had from 23-3-2020 till 4-8-2020 is 879. During this period, the Court has heard 12,748 matters. In the said period, this Court has dealt with 686 writ petitions filed under Article 32 of the Constitution of India.

68. It can thus be clearly seen, that the statement, that the CJI has kept the SC in lockdown mode denying citizens their fundamental rights to access justice is patently false. It may not be out of place to mention, that the alleged Contemnor 1 has himself appeared on various occasions in number of matters through videoconferencing. Not only that, but even in his personal capacity the alleged Contemnor 1 has taken recourse to the access of justice by approaching this Court in a petition under Article 32 of the Constitution being Writ Petition (Criminal) No. 131 of 2020, challenging the first information report lodged against him at Bhaktinagar Police Station, Rajkot, Gujarat, wherein this Court had passed the following order on 1-5-2020[32]: (*Prashant Bhushan case*[32], SCC OnLine SC paras 1-3)

> "*1.* The Court is convened through videoconferencing.
>
> *2.* Issue notice.
>
> *3.* In the meantime, no coercive action be taken against the petitioner in First Information Report No. 11209052200180 lodged on 12-4-2020 under Sections 295-A/505(1)(*b*), 34 and 120-B IPC registered at Police Station Bhaktinagar, Rajkot, Gujarat."

69. In this premise, making such wild allegation thereby giving an impression, that the CJI is enjoying riding an expensive bike, while he keeps the SC in lockdown mode and thereby denying citizens their fundamental right to access justice, is undoubtedly false, malicious and scandalous. It has the tendency to shake the confidence of the public at large in the institution of judiciary and the institution of the CJI and undermining the dignity and authority of the administration of justice. We are unable to accept the contention of the alleged Contemnor 1, that the said statement was a bona fide criticism made by him on account of his anguish of non-functioning of the courts physically. His contention, that on account of non-physical functioning of the Supreme Court for the last more than three months, the fundamental rights of citizens, such as those in detention, those destitute and poor, and others facing serious and urgent grievances were not being addressed or taken up for redressal, as stated hereinabove, is false to his own knowledge. He has made such a scandalous and malicious statement having himself availed the right of an access to justice during the said period, not only as a lawyer but also as a litigant.

70. Insofar as the second tweet is concerned, even according to the alleged Contemnor 1, the tweet is in three distinct parts. According to him, the first part of the tweet contains his considered opinion, that democracy has been substantially destroyed in India during the last six years. The second part is his opinion, that the Supreme Court has played a substantial role in allowing the destruction of the democracy and the third part is his opinion regarding the role of the last 4 Chief Justices in particular in allowing it.

32 *Prashant Bhushan* v. *Jaydev Rajnikant Joshi*, 2020 SCC OnLine SC 691

71. We are not concerned with the first part of the tweet since it is not concerned with this Court. However, even on his own admission, he has expressed his opinion, that the Supreme Court has played a substantial role in allowing the destruction of democracy and further admitted, that the third part is regarding the role of last four Chief Justices in particular, in allowing it.

72. It is common knowledge, that the emergency era has been considered as the blackest era in the history of Indian democracy. The impression which the said tweet tends to give to an ordinary citizen is, that when the historians in future look back, the impression they will get is, that in the last six years the democracy has been destroyed in India without even a formal emergency and that the Supreme Court had a particular role in the said destruction and the last four Chief Justices of India had more particular role in the said destruction.

73. There cannot be any manner of doubt, that the said tweet is directed against the Supreme Court, tending to give an impression, that the Supreme Court has a particular role in the destruction of democracy in the last six years and the last four CJIs had a more particular role in the same. It is clear, that the criticism is against the entire Supreme Court and the last four CJIs. The criticism is not against a particular Judge but the institution of the Supreme Court and the institution of the Chief Justice of India. The impression that the said tweet tends to convey is that the Judges who have presided in the Supreme Court in the period of last six years have particular role in the destruction of Indian democracy and the last four CJIs had a more particular role in it.

74. As discussed hereinabove, while considering as to whether the said criticism was made in a good faith or not, the attending circumstances are also required to be taken into consideration. One of the attending circumstances is the extent of publication. The publication by tweet reaches millions of people and as such, such a huge extent of publication would also be one of the factors that requires to be taken into consideration while considering the question of good faith.

75. Another circumstance is, the person who makes such a statement. In the own admission, the alleged Contemnor 1 has been practising for last 30 years in the Supreme Court and the Delhi High Court and has consistently taken up many issues of public interest concerning the health of our democracy and its institutions and in particular the functioning of our judiciary and especially its accountability. The alleged contemnor being part of the institution of administration of justice, instead of protecting the majesty of law has indulged into an act, which tends to bring disrepute to the institution of administration of justice. The alleged Contemnor 1 is expected to act as a responsible officer of this Court. The scurrilous allegations, which are malicious in nature and have the tendency to scandalise the Court are not expected from a person, who is a lawyer of 30 years' standing. In our considered view, it cannot be said that the above tweets can be said to be a fair criticism of the functioning of the judiciary, made bona fide in the public interest.

76. As held by this Court in earlier judgments, to which we have referred hereinabove, the Indian judiciary is not only one of the pillars on which the Indian democracy stands but is the central pillar. The Indian constitutional democracy stands on the bedrock of rule of law. The trust, faith and confidence

of the citizens of the country in the judicial system is sine qua non for existence of rule of law. An attempt to shake the very foundation of constitutional democracy has to be dealt with an iron hand. The tweet has the effect of destabilising the very foundation of this important pillar of the Indian democracy. The tweet clearly tends to give an impression, that the Supreme Court, which is the highest constitutional court in the country, has in the last six years played a vital role in destruction of the Indian democracy. There is no manner of doubt, that the tweet tends to shake the public confidence in the institution of judiciary. We do not want to go into the truthfulness or otherwise of the first part of the tweet, inasmuch as we do not want to convert this proceeding into a platform for political debate. We are only concerned with the damage that is sought to be done to the institution of administration of justice. In our considered view, the said tweet undermines the dignity and authority of the institution of the Supreme Court of India and the CJI and directly affronts the majesty of law.

77. Indian judiciary is considered by the citizens in the country with the highest esteem. The judiciary is considered as a last hope when a citizen fails to get justice anywhere. The Supreme Court is the epitome of the Indian judiciary. An attack on the Supreme Court does not only have the effect of tending an ordinary litigant of losing the confidence in the Supreme Court but also may tend to lose the confidence in the mind of other Judges in the country in its highest court. A possibility of the other Judges getting an impression that they may not stand protected from malicious attacks, when the Supreme Court has failed to protect itself from malicious insinuations, cannot be ruled out. As such, in order to protect the larger public interest, such attempts of attack on the highest judiciary of the country should be dealt with firmly. No doubt, that the Court is required to be magnanimous, when criticism is made of the Judges or of the institution of administration of justice. However, such magnanimity cannot be stretched to such an extent, which may amount to weakness in dealing with a malicious, scurrilous, calculated attack on the very foundation of the institution of the judiciary and thereby damaging the very foundation of the democracy.

78. The Indian Constitution has given a special role to the constitutional courts of this country. The Supreme Court is a protector of the fundamental rights of the citizens, as also is endowed with a duty to keep the other pillars of democracy i.e. the executive and the legislature, within the constitutional bounds. If an attack is made to shake the confidence that the public at large has in the institution of judiciary, such an attack has to be dealt with firmly. No doubt, that it may be better in many cases for the judiciary to adopt a magnanimously charitable attitude even when utterly uncharitable and unfair criticism of its operations is made out of bona fide concern for improvement. However, when there appears some scheme and design to bring about results which have the tendency of damaging the confidence in our judicial system and demoralise the Judges of the highest court by making malicious attacks, those interested in maintaining high standards of fearless, impartial and unbending justice will have to stand firmly. If such an attack is not dealt with, with requisite degree of firmness, it may affect the national honour and prestige in the comity of nations. Fearless and impartial courts of justice are the bulwark of a healthy democracy and the confidence in them cannot be permitted to be impaired by

malicious attacks upon them. As observed by Krishna Iyer, J. in *S. Mulgaokar, In re*[4], on which judgment, Shri Dave has strongly relied on, 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.

79. The summary jurisdiction of this Court is required to be exercised not to vindicate the dignity and honour of the individual Judge, who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. 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 sought to be shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded. The scurrilous/ malicious attacks by the alleged Contemnor 1 are not only against one or two Judges but the entire Supreme Court in its functioning of the last six years. Such an attack which tends to create disaffection and disrespect for the authority of this Court cannot be ignored. Recently, the Supreme Court in *National Lawyers Campaign for Judicial Transparency & Reforms* v. *Union of India*[33] and *Vijay Kurle, In re*[6] has suo motu taken action against advocates who had made scandalous allegations against the individual Judge/Judges. Here the alleged contemnor has attempted to scandalise the entire institution of the Supreme Court. We may gainfully refer to the observations of Wilmot, J. in *R.* v. *Almon*[23] made as early as in 1765: (LR p. 100)

> "... and whenever men's allegiance to the law 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; not for the sake of the Judges, as private individuals, but because they are the channels by which the King's justice is conveyed to the people."

80. The tweets which are based on the distorted facts, in our considered view, amount to committing of "criminal contempt".

81. Insofar as the alleged Contemnor 2 is concerned, we accept the explanation given by it, that it is only an intermediary and that it does not have any control on what the users post on the platform. It has also showed bona fides immediately after the cognizance was taken by this Court as it has suspended both the tweets. We, therefore, discharge the notice issued to the alleged Contemnor 2.

82. In the result, we hold alleged Contemnor 1 Mr Prashant Bhushan guilty of having committed criminal contempt of this Court.

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4 (1978) 3 SCC 339 : 1978 SCC (Cri) 402
33 (2020) 16 SCC 687
6 (2021) 13 SCC 616 : 2020 SCC OnLine SC 107

1929 SCC OnLine Bom 128 : AIR 1929 Bom 335

Bombay High Court
(BEFORE MARTEN, C.J. AND MURPHY, J.)

Government Pleader ... Applicant;
Versus
S.A. Pleader ... Opponent.

Civil Appln. No. 1085 of 1928
Decided on March 26, 1929

The Judgment of the Court was delivered by

MARTEN, C.J.:— This is an application under the disciplinary jurisdiction against Mr. S. a District Pleader holding a sanad for the Surat District. The charge against him is shortly that he had been guilty of improper conduct under Section 20 of the Bombay Pleaders Act, inasmuch as he sent various circular post cards to the public with reference to the examination of accounts of wakf properties. These post cards are signed by him as High Court Pleader. They are in the form Ex. C, and after stating his address and the date are as follows:

Page: 336

> "Respected Sir,
>
> Greetings. His Honour the District Judge of Surat has authorised me to examine the accounts of wakf properties and to issue certificates. Accounts in respect of wakf properties should be filed in the District Court before 30th June every year. Fee for examining the accounts is one per cent on the annual income.
>
> S
>
> High Court Pleader."

2. It will thus be seen that the pleader gives his address and description. So far as the description goes he is not entitled to call himself a High Court Pleader. He is only a District Court Pleader. But apart from that, it is important to observe that he refers to himself in this circular post card as a pleader.

3. Next, as regards his statement that he hid been authorized to examine wakf properties and to issue certificates, this is inaccurate. The statement means, I think, that he had been given authority to audit the accounts of wakf properties generally by an order of the Court trader Section 6(2) of the Mussalman Wakf Act of 1923.

4. In fact, all that he had been authorized to do was to examine the accounts for certain specific wakf properties on this separate application in each case. No general permission had ever been given to him. He had asked for it but it had been refused.

5. Next, in his affidavit of 25th March, 1929, which has just been handed to us, he says in para. 4:

> "He never meant to say or convey that he had general authority to audit the wakf accounts as distinguished from special authority."

6. We think, however, that the fair meaning of the post card is that he had this general authority. The main question, however, is, did this post card amount to advertising? The contention of the pleader, when called on for his explanation by the

learned District Judge, was as follows: (I refer to his affidavit of 28th July, 1928).

> "Advertising by a pleader is nowhere specifically or impliedly prohibited under the Pleaders Act or rules thereunder. There is, I believe, customary prohibition. I have every respect for that custom but 1 believe such prohibition is with regard to legal work only. Audit work is not legal work. If it were so no non-lawyer should have been authorized to do such work."

7. As regards advertising, there is no doubt that is unprofessional conduct on the part of a professional man such as a pleader or an advocate or a barrister. This indeed is a leading distinction between professional men on the one hand and those engaged in trade or business on the other hand, and it is of importance that distinction should be maintained. Accordingly, if this circular post card had merely given the address and the name and description of this, pleader, it would yet have amounted to an advertisement on his part and there fore to improper conduct. The fact that in addition he stated that he had been authorized to examine the accounts of wakf properties and to issue certificates by the District Court rather aggravates the case than the reverse. Even if auditing is not strictly legal work, yet this very fact of advertising his readiness to take up that work, combined with his statement that he is a High Court Pleader and seeing that this work is connected with the Courts and has to be supervised by the Courts, would, I think, result in his getting an improper advantage in legal work ever his fellow pleaders, who did not descend to such devices, Further, as I have already indicated, we think that his statements as to the authority given to him by the District Judge and also as to his being a High Court Pleader were inaccurate and misleading.

8. We, therefore, hold that it was improper conduct on his part to issue these post cards and to canvass for this particular work in the way that he did, and that accordingly he has committed an offence under Section 26 of the Bombay Pleaders Act. The next question is, what course we should the to signify our opinion of his improper conduct. We have considered whether it would be proper to suspend his sanad for a certain time, but as he is a comparatively junior practitioner we will not, on this occasion, take that particular course. We think it will be sufficient, under all the circumstances, to direct that he be severely reprimanded and that as he is not present in Court today that reprimand be conveyed to him personally in open Court by their learned District Judge. We further order that he do pay the Government Pleader's costs of this application.

M.N./R.K.

9. *Order accordingly*.

1962 Supp (1) SCR 288 : AIR 1962 SC 1337

In the Supreme Court of India

(BEFORE B.P. SINHA, C.J. AND K. SUBBA RAO, J.C. SHAH, RAGHUBAR DAYAL AND J.R. MUDHOLKAR, JJ.)

In the matter of Mr 'A' an Advocate

Decided on November 2, 1961

Advocates who appeared in this case:

The Advocate in person.

H.N. Sanyal, Additional Solicitor-General of India (T.M. Sen, Advocate, with him), for the Attorney-General for India.

The Judgment of the Court was delivered by

B.P. SINHA, C.J.— The Advocate proceeded against for professional misconduct was enrolled as an advocate of the Allahabad High Court in December 1958. In January 1961, he was enrolled as an advocate of this Court. The proceedings against him were taken in accordance with the procedure laid down in Order 4-A of the Supreme Court Rules.

2. In March this year the Registrar of this Court received a letter, marked "Secret", from the Secretary to the Government of Maharashtra, in the Department of Law & Judiciary, to the effect that the "Advocate-on-record" of the Supreme Court had addressed a postcard, dated January 1, 1961, to the Minister of Law of the State of Maharashtra, which "constitutes a gross case of advertisement and solicitation for work". The original postcard was enclosed with the letter, with the request that the matter may be placed before the Chief Justice and the other Judges of the Supreme Court for such action as to Their Lordships may seem fit and proper. The postcard, which was marked as Ex. A in the proceedings which followed, is in these terms:

"TRILOK SINGH ARORA
Advocate-On-Record.
Supreme Court,
Office and Residence B-9, Model town,
Delhi-9.
Dated 19-1-61.
Dear Sir,

Jai Hind.

Your attention is drawn to the Rule 20 of Order 4 of the Supreme Court Rules, 1950 (as amended up to date) to appoint an Advocate-On-Record in the Supreme Court as according to this rule 'no advocate other than an Advocate-on-Record shall appear

and plead in any matter unless he is instructed by an Advocate-On-Record'.

You might have got an Advocate-on-Record in this Court but I would like to place my services at your disposal if you so wish and agree.

Hoping to be favoured.

Thanks,

Yours sincerely,

sd/-

Trilok Singh Arora.

To

The Minister of Law,
Government of Maharashtra,
Bombay."

When the matter was placed before the Chief Justice, he directed the Registrar informally to enquire from the Advocate concerned whether the postcard in question had been written by him and bore his rubber stamp and signature. The Registrar called him, and in answer to his queries, the Advocate admitted that the postcard bore his rubber stamp and signature and that it had in fact been despatched by him. He also informed the Registrar that he had addressed similar postcards to other parties. The Advocate added that he did not realise that in addressing those postcards he was committing any wrong or breach of etiquette. The Chief Justice, on receiving the aforesaid information, placed the matter before a Committee of 3 Judges of this Court, under Rule 2 Order 4-A. The Committee considered the matter referred to it, and on receiving its opinion, the Chief Justice constituted a Tribunal of three members of the Bar, Shri Bishan Narain and Shri A. Ranganadham Chetty, Senior Advocates, and Shri I.N. Shroff, Advocate, with Shri Bishan Narain as its President, for holding the necessary enquiry into the alleged conduct of the Advocate proceeded against. In reply to the notice served on the Advocate, he chose to behave in a most irresponsible way by alleging that the complaint in question by the Government of Maharashtra "is false, mala fide and misconceived". He denied that he had written the letter in question, which he characterised as "the work of any miscreant". He added further that even if it were proved that the letter in question had been written by him, a mere perusal of it would show that there was nothing unprofessional or otherwise objectionable in it, and he added further that "certainly it is not solicitation of work if one inquires from any person whether it requires or wishes and agrees to have the services of another advocate". The Advocate was examined as witness on his own behalf and the Tribunal put the postcard to him. The following

questions by the Tribunal and answers by the Advocate will show the determined way in which he denied what he had admitted to the Registrar.

"Tribunal : This postcard which has been brought to the notice of the Court purports to be from you. Is this the postcard which you have written?

Witness : No.

Tribunal : Has it not gone from your office?

Witness : No. There is no doubt it bears the seal of my office, but it has not been affixed by me.

Tribunal : You say it does bear your name and that the rubber stamp which appears is of your office but that it has not been affixed by you.

Witness : Yes.

Tribunal : Is the hand-writing which one finds on this postcard your hand-writing?

Witness : No.

Tribunal : And the signature which is at the foot of the letter, you say, is not your signature.

Witness : No, it is not mine."

The Tribunal pursued the matter further to find out as to how the postcard had purported to emanate from his office, and then certain documents, marked Exs. B to E, were brought on the record with a view to comparing his admitted handwriting in those documents with that of the postcard in question. The Tribunal also made him write a letter in the very terms in which the postcard is written, with a view to making a comparison of the handwriting on the postcard with his admitted writing in identical terms, given by him in Court. The Tribunal then confronted him with his admissions made to the Registrar, as aforesaid, before the proceedings started. The following questions and answers will further indicate his attitude;

"Tribunal : In what respects do you find any difference between your normal signature and this signature (signature on the postcard is shown to him).

Witness : It appears to be like my signature, but it is not my signature. Signature on Ex. A is not my signature.

Tribunal : In connection with this postcard, did you see the Registrar (Supreme Court)?

Witness : Yes, he called me.

Tribunal : When? Do you know the date?

Witness : I do not remember.

Tribunal : Did you say anything to him?

Witness : I did not make any statement. He showed me the postcard. I told him, as I said here, that I had not written it; somebody else might have written it.

Tribunal : Did you admit before the Registrar that this letter was written by you?

Witness : I did not, admit it, but he told me that if I admitted it, the matter might be hushed up.

Tribunal : Did you say to the Registrar that you did not realise that in so doing you were doing anything wrong?

Witness : No. I did not say anything.

Tribunal : Do you want to produce any evidence?

Witness : No, because I have not done anything; so, I do not want to produce any evidence. Even if it is found that I have written the postcard, even then on merits, there is nothing in this Case."

3. Finding that the Advocate was adamant in his denial that he wrote the postcard or that he had made any statement before the Registrar, the Tribunal called the Registrar as a witness and examined him on solemn affirmation. The Registrar gave his evidence and fully supported his previous report that the Advocate had made those admissions before him.

4. After recording the evidence, oral and documentary, the Tribunal made the report that in spite of stout denial by the Advocate concerned, the Tribunal was satisfied that the postcard in question had been written by him. The Tribunal was also of opinion that the Advocate did not realise that in writing the postcard he was committing a breach of professional etiquette and of professional ethics. It also remarked that it was unfortunate that the Advocate chose to deny the authorship of the postcard. The findings of the Tribunal, along with the evidence and record of the case, have been placed before us. The Advocate, on notice, has appeared before us and we have heard him. Before us also the Advocate first took up the same attitude as he had adopted before the Tribunal, but on being pressed by the Court to make a true statement as to whether he had written the postcard and had admitted before the Registrar that he had done so, he answered in the affirmative.

5. It is clear beyond any shadow of doubt that the Advocate had addressed the letter aforesaid to the Government of Maharashtra, soliciting their briefs; that he had admitted to the Registrar of this Court that he had written the postcard and other such postcards to other parties, and that he did so in utter disregard of his position as an Advocate of this Court. It is equally clear that his denial of having written the postcard, and of having subsequently admitted it to the

Registrar, was again in utter disregard of truth. He has, in this Court, condemned himself as a liar and as one who is either ignorant of the elementary rules of professional ethics or has no regard for them. In our opinion, the Advocate has mischosen his profession. Apparently he is a man of very weak moral fibre. If he is ignorant of the elementary rules of professional ethics, he has demonstrated the inadequacy of his training and education befitting a member of the profession of law. If he knew that it was highly improper to solicit a brief and even then wrote the postcard in question, he is a very unworthy member of the learned profession. In any view of the matter, he does not appear to be possessed of a high moral calibre, which is essential for a member of the legal profession. If anything, by adopting the attitude of denial which has been demonstrated to be false in the course of the proceedings before the Tribunal, he has not deserved well of the Court even in the matter of amount of punishment to be meted to him for his proved misconduct. In our opinion, he fully deserves the punishment of suspension from practice for five years. This punishment will give him enough time and opportunity for deciding for himself, after deep deliberation and introspection, whether he is fit to continue to be a member of the legal profession. In our view he is not. Let him learn that a lawyer must never be a liar.

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tion under S. 18 has been made on 23rd January, 1966. From the counter-affidavit filed by the State, we find that the notice required under S. 10 (5) was served on the petitioner but by affixture.

It is contended that this service of notice by affixture is irregular and is not in compliance with the mode of service prescribed by R. 8. That rule, by Sub-R. (d), says that in the case of an individual, notice should be served by delivery or tender of the same to the person concerned or his Counsel or authorised agent or to some adult member of the family, or by sending the notice to the person concerned by registered post acknowledgment due. Cl. (iv) of Sub-R. (d) of R. 8 is to the effect that, if none of the aforesaid modes of service is practicable, service may be effected by affixing the notice in some conspicuous part of the last known place of residence or business of the person concerned. It is not stated for the State that any of the modes was tried and had failed, so as to entitle the department to take it for granted that service had to be done only by affixture. There is no doubt, therefore, that the mode of service on the petitioner was irregular and not in compliance with the requirements of R. 8, as to the manner of service of notice under S. 10 (5).

Nevertheless, we consider that the petitioner is not entitled to succeed. This is because while submitting the returns he had to fill in separate prescribed forms, one of which relating to the lands which the petitioner desires to retain subject to the ceiling, and the other mentioning the particulars of lands which he would treat as surplus and available for taking over. In these forms, he gave the name of the village, survey number, extent and other particulars of lands which he desired to retain. He also mentioned, in the other form, the particulars of lands including the village, survey number and extent which he would treat as surplus. The authorised officer, in preparing the draft statement and the final statement, simply went by the particulars the petitioner himself furnished. In view of this, there is clearly no substance in the contention that, because of defective service of the notice under S. 10 (5), he was, in any way, prejudiced. What is, however contended for the petitioner, is that he made a mistake in mentioning one or two lands as being surplus which he would in fact like to retain. That is a mistake for which the petitioner himself is responsible, and we do not think that he can build any argument on that basis and contend that for want of notice he had been prejudiced.

The petitions are dismissed but with no costs.

V. C. S.

C. D. Sekkizhar *v.* Secretary, Bar Council, Madras and others.

Anantanarayanan, C. J. and Ramakrishnan, J.

Writ App. No. 179 of 1966.

14th September 1966

Appeal under Cl. 15, Letters Patent against the order of Veeraswami, J., dated 6-1-1966 in W. P. No. 4313 of 1965.*

Bar Council Rules, R. 7 (2)—Misconduct, what is—Prohibition of canvassing or announcement of candidature by an Advocate—Validity of rule and reasonableness.

The provision under R. 7 (2) of the Rules framed by the Bar Council in the Explanation prescribing that electoral misconduct shall include any announcement or canvassing in person or by post by any Advocate of his candidature to the Bar Council, cannot be said to be *ultra vires*, as beyond the limits of reasonable provision, and, in effect, as rendering the election itself quite impracticable except for Advocates, who might have already acquired status and standing at the Bar.

It is imperative for the learned profession of the law, and for its future, that professional ethics should be maintained upon a very high level. Advertisement in any form by a member of such profession has always been regarded as unworthy of the profession, and as constituting moral misconduct, if not misconduct in the legal sense.

(1912) 1 K. B. 303 and 1930 K. B. 562 : Referred to.

The appellant in person.

ORDER

(Delivered by The Chief Justice)

This appeal is sought to be filed by one Mr. C. D. Sekkizhar, an advocate of this court of eight years' standing and a member of the Bar, from the judgment of Veeraswami J. dismissing W. P. 4313 of 1965* filed by the peti-

* Reported in 79 L.W. 306.

tioner. That proceeding sought for the issue of a writ of mandamus, directing the Secretary of the Bar Council to forbear from conducting certain elections tothe Bar Council scheduled to be held on 5-11-1965.

It is not now necessary to traverse the facts of the background against which this proceeding came to be filed. Admittedly, and as represented by Mr. C. D. Sekkizhar arguing in person before us, the crux or substance of the proceeding is the *vires* of Explanation to R. 7(2) of the rules framed by the Bar Council, by virtue of a rule making power. R. 7(2) itself specifies that

"No advocate found guilty of any electoral misconduct in the election shall be entitled to hold the office of a member of the Bar Council for a period of six years from the date of such finding.

Under the Explanation,

"Electoral misconduct" shall include any announcement or eonvassing in person, by post or otherwise, any Advocate of his candidature to the Bar Counell, or the candidature to the Bar Council, of some other advocate other than himself. Provided that a nomination to the Bar Councll or announcement by the Bar Council shall not be deemed to come within this rule".

The petitioner sought to contend before Veeraswami J., as he has argued before us, that this Explanation should be struck down, as beyond the limits of a reasonable provision, and in effect, as rendering the election itself quite impracticable, except for advocates, who might have already acquired status and standing at the Bar. The argument proceeds to the length of stressing that there might be two persons of the same name and initial standing as candidates, and that the prohibition of any announcement other than the official announcement by the Bar Council will, in effect, prevent a further disclosure of the identities of the two persons it might lead to confusion in the minds of the electorate, and negate the election itself. Apart from this illustration, the petitioner has also stressed that canvassing is a normal feature of elections held in pursuance of any democratic process, and that to prohibit canvassing altogether would, in substance, merely benefit those persons who have already acquired a wide influence in the profession, and would prevent comparative new comers from attempting to obtain office at all.

We have carefully considered these arguments and in our view, they have no substance. As the learned Judge (Veeraswami J) rightly pointed out, if we may say so with respect, it is imperative for the learned profession of the law, and for its future, that professional ethics should be maintained upon a very high level. Advertisement in any form by a member of such profession has always been regarded as unworthy of the profession, and as constituting moral misconduct, if not misconduct in the legal sense. The learned Judge has cited extracts from the decisions in *A. Solictor in re law Society ex parte* (1) and *Rex* v. *General Medical Council*, (2) which need not be recapitulated here. The learned Judge has further referred to R. 36 of the rules made by the Bar Council of India in pursuance of the delegated power under S. 49(c) of the Act. That relates to prohibition of advertisement and canvassing for professional work, in any manner whatever. We may add that this wholesome restraint upon any advertisement or canvassing for work by a member of a learned profession, including for instance, such a stipulation that even a sign board or nameplate should be of moderate size alone, has been adopted in other learned faculties also, such as the medical profession. In brief, it cannot be gainsaid that these ideals have always been recognised as tending to preserve the integrity, status and public esteem which should attach to the learned profession of the law.

We are not convinced that there is any thing unreasonable in the terminology of the explanation to R. 7(2). "Canvassing" is not defined, and we are not now determining whether it would include purely innocuous activities, such as a candidate letting it be known to persons already acquainted with him that he is standing for the Bar Council, or that he is in favour of a particular programme, policy or principle. As regards the argument about the announcement of names, we think it is misconceived. Where two persons have the same name and initials, it is perfectly open to either or both to apply to the Bar Council to see that, in the official announcement their identities are distinguished by some such particulars as giving the name of the village to which a candidate belongs, or the name of the father in full. We agree with the learned Judge in thinking that this instance is far fetched.

(1) (1912) 1 K. B. 303.
(2) 1930 K. B. 562 at 564.

There is an argument that the Bar Council is not competent to create any new 'electoral misconduct' under rule 7(2), or to impose any bar on re-election in terms of this definition. Without expressing any view on this aspect, we think it is sufficient to state that the writ jurisdiction can only be invoked where an actual case of that kind arises, when it will obviously have to be judged on the merits of the particular case. The writ Appeal is dismissed.

V.C.S.

Messrs. V. G. Panneerdas & Co., by partner V. G. Panneerdas *v.* The Corporation of Madras, Madras represented by its Commissioner and another.

Venkatadri, J.

W. P. No. 1097 of 1963.

12th September, 1966.

Petition under Art. 226 of the Constitution praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to issue a writ of Prohibition prohibiting the 1st respondent from interfering with the display of petitioner's advertisement at Guindy Railway Overbridge and Railway Overbridge at Gandhi-Irwin Road and at Sir T. Muthuswami Iyer Railway overbridge near Fort Station.

Madras City Municipal Corporation Act, S. 349 Cl. (28) — By-law framed by Corporation prohibiting the erection of advertisements— in places of public resort and regulating the same in other places—Validity of the bye-law.

It cannot be said that S. 349, Cl. (28) of the Madras City Municipal Corporation Act which relates to bye-laws being framed relating to prohibition and regulation of advertisements, is an unrestricted and absolute power and therefore *ultra vires*. It enables the Corporation to frame a bye-law under their statutory powers to provide for the prohibition and regulation of advertisements. The provision cannot be said to be a total prohibition or prevention of advertisement. There is no discrimination involved in this bye-law. It is for the Corporation to regulate, restrict or prevent the exhibition of advertisements, if they are exhibiting in such places and in such manner, and by such means, as to affect injuriously the life and face of the City. The Corporation must certainly have the power to regulate the methods of advertisements, with the object of safeguarding of the public from dangerous, obstructive or ugly advertisements.

(1873) 8 Q. B. D. 118, (1898) 2 Q. B. D. 91, (1897) 2 Q. B. D. 433 and 135 L. T. 117 : Referred to.

Mr. *S. K. L. Ratan* for Petr.

Messrs. *T. Chengalvarayan* and *M. M. Ismail* for Respts.

ORDER

The Corporation of Madras, claiming to act under the statutory powers under S. 349 Cl. 28 of the Madras City Municipal Corporation Act, made the following by-law :

"Prohibit the erection, exhibition, fixation, retention of display of all or any class of advertisements in any street, road, or public park or part thereof or in any place of public resort ; and Regulate the erection, exhibition, fixation, retention or display of advertisements in any manner in non-prohibited areas".

Acting under this by-law, the Corporation issued a notification prohibiting advertisement on side walls, embankments and railing of viaducts, overbridges, culverts and approaches thereto.

Learned Counsel for the petitioner contends that the by-law is bad because it is unreasonable. Cl. 28 of S. 349 relates to prohibition and regulation of advertisements. But the power taken under the by-law prohibits the erection or exhibition of *all or any* class of advertisements in *any* street or *any* place of public resort. Such a power is an unrestricted and absolute power. Such a power is likely to be abused. Such a by-law is likely to be a nuisance and an annoyance to the public especially to a particular class or community who carry on business. Such a by-law, under the guise of regulating advertisements, arbitrarily interferes with private business and imposes unreasonable and unnecessary restrictive regulations upon lawful occupation. Courts have power or jurisdiction to declare such a by-law as *ultra vires*, and there is nothing in the City Municipal Corporation Act which excludes that jurisdiction.

Therefore the question reserved for consideration of this Court is whether the by-law in question is valid.

> may be, is equally true of the affairs of mortal beings, their disputes and conflicts, their ventures in the field of love and sport, their achievements and failures for essentially they all have a stamp of mortality on them.

One feels tempted to add that if life like a dome of many-coloured glass stains the white radiance of eternity, so do the doings and conflicts of mortal beings till death tramples them down.

10. The appeal fails and is dismissed but in the circumstances without costs.

(1976) 2 Supreme Court Cases 291

(Before V. R. Krishna Iyer, R. S. Sarkaria, A. C. Gupta and S. Murtaza Fazal Ali, JJ.)

THE BAR COUNCIL OF MAHARASHTRA .. Appellant ;

Versus

M. V. DABHOLKAR AND OTHERS .. .. Respondents.

Civil Appeals Nos. 1461 to 1468 of 1974†, decided on October 3, 1975

Advocates Act, 1961 — Section 35(1) — Scope of requirement of Bar Council having "reason to believe"

The resolution of the Bar Council referring the case of misconduct to its disciplinary committee did not ex facie disclose that it had reason to believe that the advocates involved were guilty of professional misconduct. The question was whether the requirement of "reason to believe" was complied with.

Held :

The requirement of 'reason to believe' cannot be converted into a formalised procedural roadblock, it being essentially a barrier against frivolous enquiries. It is implicit in the resolution of the Bar Council, when it says that it has considered the complaint and decided to refer the matter to the disciplinary committee, that it had reason to believe, as prescribed by the statute. (Para 4)

Advocates Act, 1961 — Section 35 — Solicitation by snatching briefs and catching clients and undercutting fees — Held, such conduct is in gross breach of professional behaviour and invites punishment — Rule 36 of the Bar Council of India on Standards of Professional Conduct and Etiquette

Held :

Rule 36, fairly construed, sets out wholesome rules of professional conduct although the canons of ethics existed even prior to Rule 36. Also Rule 36 is not the only nidus of professional ethics. Professional ethics were born with the organised Bar, even as moral norms arose with civilised society. (Paras 6, 19, 20 and 22)

The exercise by the disciplinary tribunal in discovering three elements in Rule 36, viz., (1) solicited work (2) from a particular person (3) with respect to a case was as unserviceable as it was supererogatory. Snatching briefs by standing at the door of the courthouse and in-fighting for this purpose is too dishonourable, disgraceful and unbecoming to be approved. (Paras 6, 16, 19 and 23)

Hastings, Hon. John S. : *"Judicial Ethics as it Relates to Participation in Money-Making Activities"* —Conference on Judicial Ethics, p. 8, The School of Law, University of Chicago (1964) ; *In the matter of 'P', an Advocate*, (1964) 1 SCR 697 : AIR 1963 SC 1313 : (1963) 2 Cri LJ 341 ; *In re : Shri M. Advocate of Supreme Court of India*, 1956 SCR 811 : AIR 1957 SC 149 : 1957 Cri LJ 300 ; *In the matter of 'N', an Advocate*, ILR 63 Cal 867 : AIR 1936 Cal 158 and *Govt. Pleader* v. *Siddick*, 31 Bom LR 625 : AIR 1929 Bom 335 : ILR 53 Bom 640, *referred to*.

†From the Judgment and Order dated April 14, 1974 of the Disciplinary Committee of the Bar Council of India, New Delhi in D. C. Appeal Nos. 15 to 19 & 21, 22 and 25 of 1973.

The canons of ethics and propriety for the legal profession totally taboo conduct by way of soliciting, advertising, scrambling and other obnoxious practices, subtle or clumsy, for betterment of legal business. Law is no trade, briefs no merchandise and so the leaven of commercial competition or procurement should not vulgarise the legal profession. (Para 23)

For the practice of Law with expanding activist horizons, professional ethics cannot be contained in a Bar Council rule nor in traditional cant in the books but in new canons of conscience which will command the members of the calling of justice to obey rules of morality and utility, clear in the crystallized case-law and concrete when tested on the qualms of high norms — simple enough in given situations, though involved when expressed in a single sentence. (Para 25)

Advocates Act, 1961 — Section 35(2) and (3) — Cases of misconduct by several lawyers referred to disciplinary committee — Clubbing of the cases and disposal by a common judgment, held, caused prejudice to the individual cases — Evidence against each delinquent should have been considered separately — Well known norms of fair procedure not to be disregarded (Paras 5, 6 and 21)

Advocates Act, 1961 — Section 35(3) — Sentence — Delinquent advocate exonerated where he planned to retire and step out of the Bar and assured the court of professional propriety (Paras 7 and 10)

Advocates Act, 1961 — Section 35(3) — Sentence — Unconditional regret for the deviant behaviour and assurance for observing professional propriety, held, call for a reduced sentence (Paras 9 and 14)

Advocates Act, 1961 — Section 35(3) — Sentence — Admonition by court, held, proper in the circumstances (Para 13)

Appeals allowed M/2675/C

Advocates who appeared in this case :

V. S. Desai, Senior Advocate (*Vimal Dave* and *Miss Kailash Mehta*, Advocates of M/s. Mehta, Dave & Co., Advocates with him), for the Appellant ;

In Person, the Respondents in C. As. Nos. 1461 & 1467-1468 ;

Zakiuddin F Bootwala and *Mrs. Urmila Sirur*, Advocates, for the Respondents in C. As. Nos. 1462-1464 ;

V N. Ganpule, Advocate, for the Respondent in C. A. No. 1465 ;

D. V. Patel, Senior Advocate (*Mrs. K. Hingorani*, Advocate, with him), for the Bar Council of India ;

S. K. Sinha, Advocate, for the Bihar State Bar Council.

The Judgment of the Court was delivered by

KRISHNA IYER, J.—These appeals have filled us as much with deep sorrow as with pained surprise. The story of the alleged 'professional misconduct' and the insensitivity of the disciplinary authority to aberrant professional conduct have been the source of our distress, as we will presently explain, after unfurling the factual canvas first.

2. The first chapter of the litigation in this Court related to the *standing* of the State Bar Council to appeal to this Court, under Section 38 of the Advocates Act, 1961 (the Act, for short) against an appellate decision of the Disciplinary Tribunal appointed by the Bar Council of India. This Court upheld* the competence to appeal, thus leading us to the present stage of disposing of the eight cases on merits.

3. The epileptic episodes — what other epithet can adequately

* *Bar Council of Maharashtra v. M. V. Dabholkar*, (1975) 2 SCC 702.

express the solicitation circus dramatised by the witnesses as practised by the panel of advocate-respondents before us? — make us blush in the narration. For, after all, do we not all together belong to the 'inner republic of Bench and Bar'? The putative delinquents are lawyers practising in the criminal courts in Bombay city. Their profession ordains a high level of ethics as much in the *means* as in the *ends*. Justice cannot be attained without the stream being pellucid throughout its course and that is of great public concern, not merely professional care. Briefly expressed, these practitioners, according to testimony recorded by the State Disciplinary Tribunal, positioned themselves at the entrance to the magistrates' courts, watchful of the arrival of potential litigants. At sight, they rushed towards the clients in an ugly scrimmage to snatch the briefs, to lay claim to the engagements even by physical fight, to undercut fees, and by this unedifying exhibition, sometimes carried even into the Bar Library, solicited and secured work for themselves. If these charges were true, any member of the Bar with elementary ethics in his bosom would be outraged at his brethren's conduct and yet, in reversal of the State Disciplinary Committee's finding, the appellate tribunal at the national level appears to have entered a verdict, based on a three-point formula, that this conduct, even if true, was, after all, an attempt to solicit practice and did not cross the borderline of misconduct! The Bar Council of the State of Maharashtra (the appellant before us) and the Bar Council of India which is a party-respondent, have expressed consternation at this view of the law of professional misconduct and we share this alarm. Were this view right, it is difficult to call the legal profession noble. Were this understanding of deviant behaviour sound, there is little to distinguish between railway porters and legal practitioners although we do not mean to hurt the former and have mentioned a past practice, to drive home our present point! We do not wish to dilate further on the evidence in so far as it concerns each of the respondent-advocates in view of certain developments which we will presently notice. There are eight cases but we are relieved from dissecting the evidence against most of them for reasons which we will hopefully and shortly state.

4. The Bar Council of Maharashtra, by its resolution No. 29, dated August 8, 1964 considered the complaint received from the High Court against one Kelawala and 15 other advocates among whom are those charged with professional misconduct and covered by the present appeals, under Section 35(1) of the Act, and, presumably having reason to believe that the professional misconduct alleged required a further probe referred the case to its disciplinary committee. This procedure is in due compliance with Section 35(1) of the Act and, although the respondent in C. A. No. 1467/74 (A. K. Doshi) has contended that the resolution of the Bar Council does not ex facie disclose that it had reason to believe that the advocates involved were guilty of professional misconduct, we see no merit in it. The requirement of 'reason to believe' cannot be converted into a formalised procedural roadblock, it being essentially a barrier against frivolous enquiries. It is implicit in the resolution of the Bar Council, when it says that it has considered the complaint and decided to refer the matter to the disciplinary committee, that it had reason to believe, as prescribed by the statute.

5. Such blanket reference to the disciplinary body, so far as we are concerned, related to the respondent in C. A. No. 1461/74 (Dabholkar), C. A. No. 1462/74 (Bhagtani), C. A. No. 1463/74 (Talati), C. A. No. 1464/74 (Kelawala), C. A. No. 1465/74 (Dixit), C. A. No. 1466/74 (Mandalia), C. A. No. 1467/74 (Doshi) and C. A. No. 1468/74 (Raisinghani). All the cases were tried together as a unified proceeding and disposed of by a common judgment by the Disciplinary Committee, a methodology conducive to confusion and prejudice as we will explain later in this judgment. The respondents in the various appeals before us were found guilty 'of conduct which seriously lowers the reputation of the Bar in the eyes of the public' and they were suspended from practising as advocates for a period of three years. Appeals were carried to the Bar Council of India and, in accordance with the statutory provision, they were referred to the Disciplinary Committee appointed by it under Section 37(2) of the Act. The Appellate Disciplinary Committee heard the appeals and absolved them of professional misconduct. Aggrieved by this verdict of reversal, the Bar Council of Maharashtra has appealed to this Court. The initial hurdle of locus standi has been surmounted, as stated earlier, and we have been addressed arguments on the merits by Shri V. S. Desai on behalf of the appellant. He has canvassed the correctness of the finding of fact in each case, although with varying degrees of diffidence, but turned his forensic fusillade on the somewhat startling concept of professional misconduct adopted by that disciplinary tribunal.

6. We will proceed to deal with each appeal separately so far as the factual foundation for the charges is concerned but discuss the legal question later as it affects not merely the advocates ranged as respondents but the Bar in India and the public in the country. The profound regret of these cases lies not only in the appellate disciplinary tribunal's subversive view of the law of professional conduct that attempted solicitation by snatching briefs and catching clients is of no ethical moment, or contravention of the relevant provisions, but also in the naive innocence of fair and speedy procedure displayed by the State Disciplinary Tribunal in clubbing together various charges levelled against 16 advocates in one common trial, mixing up the evidence against many, recording omnibus testimony slipshodly, not maintaining a record of each day's proceedings, examining witnesses in the absence of some respondents, taking eight years to finish a trial involving depositions of four witnesses and the crowning piece, omission to consider the evidence against each alleged delinquent individually in the semi-penal proceedings. True, a statutory tribunal may ordinarily regulate its procedure without too much rigidity, subject to the rules of natural justice, but large-scale disregard of well-known norms of fair process makes us wonder whether some at least of the respondents have not been handicapped and whether justice may not be a casualty if the tribunal is not alerted about its processual responsibilities. We have some observations to make about the tribunals at the State and at the appellate levels in the further stages of this judgment. However, we find it convenient to dispose of the appeals on the evidence, on the assumption that if, in fact, there have been snatching and fighting and like solicitation exercises indulged in by any of the

respondents, such conduct is in gross breach of professional behaviour and invites punishment.

7. A case-by-case disposal is desirable and so we begin with Dabholkar (respondent in C. A. No. 1461/74) who appeared in person to plead in defence. The evidence against him is far from satisfactory and suffers from generalised imputation of misconduct against a group of guilty lawyers. To dissect and pick out is an erroneous process, except where individualised activities are clearly deposed to. Moreover, the only witness who implicates him swears :

> I have not seen him actually snatching away the papers. I did not hear the talk Mr. Dabholkar had with the persons.

Moreover, he was a senior public prosecutor. We also record the fact that he expressed distress as the arguments moved on. Apart from the weak and mixed evidence against him, there is the circumstance that he is around 68 years old. With a ring of truth he submitted that he was too old to continue his practice in the profession and had resolved to retire into the sequestered vale of life. He frankly admitted that, even apart from the evidence, if there were any sins of the past, he would not pursue the path of professional impropriety hereafter having decided virtually to step out of the Bar, except for a limited purpose. He had just four cases left with him which he desired to complete, having received fees. He further represented that he did not intend to accept any new briefs or appear in any court except to the little extent that the Bombay Paints and Allied Products Limited (Chembur, Bombay), a large company which occasionally engaged him in small cases chose to brief him. We are inclined to take him at his word, particularly because he has put himself out of harm's way by a clear assurance about his future plans. On the evidence, we exonerate him from professional misconduct and otherwise we record his solemn statement to the Court.

8. Shri Bhagtani, respondent in C. A. No. 1462/74, has not engaged Counsel, nor appeared in person, but as we examined the evidence, assisted by Shri Desai, we found precious little against him. That extinguishes the charge. No need, therefore, arises for punishing him or reversing the appellate tribunal's acquittal.

9. The respondent in C. A. No. 1463/74 is Talati. He has been found 'not guilty' in appeal but, as we perused the evidence, it became fairly clear that some acts of misconduct had been made out, although the evidence suffered from omnibus implication. His Counsel, Mr. Zakiuddin F. Bootwala, however made a submission which has moved us into showing some consideration for this respondent. Shri Zaki represented that his client had stood the vexatious misfortune of a long, protracted, litigation before the two tribunals, and a later round in this Court when the question of locus standi of the State Bar Council was gone into. He was in poor circumstances and had suffered considerably on this score. Further, he has given an undertaking expressing unqualified regret for his deviant behaviour and has prayed for the clemency of the Court, promising to turn a new leaf of proper professional conduct, if he were permitted to practice. Taking note of the compassionate conspectus of

circumstances attendant on his case and in view of the tender of unconditional regret which expiates, in part, his guilt, we allow the appeal, but reduce the period of suspension inflicted by way of punishment by the Maharashtra Tribunal from three years to a period upto December 31, this year (1975). In short, we find him guilty and reluctantly restore the verdict of the original tribunal, but reduce the punishment to suspension from practice, as aforesaid.

10. The respondent in C.A. No. 1464/74 is Kelawala. His Counsel, Mr. Zaki, submitted that this practitioner had become purblind and was ready to give an undertaking to the court that he would no longer practice in the profession. While there is some evidence against him, an overall view of the testimony does not persuade us to take a serious view of the case against him. Moreover, being old and near-blind and having undertaken to withdraw from the profession for ever, it is but fair that he spends the evening years left to him without the stigma of gross misconduct. In this view, we do not disturb the finding of the Disciplinary Committee of the Bar Council of India, but record the undertaking filed by Shri Zaki that his client Kelawala will not practice the profession of law any longer.

11. The respondent in C. A. No. 1465/74 is Dixit for whom Shri Ganpule appeared. Shri Desai, for the appellant, took us through the evidence against this lawyer but fairly agreed that the evidence was, by any standard, inadequate to bring home the guilt of misconduct. We readily hold him rightly absolved from professional misconduct.

12. The respondent in C. A. No. 1466/74 is Mandalia. He did not appear in person or through Counsel. The reason is fairly obvious. The evidence is so little that it is not possible nor proper to pick out with precision and assurance any particular 'soliciting' act to infer guilt. Shri Desai, for the appellant, was fair enough to accede to this position. His exculpation cannot, therefore, be interfered with.

13. The only contesting respondent is Doshi — C. A. No. 1467/74. He contests his guilt and pursues his plea with righteous persistence and challenges the evidence and its credibility projecting his grievance about processual improprieties. We will consider both these facts of his legitimate criticism despite his cantankerous arguments which we have heard with forbearance, remembering that a party arguing his own case may, perhaps, not be able to discipline himself to observe the minimal decorum that advocacy in court obligates. The respondent displayed, as the proceedings in this Court ran on, his art of irritating interruptions, his exercises in popping up and down heedless of the Court's admonition, and his skill in rambling references to what was not on record. The fine art of advocacy suffers mayhem when irreverent men indelicately brush with it. The State Tribunal's records reveal that Shri Doshi had not spared their patience or sense of pertinence. Having said all this, we are bound to examine the evidence against him fairly. Such a scrutiny shows that the best witness Shri Shertukde, the President of the Bar Association and otherwise a respected member of the Bar, has not involved him in any malpractice. Even Shri Pathare, the only one to rope him in, merely gives omnibus testimony ambivalent in places and unspecific about some,

including Doshi. There is little else brought home with clarity against loquacious Doshi. To convict him out of the vague lips of Pathare may perhaps be a credulous folly. The grouping of a number of advocates in a sort of mass trial has prejudiced Shri Doshi, a consequence which could and should have been avoided. He has other grievances of denial of fair opportunity which we could not verify for want of a daily diary or order sheet. We are satisfied by a perusal of the record that this respondent has had an impressive background of social service, commendable testimonials of his legal skills from competent persons and some law practice in various courts and consultancy work for social welfare institutions which are apt to dissuade him from the disreputable bouts in the 'pathological' area of the Esplanade Police Courts in Bombay. Even assuming that this overzealous gentleman had exceeded the strict bounds of propriety, we are not satisfied that the charge of professional misconduct, as laid, has been brought home to him. What we have observed about his conduct in this Court must serve as a sufficient admonition to wean him away from improper conduct. We do not interfere with the exculpation secured by him before the appellate tribunal hopeful that he will canalize his professional energies in a more disciplined way to be useful to himself and, more importantly, to his 'unsolicited' clientele. After all, even a sinner has a future and given better court manners and less turbulent bellicosity, Shri Doshi appears to have a fair professional weather ahead in the city. We hold him unblemished so far as the vice of solicitation is concerned, but caution him to refine himself in advocacy.

14. Shri Raisinghani is the respondent in C. A. No. 1468/74. Shri V. S. Desai took us through the evidence against him and although he is 65 years old, the evidence shows that he has physically fought two rival advocates in the course of snatching the briefs from clients entering the Esplanade Criminal Courts. One of these fights resulted in his trousers being torn and the other assault by him was on Mr. Mandalia, one of the respondents in these appeals. Shri Mandalia had filed a complaint against Raisinghani but in the criminal court they lived down their earlier skirmish and compounded the case. Be that as it may, we find that Shri Raisinghani is not merely an old man but a refugee from Pakistan who, leaving his properties there, has migrated to Ahmedabad with his family. Apparently he is in penurious environs and stays in the refugee colony in Bombay, incidentally attending to his claims to the properties left behind in Pakistan and acquiring some evacuee property in lieu of what he has lost. Staying in Kalyan refugee camp this lawyer, afflicted with distress and dotage, is also attending the Magistrate's Court to make a living. This commiserative social milieu may not absolve him of the misconduct which, we are satisfied, the testimony in the case has established. Even so, Shri Raisinghani has appeared in person and has given an undertaking expressing remorse, praying to be shown clemency and assuring that, economic pressure notwithstanding, he will not go anywhere near professional pollution in the last years of his practice at the Bar. We are inclined to take a sympathetic view of his septuagenarian situation, record his apology and assurance, restore the verdict of guilt by the State Disciplinary Committee but reduce the punitive part of it to a period of suspension until December 31, this year (1975).

15. Now to the legal issue bearing on canons of professional conduct. The rule of law cannot be built on the ruins of democracy, for where law ends tyranny begins. If such be the keynote thought for the very survival of our Republic, the integral bond between the lawyer and the public is unbreakable. And the vital role of the lawyer depends upon his probity and professional lifestyle. Be it remembered that the central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of justice — social justice. The Bar cannot behave with doubtful scruples or strive to thrive on litigation. Canons of conduct cannot be crystallised into rigid rules but *felt* by the collective conscience of the practitioners as right :

> It must be a conscience alive to the proprieties and the improprieties incident to the discharge of a sacred public trust. It must be a conscience governed by the rejection of self-interest and selfish ambition. It must be a conscience propelled by a consuming desire to play a leading role in the fair and impartial administration of justice, to the end that public confidence may be kept undiminished at all times in the belief that we shall always seek truth and justice in the preservation of the rule of law. It must be a conscience, not shaped by rigid rules of doubtful validity, but answerable only to a moral code which would drive irresponsible judges from the profession. Without such a conscience, there should be no judge.[1]

— and, we may add, no lawyer. Such is the high standard set for professional conduct as expounded by courts in this country and elsewhere.

16. These background observations will serve to size up the grave misapprehension of the law of professional ethics by the tribunal appointed by the Bar Council of India. The disciplinary body, acquitting everyone on non-violation of bounds of propriety argued :

> Rule 36 (of the Bar Council of India on Standards of Professional Conduct and Etiquette) is as follows :
>
> > An Advocate shall not solicit work or advertise either directly, or indirectly whether by circular, advertisements, touts, personal communications, interviews not warranted by personal relations, furnishing newspaper comments or procuring his photograph to be published in connection with cases in which he has been engaged or concerned . . . .
>
> Hence, in order to be amenable to disciplinary jurisdiction, the Advocates must have (1) **solicited work** (2) **from a particular person** (3) **with respect to a case.** Unless all the three elements are satisfied, it cannot be said that an advocate has acted beyond the standard of professional conduct and etiquette. It has been stated that the conduct of the advocate concerned did not conform to the highest standards of the legal profession. It is not that everybody must conform to the highest standards of the legal profession. It is enough if an advocate conforms to the standards of professional conduct and etiquette as referred to in the rules.
>
> * * * *
>
> He (witness Mantri) says further that 7 advocates who are personally present today I have seen each of them standing either on the ground floor, near the lift or on the first floor either near the lift or in the lobbies of the Esplanade Court and trying to solicit work from the persons coming to the Esplanade Court. **This mere attempt to solicit is nothing.**

1. Hastings, Hon. John S. : "*Judicial Ethics as it Relates to Participation in Money-Making Activities*"—Conference on Judicial Ethics, p. 8. The School of Law, University of Chicago (1964).

* * * *

In order to be within the mischief of Rule 36, **not merely canvassing is enough, but canvassing must be for a case with the person who had not till then engaged a lawyer.** There is nothing to show either of these things; none of the persons who might have been subjected to these solicitations as they are stated, have been examined to prove the case. Hence this evidence does not establish anything within Rule 36 . . . . . All that is necessary for us to see is whether the three items referred to have been complied with and we find that they have not been complied with because we do not know what was the nature of the communication, we do not know in connection with which case the solicitation took place and with whom the conversation took place. Hence Mr. Shertukde's evidence is not sufficient for the purpose of taking any disciplinary action under Rule 36.

* * * * *

Mr. Krishnarao V. Pathumdi is the first witness in this case (case of Raisinghani). He says: "I had seen Kelawala, Mr. Baria, Mr. Raisinghani, Mr. Bhagtani approaching the people visiting the Court and **soliciting work from them**". This we have already stated is far below the requirement required to be proved under Rule 36 . . . . . He says that he had seen Mr. Raisinghani approaching people and soliciting work. He did not ascertain the names of the persons who approached because it was not his business. But as stated above, this evidence does not establish **the three elements** required to be proved under Rule 36 because we do not know what was the personal communication between him and the persons solicited. We do not know whether it related **to a case or not** . . . . . Then the next witness is Mr. Sitaram Gajanan Shertukde. In cross-examination by Mr. Raisinghani he says: "I have seen Mr. Raisinghani **accosting people**. I have seen Mr. Raisinghani snatching the papers from the hands of the litigating public. I have seen this more than 10 times. The litigating public from whom the papers were snatched did not say anything that there was a fight between Mr. Raisinghani and other lawyer over the papers which were snatched. I did not contact those persons from whom the papers were snatched nor talked to them so he was not concerned with this. **Therefore his evidence cannot be sufficient.** (Emphasis, ours)

17. We may, illustratively, quote an excerpt from the evidence of the Bar Association President and one-time Bar Council member Shri Shertukde to show the injury to the profile of the profession the curious view of the disciplinary tribunal has inflicted:

I have seen Mr. Raisinghani accosting people. I have seen Mr. Raisinghani snatching the papers from the hands of litigating public. I have seen this more than 10 times . . . . There was a fight between Mr. Raisinghani and Mr. Baria. I made oral complaint to the C. P. M. I do not remember who was present at that time. In that fight Mr. Raisinghani's pants was torn . . . . . There was assault by Mr. Raisinghani on Mr. Mandalia and I had advised Mr. Mandalia to file a complaint against Mr. Raisinghani. Mr. Mandalia did file a case against Mr. Raisinghani but it was compounded.

18. How can a disciplinary authority, aware of its accountability to the Indian Bar, functioning as the stern monitor holding the punitive mace to preserve professional purity and promote public commitment and appreciative of what is disgraceful, dishonourable and unbecoming, judged by the standards of conduct set for this noble calling and deviations damaging to its public image, find its way to hold such horrendous misbehaviour as snatching, catching, fighting and undercutting as not outraging the canons of conduct without exposing itself to the charge of dereliction of public duty on the trisection of Rule 36 and blind to the 'law for lawyers'?

19. It has been universally understood, wherever there is an organised Bar assisting in administering justice, that an attorney, solicitor,

barrister or advocate will be suspended or disbarred for soliciting legal business. And the 'snatching' species of solicitation are more revolting than 'ambulance chasing', advertising and the like. If the learned profession is not a money-making trade or a scramble for porterage but a branch of the administration of justice, the view of the appellate disciplinary tribunal is indefensible and deleterious. We, as a legal fraternity, must and shall live up to the second and live down the first, by observance of high standards and dedication to the dynamic rule of law in a developing country.

20. It is unfortunate that the Maharashtra tribunal has slurred over vital procedural guidelines. Professional misconduct proscribed by Section 35 of the Act has to be understood in the setting of a calling to which Lincoln, Gandhi, Lenin and a galaxy of great men belonged. The high moral tone and the considerable public service the Bar is associated with and its key role in the developmental and dispute-processing activities and, above all, in the building up of a just society and constitutional order, has earned for it a monopoly to practise law and an autonomy to regulate its own internal discipline. This heavy public trust should not be forfeited by legalising or licensing fights for briefs, affrays in the rush towards clients, undercutting and wrangling among members. Indeed, we were scandalized when one of the respondents cited a decision under the Suppression of Immoral Traffic Act to prove what is 'soliciting'. The odious attempt to equate by implication the standards for the two professions was given up after we severely frowned on it. But the disciplinary tribunal's view that an attempt to solicit did not matter, that professional misconduct rested solely on Rule 36 of the rules framed under Section 49(*c*) and that Rule 36 was made up of three components, shows how an orientation course in canons of conduct and etiquette in the socio-ethical setting of the lawyer, the public and professional responsibility may be an educative asset to disciplinary tribunals and Bar Councils which appoint tribunals and regulate professional conduct by rules. Cicero called the law 'a noble profession', but Frederick the Great described lawyers as 'leeches'. We agree that Rule 36, fairly construed, sets out wholesome rules of professional conduct although the canons of ethics existed even prior to Rule 36 and the dissection of the said rule, the way it has been done by the disciplinary tribunal, disfigures it. It is also clear that Rule 36 is not the only nidus of professional ethics.

21. Indeed, the State tribunal has, from a processual angle, fallen far short of norms like proper numbering of witnesses and exhibits, indexing and avoidance of mixing up of all cases together, default in examination of the respondents, consideration, separately, of the circumstances of each delinquent for convicting and sentencing purposes. More attention to the specificity in recording evidence against each deviant instead of testimonial clubbing together of all the respondents, would have made the proceedings clearer, fairer and in keeping with court methodology, without overjudicialised formalities. Indeed, the consolidation of 16 cases and trying them all jointly although the charges were different episodes, were obviously violative of fair trial. And 8 years for an enquiry so simple and brief! We express the hope that improvement of this branch of

law relating to disciplinary proceedings will receive better attention from the Bar Council and the tribunal members. What prophylactic prescription can ensure fundamentally fair hearing or due process better than by choosing persons of sense and sensibility familiar with the basics of trial procedure and conscientious about avoidance of prejudice and delay? Rules may regulate, but men apply them. Both are important.

22. The appellate disciplinary tribunal was wholly wrong in applying Rule 36 which was promulgated only in 1965 while the alleged misconduct took place earlier. What this tribunal forgot was that the legal profession in India has been with us even before the British and coming to decades of this century, the provisions of Section 35 of the Advocates Act, Section 10 of the Bar Councils Act and other enactments regulating the conduct of legal practitioners have not turned on the splitting up of the text of any rule but on the broad canons of ethics and high tone of behaviour well-established by case-law and long accepted by the soul of the Bar. Professional ethics were born with the organised Bar, even as moral norms arose with civilised society. The exercise in discovering the 'three elements' of Rule 36 was as unserviceable as it was supererogatory.

23. The rulings in *In the matter of 'P', an Advocate*[2] ; *In re : Shri M, Advocate of Supreme Court of India*[3] ; *In the matter of 'N', an Advocate*[4] ; *Government Pleader* v. *Siddick*[5] were cited before us and no judge, nor lawyer will be in doubt, even without study of case-law, that snatching briefs by standing at the door of the courthouse and in-fighting for this purpose is too dishonourable, disgraceful and unbecoming to be approved even for other professions. Imagine two or three medical men manhandling a patient to claim him as a client! The law has suffered at the hands of the appellate tribunal. Lest there should be lingering doubts, we hold that the canons of ethics and propriety for the legal profession totally taboo conduct by way of soliciting, advertising, scrambling and other obnoxious practices, subtle or clumsy, for betterment of legal business. Law is no trade, briefs no merchandise and so the leaven of commercial competition or procurement should not vulgarise the legal profession. Canon 27 of Professional Ethics of the American Bar Association states :

> It is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communications or interviews not warranted by personal relations.

24. We wish to put beyond cavil the new call to the lawyer in the economic order. In the days ahead, legal aid to the poor and the weak, public interest litigation and other rule-of-law responsibilities will demand a whole new range of responses from the Bar or organised social groups with lawyer members. Indeed, the hope of democracy is the dynamism of the new frontiersmen of the law in this developing area and what we have observed against solicitation and alleged profit-making vices are

2. (1964) 1 SCR 697 : AIR 1963 SC 1313 : (1963) 2 Cri LJ 341.
3. 1956 SCR 811 : AIR 1957 SC 149 : 1957 Cri LJ 300.
4. ILR 63 Cal 867 : AIR 1936 Cal 158.
5. 31 Bom LR 625 : AIR 1929 Bom 335 : ILR 53 Bom 640.

distant from such free service to the community in the jural sector as part of the profession's tryst with the People of India.

25. It is a misfortune that a disciplinary body of a dimensionally great and growing public utility profession has lost its vision, blinkered by Rule 36 (as misconstrued and trisected by it). For the practice of Law with expanding activist horizons, professional ethics cannot be contained in a Bar Council rule nor in traditional cant in the books but in new canons of conscience which will command the members of the calling of justice to obey rules of morality and utility, clear in the crystallized case-law and concrete when tested on the qualms of high norms — simple enough in given situations, though involved when expressed in a single sentence. We but touch upon this call to the calling of law as more is not necessary in the facts of these cases.

26. The law has thus been set right, the delinquents identified and dealt with, based on individualised deserts and the appeals are disposed of in the trust that standards and sanctions befitting the national Bar will be maintained in such dignified and deterrent a manner that public confidence in this arm of the justice-system is neither shaken nor shocked.

27. Parties will bear their costs throughout.

(1976) 2 Supreme Court Cases 302

(Before R. S. Sarkaria and N. L. Untwalia, JJ.)

VEERA IBRAHIM .. .. .. Appellant ;

Versus

THE STATE OF MAHARASHTRA .. .. Respondent.

Criminal Appeal No. 234 of 1971†, decided on March 18, 1976

Constitution of India — Article 20(3) — Applicability of — Phrase "accused of an offence" — Meaning of — If applicable to statement recorded by the Customs Officer under Section 108, Customs Act, 1962

The appellant was arrested by the police on December 12, 1967 on suspicion of having committed an offence under Section 124 of the Bombay Police Act and panchnama of the packages in the truck was also prepared. But the police did not register any case or enter any F. I. R. nor did the police open the packages or prepare inventories of the goods packed therein. The police dropped further proceedings but informed the customs authorities, who opened the packages, inspected the goods and on finding them contraband goods, seized them under a panchnama. The customs authorities called the appellant and his companion to the customs house, took them into custody, and after due compliance with the requirements of the law, the Inspector of Customs questioned the appellant and recorded his statement under Section 108 of the Customs Act. Subsequently he was charged and tried for offences under Sections 135(a) and 135(b) of the Customs Act, 1962 and Section 5 of the Imports and Exports (Control) Act, 1947.

Held :

In order to claim the benefit of the guarantee against testimonial com-

†From the Judgment and Order dated March 26, 1971 of the Bombay High Court at Bombay in Criminal Appeal No. 1434 of 1970.

denied them and chose to depose before the court. The practice adopted by the defence side in getting the affidavits of these witnesses in advance is to be deprecated. That, in a way, amounts to an attempt aimed at dissuading the witnesses from speaking the truth before the court. The trial Judge as well as the High Court rightly rejected the defence contention. These witnesses appear to be illiterate persons. Their so-called affidavits must have been either cooked up or obtained by playing a fraud on them. This type of interference in criminal justice shall not be encouraged and is to be viewed seriously.

11. There was some semblance of doubt regarding the presence of some of the accused at the place of occurrence and those accused were given the benefit of doubt by the Sessions Court.

12. We do not find any reason to interfere with the findings recorded by the Sessions Court, which were affirmed by the High Court. These appeals are without any merit and are dismissed accordingly. The appellants who are on bail shall surrender to their bail bonds to serve out the remaining sentence.

(2002) 4 Supreme Court Cases 212

(BEFORE R.C. LAHOTI AND P. VENKATARAMA REDDI, JJ.)

RAJENDRA V. PAI . . Appellant;

Versus

ALEX FERNANDES AND OTHERS . . Respondents.

Civil Appeals Nos. 6142-44 of 2001†, decided on April 9, 2002

A. **Advocates Act, 1961 — Ss. 35(3)(d) and 38 — Professional misconduct — Quantum of punishment — Removal of name of appellant advocate from the State roll of advocates, if on facts, was justified — Land acquisition proceedings taking place in appellant's village — Appellant defending the proposed acquisition of land in which he had a personal interest in view of his family property being involved therein — Due to the said fact, other villagers (about 150 in number) too, either on their own or on persuasion, confiding in appellant and engaging him to contest the said proceedings in respect of their lands — Only 3 of the said villagers making complaints against the appellant to the Bar Council on the ground of professional misconduct of soliciting professional work and settling contingent fee and wrongly identifying claimants — Finding the appellant guilty, Bar Council debarring him from practice for his life — Held, ordinarily, the Supreme Court does not interfere with the quantum of punishment in such like matters where an elected statutory body of professionals has found one of their own kinsmen guilty of professional misconduct, but the punishment given to the appellant in the totality of facts and circumstances of the case was so disproportionate as to prick the conscience of the Court — Hence, on facts, punishment awarded to the appellant modified by suspending him from practice for a period of 7 years**

† From the Judgment and Order dated 22-12-2000 of the Disciplinary Committee of the Bar Council of India at New Delhi in DCAs Nos. 11-13 of 2000

B. **Advocates Act, 1961 — Ss. 35 and 36 — Punishment for misconduct — Probity and high standards of ethics and morality in professional career, particularly of an advocate — Held, must be maintained and cases of proved misconduct should be severely dealt with**

C. **Advocates Act, 1961 — Ss. 35(3)(d) and 37 — Punishment for professional misconduct — Removal of name from the State roll of advocates — Considerations in — Held, debarring a person from pursuing his career for his life is an extreme punishment and calls for caution and circumspection before being passed**

D. **Advocates Act, 1961 — S. 35 — Professional misconduct — Involvement of personal interest of an advocate in a litigation — Held, the appellant should not have indulged in prosecuting or defending a litigation in which he had a personal interest in view of his family property being involved therein**

There were large-scale land acquisition proceedings in the village to which the appellant belonged. There were about 150 villagers whose lands were involved. Inasmuch as the appellant was an advocate and also personally interested in defending against the proposed acquisition of land belonging to his family members, the villagers either on their own or on persuasion confided in the appellant, who played a leading role initially in contesting the land acquisition proceedings and later in securing the best feasible quantum of compensation. Out of about 150 claimants, 3 filed complaints against the appellant which were inquired into by the Disciplinary Committee of the State Bar Council and held proved against the appellant. The substance of the allegations found proved was that the appellant solicited professional work from the villagers; that he settled contingent fee depending on the quantum of compensation awarded to the claimant; and that he identified some claimants in opening a bank account wherein the cheque for the awarded amount of compensation was lodged and then the amount withdrawn, which identification was later on found to be false. The appellant submitted that he did not solicit professional work as such and in fact the villagers confided in him because he was an advocate and was also looking after litigation relating to his family land. The appellant also contended that the villagers had voluntarily agreed to contribute to a collective fund raised for covering the expenses of litigation and so far as false identification in opening the bank account was concerned, the appellant acted irresponsibly when he relied on other villagers who persuaded him to make an identification which only was acceptable to the authorities on account of his being an advocate. It was urged on behalf of the appellant that it was his first fault, if at all, and if he was debarred from practice for his life, the appellant and his family would be completely ruined.

Partly allowing the appeals, the Supreme Court

Held :

Debarring a person from pursuing his career for his life is an extreme punishment and calls for caution and circumspection before being passed. Ordinarily, the Supreme Court does not interfere with the quantum of punishment in such like matters where an elected statutory body of professionals has found one of their own kinsmen guilty of professional misconduct. (Para 3)

No doubt probity and high standards of ethics and morality in professional career, particularly of an advocate, must be maintained and cases of proved

professional misconduct severely dealt with; yet, it is felt that the punishment given to the appellant in the totality of facts and circumstances of the case is so disproportionate as to prick the conscience of the Court. There does not appear to have been any other occasion where the appellant may have defaulted or misconducted himself. Undoubtedly, the appellant should not have indulged in prosecuting or defending a litigation in which he had a personal interest in view of his family property being involved. The explanation put forward by the appellant may not provide a legally acceptable defence so as to absolve him from the charge of misconduct levelled against him, but the same does deserve to be taken into consideration for mellowing down the gravity of indictment. In a group litigation wherein a little less than 150 persons were involved, only 3 have found a cause for grievance inspiring them to complain against the appellant, is a factor of some relevance. It was conceded by the learned counsel for the complainant-respondent that the complainants have not suffered any financial loss on account of the appellant. On the totality of the facts and circumstances of the case it would meet the ends of justice if the appellant is suspended from practice for a period of seven years. Such sentence would satisfy the need for punishment and also act as a deterrent on the appellant and set an example to others so as to prevent recurrence of such like incidents. (Para 3)

W-M/T/25637/C

Advocates who appeared in this case :
Kailash Vasdev, Senior Advocate (K.V. Viswanathan, V.S. Borkar, Kunwar Ajit Mohan and K.V. Venkataraman, Advocates, with him) for the Appellant;
Ms S. Janani, Advocate, for the Respondents.

The Judgment of the Court was delivered by

R.C. LAHOTI, J. The appellant, an advocate on the rolls of the Bar Council of Maharashtra and Goa, has been found guilty of professional misconduct and by order dated 22-1-2000, passed under Section 35 of the Advocates Act, 1961, his name has been directed to be removed from the State roll of advocates. The appeal to the Bar Council of India preferred by the appellant has been dismissed on 22-12-2000. Feeling aggrieved by the said two orders these appeals have been preferred under Section 38 of the Advocates Act.

2. A brief résumé of the facts would suffice for the purpose of this order. It appears that there were large-scale land acquisition proceedings in the village to which the appellant belongs. There were about 150 villagers whose lands were involved. Some land owned by the family members of the appellant also suffered acquisition. Inasmuch as the appellant was an advocate and also personally interested in defending against the proposed acquisition of land belonging to his family members, the villagers either on their own or on persuasion confided in the appellant, who played a leading role initially in contesting the land acquisition proceedings and later in securing the best feasible quantum of compensation. There were around 150 claimants out of whom three only filed complaints against the appellant which were inquired into by the Disciplinary Committee of the State Bar Council and held proved against the appellant. The substance of the allegations found proved is that the appellant solicited professional work

from the villagers; that he settled contingent fee depending on the quantum of compensation awarded to the claimant; and that he identified some claimants in opening a bank account wherein the cheque for the awarded amount of compensation was lodged and then the amount withdrawn, which identification was later on found to be false. The gist of only the relevant one out of the several pleas taken up by the appellant before the Bar Council and pressed for the consideration of this Court by learned counsel for the appellant is that the entire episode points out only to rustic naivety on the part of the appellant though an advocate. It was submitted that the appellant did not solicit professional work as such and in fact the villagers confided in him because of his being an advocate, also looking after litigation relating to his family land, and the villagers had voluntarily agreed to contribute to a collective fund raised for covering the expenses of litigation as they were likely to make an overall saving in litigation expenses by fighting collectively as a group and it is out of this fund that the appellant incurred expenses including those by himself. So far as false identification in opening the bank account is concerned, the appellant acted irresponsibly when he relied on other villagers who persuaded him to make an identification which only was acceptable to the authorities on account of his being an advocate. This fact finds support from the circumstance that out of little less than 150, only 3 of the litigating landowners have filed these complaints to the Bar Council. It was urged most passionately by the learned counsel for the appellant that it was the first fault, if at all, of the appellant and if debarred from practice for his life at his age, yet in early forties, the appellant and his family would be completely ruined.

3. We have heard the learned counsel for the parties. Ordinarily, this Court does not interfere with the quantum of punishment in such like matters where an elected statutory body of professionals has found one of their own kinsmen guilty of professional misconduct and hence not worthy of being retained in the profession. So far as the finding as to professional misconduct is concerned, we cannot find any fault or infirmity therewith and indeed learned counsel for the appellant very wisely and fairly gave up challenge to such finding and kept himself confined to pursuing and pressing what can be termed as a mere mercy appeal. Debarring a person from pursuing his career for his life is an extreme punishment and calls for caution and circumspection before being passed. No doubt probity and high standards of ethics and morality in professional career, particularly of an advocate, must be maintained and cases of proved professional misconduct severely dealt with; yet, we strongly feel that the punishment given to the appellant in the totality of facts and circumstances of the case is so disproportionate as to prick the conscience of the Court. Excepting the instance forming gravamen of the charge against the appellant, there does not appear to have been any other occasion where the appellant may have defaulted or misconducted himself. Undoubtedly, the appellant should not have indulged in prosecuting or defending a litigation in which he had a personal interest in view of his family property being involved. Though the explanation put forward on

behalf of the appellant, which has been consistently taken before the State Bar Council, the Bar Council of India and before this Court, may not provide a legally acceptable defence so as to absolve him from the charge of misconduct levelled against him but the same does deserve to be taken into consideration for mellowing down the gravity of indictment and hence for determining the quantum of punishment. In a group litigation wherein a little less than 150 persons were involved only 3 have found a cause for grievance inspiring them to complain against the appellant, is a factor of some relevance. It was conceded by the learned counsel for the complainant-respondent that the complainants have not suffered any financial loss on account of the appellant. On the totality of the facts and circumstances of the case, in our opinion, it would meet the ends of justice if the appellant is suspended from practice for a period of seven years. Such sentence would satisfy the need for punishment and also act as a deterrent on the appellant and set an example to others so as to prevent recurrence of such like incidents.

4. The appeals are partly allowed. Though the finding of the appellant having been guilty of committing professional misconduct as arrived at by the State Bar Council and the Bar Council of India is maintained, the punishment awarded to the appellant is modified. Instead of the name of the appellant being removed from the State rolls of the Bar Council of the State, it is directed that his licence to practise shall remain suspended for a period of seven years. Order awarding the costs is maintained. The appeals stand disposed of in these terms. No order as to the costs in this Court.

(2002) 4 Supreme Court Cases 216

(BEFORE S. RAJENDRA BABU AND RUMA PAL, JJ.)

ASHEESH PRATAP SINGH AND OTHERS . . Petitioners;

Versus

UNION OF INDIA AND OTHERS . . Respondents.

Writ Petitions (C) No. 8 of 2001* with No. 76 of 2001 (along with modification order in IA No. 2),
decided on March 11, 2002

Constitution of India — Art. 32 — Issue of directions and orders — Medical colleges — Private medical college — Closure under Supreme Court's order — Relief to students — Students of Azamgarh Medical College passing the 1st professional examination held in May 2000 but the College neither having lab facilities nor sufficient teachers for the 2nd professional course — Supreme Court by an interim order granting time for bringing the College up to the standards fixed in 1993 Regulations — Ultimately, in terms of a stipulation in the said interim order Supreme Court ordering closure of the College — In such circumstances, the competent authority directed to initiate necessary steps, on appropriate

* Under Article 32 of the Constitution of India

consent of the appellant and whether such publicity can be construed as constituting corrupt practice under Section 123(3) and Section 123(3-A) of the Representation Act. It may, however, be indicated here that the High Court has answered Issue 4 namely "whether the petitioner proves that Respondent 1 utilised the propaganda machinery of Shiv Sena party" in the negative.

19. In that view of the matter, it is also not necessary to remand the matter to the High Court for naming the collaborators of corrupt practice by following the appropriate procedure for the purpose. This appeal therefore fails and is dismissed with costs.

(1995) 5 Supreme Court Cases 139

(BEFORE KULDIP SINGH, B.L. HANSARIA AND S.B. MAJMUDAR, JJ.)

TATA PRESS LTD. .. Appellant;

Versus

MAHANAGAR TELEPHONE NIGAM LIMITED AND OTHERS .. Respondents.

Civil Appeal No. 6960 of 1994†, decided on August 3, 1995

A. Constitution of India — Art. 19(1)(a) & (2) — Commercial speech is a part of the freedom of speech and expression guaranteed by Art. 19(1)(a) — Hence commercial advertisement which is a form of commercial speech is protected under Art. 19(1)(a) but subject to Art. 19(2) — Public is benefited by the information disseminated through such advertisements — Both the advertiser and the recipients of the advertisement are entitled to protection under Art. 19(1)(a) — But commercial speech which is deceptive, unfair, misleading and untruthful would be hit by Art. 19(2) and so can be regulated/prohibited by the State

B. Constitution of India — Art. 19(1)(a) — Commercial speech — Buyers' guide or 'Yellow Pages' attached to the telephone directory consisting of paid advertisements from businessmen, traders and professionals procured by contractor (Tata Press Ltd.) through whom Mahanagar Telephone Nigam Ltd. got the directory printed and published for distribution to telephone subscribers — Held, constitutes commercial speech under Art. 19(1)(a) — It is not a public utility service i.e. telephone service — Publication of the Yellow Pages does not amount to publication of 'list of telephone subscribers' and 'publishing of telephone directory' within the meaning of R. 458 of Telegraph Rules so as to be the exclusive function of the Nigam under R. 458 r/w R. 453 of the Rules — Hence the Nigam cannot deny its contractor his right to print and publish the yellow pages in the directory — But the contractor cannot print/publish an entry containing only the name, address and telephone number as usually published in a telephone directory — Words and phrases — 'List'

† From the Judgment and Order dated 8-9-1994 of the Bombay High Court in L.P.A. No. 100 of 1994

C. **Telegraph Rules, 1951 — Rr. 458 and 452, 453, 457 & 459 — Scheme — Held, R. 458 mandatory — Publication of 'list of telephone subscribers' under R. 458 — Meaning — Does not include publication of advertisements with or without telephone numbers in a telephone directory**

The Mahanagar Telephone Nigam is a government company substantially controlled by the Government of India. The Nigam, being a licensee under the Act, is required to establish, maintain and control the telecommunication services in the Union Territory of Delhi and the areas covered by the Municipal Corporations of Bombay, New Bombay and Thane. Initially, the Nigam/Union of India used to publish and distribute, on its own, the telephone directory consisting of white pages only. However, from 1987 the Nigam started entrusting the publication of its telephone directory to outside contractors and permitted such contractors to raise revenue for themselves, by procuring advertisements and publishing the same as "Yellow Pages" appended to the telephone directory. The telephone directory published and distributed by the Nigam now consists of the white pages which contain alphabetical list of telephone subscribers and also "Yellow Pages" consisting of advertisements procured by the contractor to meet the expenses incurred by the contractor in printing, publishing and distributing the directory. The Tata Press Ltd. (Tatas) are engaged in publication of the Tata Press Yellow Pages. The Nigam and the Union of India instituted a civil suit before City Civil Court at Bombay for a declaration that they alone have the right to print/publish the list of telephone subscribers and that the Tatas have no right whatsoever to print, publish and circulate the Yellow Pages. A permanent injunction restraining the Tatas, their agents and servants from printing and/or publishing and/or circulating the "Yellow Pages" — being violative of the Indian Telegraph Act, 1885 and the Indian Telegraph Rules, 1951 — was also sought. The City Civil Court dismissed the suit. But a Single Judge of the Bombay High Court allowed the first appeal of the Nigam and the Union of India. Letters Patent Appeal filed by the Tatas was dismissed by a Division Bench of the High Court. Allowing the appeal of the Tatas

Held :

A commercial advertisement is a form of speech. "Commercial speech" is a part of the freedom of speech and expression guaranteed under Article 19(1)(*a*) of the Constitution. However, unlike the First Amendment under the United States Constitution, our Constitution itself lays down in Article 19(2) the restrictions which can be imposed on the fundamental right guaranteed under Article 19(1)(*a*). "Commercial speech" which is deceptive, unfair, misleading and untruthful would be hit by Article 19(2) and can be regulated/prohibited by the State.

(Paras 17, 18 and 25)

Advertising is considered to be the cornerstone of our economic system. Low prices for consumers are dependent upon mass production, mass production is dependent upon volume sales, and volume sales are dependent upon advertising. Apart from the lifeline of the free economy in a democratic country, advertising can be viewed as the lifeblood of free media, paying most of the costs and thus making the media widely available. For a democratic press the advertising 'subsidy' is crucial. Without advertising, the resources available for expenditure on the 'news' would decline, which may lead to an erosion of quality and quantity. The cost of the 'news' to the public would increase, thereby restricting its 'democratic' availability. (Para 20)

Advertising as a "commercial speech" has two facets. Advertising which is no more than a commercial transaction, is nonetheless dissemination of information regarding the product advertised. Public at large is benefited by the information made available through the advertisement. In a democratic economy free flow of

commercial information is indispensable. There cannot be honest and economical marketing by the public at large without being educated by the information disseminated through advertisements. The economic system in a democracy would be handicapped without there being freedom of "commercial speech". Therefore, any restraint or curtailment of advertisements would affect the fundamental right under Article 19(1)(*a*) on the aspects of propagation, publication and circulation. (Para 23)

Sakal Papers (P) Ltd. v. *Union of India*, AIR 1962 SC 305 : (1962) 3 SCR 842; *Bennett Coleman & Co.* v. *Union of India*, (1972) 2 SCC 788 : (1973) 2 SCR 757, *relied on*

Examined from another angle, the public at large has a right to receive the "commercial speech". Article 19(1)(*a*) not only guarantees freedom of speech and expression, it also protects the rights of an individual to listen, read and receive the said speech. So far as the economic needs of a citizen are concerned, their fulfilment has to be guided by the information disseminated through the advertisements. The protection of Article 19(1)(*a*) is available to the speaker as well as to the recipient of the speech. The recipient of "commercial speech" may be having much deeper interest in the advertisement than the businessman who is behind the publication. An advertisement giving information regarding a life-saving drug may be of much more importance to general public than to the advertiser who may be having purely a trade consideration. (Para 24)

New York Times Co. v. *Sullivan*, 376 US 254 : 11 L Ed 2d 686 (1964); *Jeffrey Cole Bigelow* v. *Commonwealth of Virginia*, 421 US 809 : 44 L Ed 2d 600 : 95 S Ct 2222 (1975); *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 US 748 : 48 L Ed 2d 346 (1976); *John R. Bates and Van O'Steen* v. *State Bar of Arizona*, 53 L Ed 2d 810 : 433 US 350 (1977); *Central Hudson Gas and Electric Corpn.* v. *Public Service Commission*, 447 US 557 : 65 L Ed 2d 341 (1980); *Posadas de Puerto Rico Associates* v. *Tourism Co. of Puerto Rico*, 92 L Ed 2d 266; *Board of Trustees of the State University of New York* v. *Todd Fox*, 106 L Ed 2d 388; *Indian Express Newspapers (Bombay) (P.) Ltd.* v. *Union of India*, (1985) 1 SCC 641 : 1985 SCC (Tax) 121 : (1985) 2 SCR 287, *relied on*

Hamdard Dawakhana (Wakf) Lal Kuan v. *Union of India*, (1960) 2 SCR 671 : AIR 1960 SC 554, *distinguished* and *limited*

Lewis J. Valentine v. *F.J. Chrestensen*, 316 US 52 : 86 L Ed 1262 : 62 S Ct 920 (1942), *referred to*

R.M.D. Chamarbaugwalla v. *Union of India*, 1957 SCR 930 : AIR 1957 SC 628; *John W. Rast* v. *Van Deman & Lewis Co.*, 240 US 342 : 60 L Ed 679 (1916); *Breard* v. *Alexandria*, 341 US 622 : 95 L Ed 1233 : 71 S Ct 920 (1951); *Martin* v. *Struthers*, 319 US 141 : 87 L Ed 1313 (1943); *Pittsburgh Press Co.* v. *Human Relations Comm'n*, 413 US 376 : 37 L Ed 2d 669 : 93 S Ct 2553 (1973); *Chaplinsky* v. *New Hampshire*, 315 US 568 : 86 L Ed 1031 : 62 S Ct 766 (1942); *Roth* v. *United States*, 354 US 474 : 1 L Ed 2d 1498 : 77 S Ct 1304 (1957); *Fur Information & Fashion Council, Inc* v. *E. F. Timme & Son*, 364 F Supp 16 (SDNY 1973); *William B. Cammarano* v. *United States*, 358 US 498 : 3 L Ed 2d 462 (1959), *cited*

A telephone directory is an essential instrumentality in connection with the peculiar service which the Union of India offers for the public benefit and convenience. It is as much so as is the telephone receiver itself. It would be practically useless for the receipt and transmission of messages without the accompaniment of such directories. The telephone service being a public utility service, the telephone authority has rightly been given powers under the Act and the Rules to regulate the form and contents of the telephone directory. In the development of this form of public utility service, the telegraph authority has found it practicable and profitable to diminish the cost and increase the profits of

operation by making use of its directories as a means and form of advertising available to its subscribers. The paid advertising, apart from the light-faced free listing, is not in the nature of a service rendered by a utility. The "Yellow Pages" attached to the telephone directory issued by the Nigam cannot be considered a part of the Nigam's public telephone service. (Para 26)

"Publication of advertisements" which is a "commercial speech" and protected under Article 19(1)(*a*) of the Constitution cannot be denied to the appellants on the interpretation of Rules 458 and 459 of the Rules. The prohibition under Rule 458 of the Rules is only in respect of publishing "any list of telephone subscribers". "Publication of advertisement" cannot be equated with a "list of telephone subscribers". A 'list' is a number of names having something in common written out systematically one beneath the other. "List of telephone subscribes" in terms of Rule 458 of the Rules would have to be compiled only on the criterion of the persons listed being telephone subscribers. No person who is not a telephone subscriber could be eligible for inclusion. The said list would necessarily be restricted to the area serviced by the Nigam. On the other hand "Tata Press Yellow Pages" is a buyers' guide comprising of advertisements given by traders, businessmen and professionals and the only basis/criterion applied for acceptance/publication of advertisements is that an advertiser should be a trader, businessman or professional. Thus the scheme of the Rules make it clear that advertisements are treated differently under the Rules from "list of telephone subscribers". Rule 458 of the Rules intends to protect the exclusive property rights of the Nigam/Union of India created under Rule 457 in respect of the telephone directory prepared in terms of Rule 453. "Publication of advertisements" being a non-utility service cannot come within the prohibition imposed by Rule 453 of the Rules. (Paras 28 to 29)

The Nigam/Union of India cannot restrain the appellant from publishing "Tata Press Yellow Pages" comprising paid advertisements from businessmen, traders and professionals. However, the appellant cannot publish in the "Tata Press Yellow Pages" any "list of telephone subscribers", similar to that printed in the 'white pages' of the telephone directory published by the Nigam under the Rules, without permission of the telephone authority. The appellant cannot print/publish an entry containing only the telephone number, the initials, the surname and the address of the businessmen, trader or professional concerned. (Para 30)

D. **Constitution of India — Art. 19(1)(a) & (2) — Right under Art. 19(1)(a) cannot be denied by creating a monopoly in favour of the Government or any other authority — Right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution can only be restricted under Article 19(2)**

R-M/14750/C

Advocates who appeared in this case :

Dr A.M. Singhvi, K.K. Venugopal and Arun Jaitley, Senior Advocates (Apsi Chinoy, P.V. Kapoor, Sunil Gupta, P.D. Tyagi, Ms A.K. Verma, Advocates for JBD & Co., K.V. Sreekumar, P.P. Tripathi, A.K. Sikri, S.I. Shah an Ms Madhu Sikri, Advocates, with them) for the appearing parties.

The Judgment of the Court was delivered by

KULDIP SINGH, J.— This appeal has arisen from a civil suit instituted before the Bombay City Civil Court at Bombay by the Mahanagar Telephone Nigam Limited (the Nigam) and the Union of India for a declaration that they alone have the right to print/publish the list of telephone subscribers and

that the same cannot be printed or published by any other person without express permission of the Nigam/Union of India. A further declaration was sought that the Tata Press Limited (Tatas) have no right whatsoever to print, publish and circulate the compilation called "Tata Press Yellow Pages" (Tata Pages). A permanent injunction restraining the Tatas, their agents and servants from printing and/or publishing and/or circulating the "Tata Pages" — being violative of the Indian Telegraph Act, 1885 (the Act) and the Indian Telegraph Rules, 1951 (the Rules) — was also sought from the Court. The City Civil Court, Bombay by its judgment dated 7-8-1993 dismissed the suit. First appeal filed by the Nigam and the Union of India was heard by a learned Single Judge of the Bombay High Court and the learned Judge by the judgment dated 27-4-1994 allowed the appeal, set aside the judgment of the trial court and decreed the suit. Letters patent appeal filed by the Tatas was dismissed by a Division Bench of the Bombay High Court by the impugned judgment dated 8-9-1994. This appeal, by way of special leave, is against the judgment of the Division Bench of the High Court upholding the learned Single Judge.

2. The Nigam is a government company substantially controlled by the Government of India. The Government holds 80% of the total shares of the Company. The Nigam is a licensee under the Act and as such is required to establish, maintain and control the telecommunication services within the territorial jurisdiction of the Union Territory of Delhi and the areas covered by the Municipal Corporations of Bombay, New Bombay and Thane. Till 1987 the Nigam/Union of India used to publish and distribute, on its own, the telephone directory consisting of white pages only. However, of late, the Nigam started entrusting the publication of its telephone directory to outside contractors. From 1987 onwards, the Nigam has permitted such contractors to raise revenue for themselves, by procuring advertisements and publishing the same as "Yellow Pages" appended to the telephone directory. In other words, the telephone directory published and distributed by the Nigam consists of the white pages which contain alphabetical list of telephone subscribers and also "Yellow Pages" consisting of advertisements procured by the contractor to meet the expenses incurred by the contractor in printing, publishing and distributing the directory.

3. The Tatas are engaged in the publication of the Tata Pages which is a buyers' guide comprising of a compilation of advertisements given by businessmen, traders and professionals duly classified according to their trade, business or profession. It is not disputed that the said compilation includes unpaid advertisements in which the category/type of business, trade or profession of the advertiser is listed. It is stated by the appellant that the advertisements are published in the Tata Pages on the application of the party concerned. The only criterion for inclusion of advertisements in the said compilation is that the advertiser must be engaged in a trade, profession or business. Three editions of Tata Pages have already been published in Bombay in 1992, 1993 and 1994. According to the appellant such Yellow Pages/buyers' guides have been published in India since 1984 and follow

generic international pattern which was introduced in the USA as far back as 1880. Since 1984 a large number of parties — details have been placed on the record — are engaged in the publication of Yellow Pages/trade directories/buyers' guides in India.

4. Rules 452, 453, 457, 458 and 459 of the Rules which are relevant, are reproduced hereunder:

> "452. *Supply of telephone directories.*— A copy of the telephone directory shall be supplied free of charge for each telephone, extension or party line, rented by the subscriber from an exchange system or private branch exchange or a private exchange. A copy shall also be supplied free of charge for each extension (including extension) from an extension working from a public call office. Additional copies supplied shall be charged for at such rate as may be fixed by the Telegraph Authority from time to time.
>
> 453. *Entries in telephone directories.*— For each direct telephone line rented (i.e. for main connections, direct extensions and PBX junction lines) ordinarily only one entry not exceeding one line will be allowed free of charge in the telephone directory to every subscriber. Such entry shall contain the telephone number, the initials, the surname and the address of the subscriber or user. No word which can intelligibly be abbreviated shall be allowed to be printed in full. Additional lines may be allowed by the Telegraph Authority at its discretion.
>
> 457. *General.*— Any telephone directory provided by the Department shall remain its exclusive property and shall be delivered to it on demand. The Department reserves the right to amend or delete any entries in the telephone directory at any time and undertakes no responsibility for any omission; and it shall not entertain any claim or compensation on account of any entry in or omission from the telephone directory or of any error therein.
>
> 458. *Publishing of telephone directory.*— Except with the permission of the Telegraph Authority no person shall publish any list of telephone subscribers.
>
> 459. *Advertisements.*— The Telegraph Authority may publish or allow the publication of advertisements in the body of the telephone directory."

5. As stated above, the learned trial Judge dismissed the suit filed by the Nigam and the Union of India. The learned Judge compared the advertisements published in the Tata Pages with the telephone directory and found as a fact that the "Tata Pages" was a compilation of advertisements given by the businessmen, traders and professionals and as such did not constitute a list of telephone subscribers as contemplated in Rule 458 of the Rules. The learned Judge based his conclusions on the reasoning that the source for the advertisements published in the Tata Pages was different from the telephone directory, some advertisements in the Tata Pages did not list telephone numbers, the criterion for listing in the telephone directory and for

publication in the Tata Pages was different — for telephone directory the person/party must be a telephone subscriber whereas for the Tata Pages the advertiser must be a trader, professional or businessman — and the telephone directory was restricted to the area of service by the Nigam whereas the advertisements in the Tata Pages relate to parties outside the local area/Bombay.

6. Appeal against the trial court judgment was heard by a learned Single Judge of the High Court. The learned Judge agreed with the trial court that the white pages of the telephone directory constituted the "List of Telephone Subscribers" whereas the yellow pages consisted of the advertisements given by the telephone subscribers and others. He further accepted that the criterion for listing of entries in the white pages was different from the criterion for inclusion of advertisements in the yellow pages. The learned Judge, however, held that Rule 458 covered all parts of the telephone directory including the yellow pages. According to the learned Judge the publication of advertisements in the form of yellow pages, appended to the white pages, was within the bar contained in Rule 458 of the Rules. The learned Judge accordingly allowed the appeal and restrained the appellant from publishing the Tata Pages.

7. The letters patent bench of the Bombay High Court hearing the appeal filed by the Tatas against the judgment of the learned Single Judge posed the question to be considered by the Bench in the following words:

> "There should be no doubt that a publication in order to amount to a contravention of the Rules, as quoted above, must *in substance* be a 'list of telephone subscribers', for it is the substance that must count and must outweigh and take precedence over mere appearance. Before restraining the defendant — Tata Press Ltd. from publishing or circulating or in any way dealing with the 'TATA Press Yellow Pages', we have to be satisfied that *in substance and in effect* the same is a 'list of telephone subscribers' or a 'telephone directory'. The case at hand involves questions, not so much of law but rather of semantics and common sense."

The Bench while dealing with the question observed as under:

> " '... a list of telephone subscribers' would obviously mean a list of persons to whom telephone services have been provided by means of an installation under the Telegraph Rules or under an agreement. Suppose we, in this High Court, print or publish a book containing a list of our Judges and officers containing their names, designations, departments they are attached to, their office as well as residential addresses and also their telephone numbers in the office as well as in their residence. Or, suppose, a Bar Association or a Medical Association prints or publishes a book containing the names of their members, their specialisation, addresses of their offices, chambers and residences along with their respective telephone numbers, we are inclined to think that such books as aforesaid may not amount to 'a list of subscribers' if the dominant

purpose for such publication is not to notify the telephone numbers *only*, but *mainly* to notify who these persons are along with their designations and/or qualifications or specialisation; and addresses at which they would be available during as well as after office hours and the telephone numbers published in such books would be there only to provide a full or a more complete picture. The High Court or the Bar Association or the Medical Association in such cases may not be proceeded against for violation of Rule 458 of the Indian Telegraph Rules, for publishing such books, if the primary object thereof is not to provide the telephone numbers only, but, may be, the telephone numbers also along with various other relevant matters. If in such books as aforesaid, the names of such officers or members, *who are not subscribers of telephones*, are also published, the same would further go to show that such books would not be a list of subscribers."

The Bench finally upheld the judgment of the learned Single Judge on the following reasoning:

"We have given our best and very serious considerations to the arguments advanced by Mr Nariman. We have already indicated, we will have to scrutinise and examine the publication Tata Press Yellow Pages and would have to come to our conclusion as to whether the same is a telephone directory or a list of telephone subscribers from the point of view of the main object and the dominant purpose of the publication. The fact that has weighed with us most is that even though there are some features which may distinguish the 'Tata Press Yellow Pages' from a mere telephone directory or a mere list of telephone subscribers, the publication would nevertheless be of little or no use if the telephone numbers printed therein are omitted or deleted. It may be that the 'Tata Press Yellow Pages' may not be a telephone directory or a list of telephone subscribers *only*, but we are nevertheless of the clear view that the same is a telephone directory or a list of telephone subscribers also ... reading the provisions of Rules 452, 458 and 459 together, we will have to hold that even if a telephone directory or list of telephone subscribers contain advertisements, may be in large numbers, publication thereof would nevertheless come within the prohibition of Rule 458 as in such a case the publication, even though not *merely* a telephone directory or a list of telephone subscribers, is *also* nevertheless such a telephone directory or list of telephone subscribers."

8. Learned counsel for the appellant has drawn our pointed attention to the above-quoted observations of the Division Bench of the High Court and has vehemently contended that the examination of Tata Pages, even in the light of the test laid down by the High Court, would show that the said compilation is not a telephone directory. A Bar Association or a Medical Association can publish a list of their respective members. Similarly, according to the learned counsel, the associations of professionals, traders or businessmen can publish lists of their respective members. The Tata Pages, he contended, which is a compilation of advertisements, given by

businessmen, traders and professionals, cannot be equated with a "list of telephone subscribers". It is contended that the Tata Pages was a buyers' guide/trade directory and its content, character and function are different from the Telephone Directory. The primary purpose of reference to a telephone directory is to find out the telephone number of a particular telephone subscriber whereas the primary purpose of buyers' guide such as the Tata Pages is to enable a consumer/buyer to find out the parties engaged in a particular business or trade for providing a particular service. There is plausibility in the contention of the learned counsel but cannot, by itself, tilt the balance in favour of the appellant.

9. We are of the view that the answer to the question whether the Tata Pages is a telephone directory within the meaning of Rule 458 or is a buyers' guide/trade directory outside the scope of the said rule, depends upon the determination of the larger issue whether a simple "commercial advertisement" comes within the concept of "freedom of speech and expression" guaranteed under Article 19(1)(*a*) of the Constitution of India. We, therefore, proceed to deal with the constitutional question.

10. Dr Abhishek Singhvi, learned counsel supporting the case of the appellant, has contended that the "commercial speech" is protected under Article 19(1)(*a*) read with Article 19(2) of the Constitution. Mr Venugopal and Mr Arun Jaitley, learned counsel appearing for the respondents have, however, contended that a purely commercial advertisement is meant for furtherance of trade or commerce and as such is outside the concept of freedom of speech and expression. Reliance was placed by the learned counsel on the judgment of this Court in *Hamdard Dawakhana (Wakf) Lal Kuan* v. *Union of India*[1]. A Constitution Bench of this Court speaking through Kapur, J. held as under:

> "An advertisement is no doubt a form of speech but its true character is reflected by the object for the promotion of which it is employed. It assumes the attributes and elements of the activity under Article 19(1) which it seeks to aid by bringing it to the notice of the public. When it takes the form of a commercial advertisement which has an element of trade or commerce it no longer falls within the concept of freedom of speech for the object is not propagation of ideas — social, political or economic or furtherance of literature or human thought; but as in the present case the commendation of the efficacy, value and importance in treatment of particular diseases by certain drugs and medicines. In such a case, advertisement is a part of business even though as described by Mr Munshi its creative part, and it was being used for the purpose of furthering the business of the petitioners and had no relationship with what may be called the essential concept of the freedom of speech. It cannot be said that the right to publish and distribute commercial advertisements advertising an individual's personal business is a part of freedom of speech guaranteed by the Constitution. In *Lewis J. Valentine*

1 (1960) 2 SCR 671 : AIR 1960 SC 554

v. *F.J. Chrestensen*[2] it was held that the constitutional right of free speech is not infringed by prohibiting the distribution in city streets of handbills bearing on one side a protest against action taken by public officials and on the other advertising matter. The object of affixing of the protest to the advertising circular was the evasion of the prohibition of a city ordinance forbidding the distribution in the city streets of commercial and business advertising matter. Mr Justice Roberts, delivering the opinion of the Court said:

> 'This Court has unequivocally held that the streets are proper places for the exercise of the freedom of communicating information and disseminating opinion and that, though the States and municipalities may appropriately regulate the privilege in the public interest, they may not unduly burden or prescribe its employment in these public thoroughfares. We are equally clear that the Constitution imposes no such restraint on Government as respects purely commercial advertising .... If the respondent was attempting to use the streets of New York by distributing commercial advertising, the prohibition of the Code provisions was lawfully invoked against such conduct.'

It cannot be said therefore that every advertisement is a matter dealing with freedom of speech nor can it be said that it is an expression of ideas. In every case one has to see what is the nature of the advertisement and what activity falling under Article 19(1) it seeks to further. The advertisements in the instant case relate to commerce or trade and not to propagating of ideas; and advertising of prohibited drugs or commodities of which the sale is not in the interest of the general public cannot be speech within the meaning of freedom of speech and would not fall within Article 19(1)(*a*). The main purpose and true intent and aim, object and scope of the Act is to prevent self-medication or self-treatment and for that purpose advertisements commending certain drugs and medicines have been prohibited. Can it be said that this is an abridgement of the petitioners' right of free speech. In our opinion it is not. Just as in *Chamarbaugwala case*[3] it was said that activities undertaken and carried on with a view to earning profits e.g. the business of betting and gambling will not be protected as falling within the guaranteed right of carrying on business or trade, so it cannot be said that an advertisement commending drugs and substances as appropriate cure for certain diseases is an exercise of the right of freedom of speech.

* * *

Freedom of speech goes to the heart of the natural right of an organised freedom-loving society to 'impart and acquire information about that common interest'. If any limitation is placed which results in the society being deprived of such right then no doubt it would fall

2 316 US 52 : 86 L Ed 1262 : 62 S Ct 920 (1942)

3 *R M D. Chamarbaugwala* v. *Union of India*, 1957 SCR 930 : AIR 1957 SC 628

within the guaranteed freedom under Article 19(1)(*a*). But if all it does is that it deprives a trader from commending his wares it would not fall within that term. In *John W. Rast* v. *Van Deman & Lewis Co.*[4] Mr Justice McKenna, dealing with advertisements said:

> 'Advertising is merely identification and description, apprising of quality and place. It has no other object than to draw attention to the article to be sold and the acquisition of the article to be sold constitutes the only inducement to its purchase.'

As we have said above advertisement takes the same attributes as the object it seeks to promote or bring to the notice of the public to be used by it. Examples can be multiplied which would show that advertisement dealing with trade and business has relation with the item 'business or trade' and not with 'freedom of speech'. Thus advertisements sought to be banned do not fall under Article 19(1)(*a*)."

11. This Court in *Hamdard Dawakhana case*[1] primarily relied on the judgment of the United States Supreme Court in *Valentine* v. *Chrestensen*[2] for the proposition that "purely commercial advertising" is not protected by Article 19(1)(*a*) of the Constitution. Dr Singhvi has placed reliance on series of judgments of the United States Supreme Court since 1942 when *Chrestensen case*[2] was decided to show that the courts in United States have step-by-step moved away from the rule in *Chrestensen case*[2], and as on today "purely commercial advertising" is entitled to full "First Amendment"/ protection. We may refer to some of the cases. In 1964 United States Supreme Court ruled in *New York Times Co.* v. *Sullivan*[5] that editorial advertising, that is, advertising to promote an idea such as "Save Whale", "Stop War" or "Ban Pesticides" rather than a product like used cars or spaghetti is protected by the First Amendment. In the year 1975 in *Jeffrey Cole Bigelow* v. *Commonwealth of Virginia*[6] the United States Supreme Court reversed the conviction of a Virginia newspaper editor who had been found guilty of publishing an advertisement which offered assistance to women seeking abortion. Abortion was illegal in Virginia in 1971 when the advertisement was published. The Women Pavilion, a New York group, urged women who wanted an abortion to come to New York. Blackmun, J. analysing earlier judgments of the Court observed that speech does not lose the protection of the First Amendment merely because it appears in the form of a commercial advertisement.

12. Finally, in 1976 the United States Supreme Court has provided a clearer answer in *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council, Inc*[7]. The appealees in the said case attacked, as violative of the First Amendment, that part of the statute which provided that a pharmacist licensed in Virginia was guilty of unprofessional conduct if he

4 240 US 342 : 60 L Ed 679 (1916)
5 376 US 254 : 11 L Ed 2d 686 (1964)
6 421 US 809 : 44 L Ed 2d 600 : 95 S Ct 2222 (1975)
7 425 US 748 : 48 L Ed 2d 346 (1976)

"publishes, advertises or promotes, directly or indirectly, in any manner whatsoever, any amount, price, fee, premium, discount, rebate or credit terms ... for any drugs which may be dispensed only by prescription". The District Court declared the quoted portion of the statute "void and of no effect". The appellants before the Supreme Court contended that the advertisement of prescription drug price was outside the protection of the First Amendment because it was "commercial speech". Rejecting the argument the Court speaking through Blackmun, J. held as under:

> "There can be no question that in past decisions the Court has given some indication that commercial speech is unprotected. In *Valentine* v. *Chrestensen*[2], the Court upheld a New York statute that prohibited the distribution of any 'handbill, circular ... or other advertising matter whatsoever in or upon any street'. The Court concluded that, although the First Amendment would forbid the banning of all communication by handbill in the public thoroughfares, it imposed 'no such restraint on Government as respects purely commercial advertising'. [*Valentine* v. *Chrestensen*[2] (at p. 54)]. Further support for a 'commercial speech' exception to the First Amendment may perhaps be found in *Breard* v. *Alexandria*[8] where the Court upheld a conviction for violation of an ordinance prohibiting door-to-door solicitation of magazine subscriptions. The Court reasoned: 'The selling ... brings into the transaction a commercial feature', and it distinguished *Martin* v. *Struthers*[9] where it had reversed a conviction for door-to-door distribution of leaflets publicizing a religious meeting, as a case involving 'no element of the commercial'. *Breard* v. *Alexandria*[8] at pp. 642-643. ... Since the decision in *Breard*[8], however, the Court has never denied protection on the ground that the speech in issue was 'commercial speech'. That simplistic approach, which by then had come under criticism or was regarded as of doubtful validity by members of the court.
>
> Last term, in *Bigelow* v. *Virginia*[6] the notion of unprotected 'commercial speech' all but passed from the scene. We reversed a conviction for violation of a Virginia statute that made the circulation of any publication to encourage or promote the processing of an abortion in Virginia a misdemeanor. The defendant had published in his newspaper the availability of abortions in New York. The advertisement in question, in addition to announcing that abortions were legal in New York, offered the services of a referral agency in that State. We rejected the contention that the publication was unprotected because it was commercial. *Chrestensen*[2] continued validity was questioned, and its holding was described as 'distinctly a limited one' that merely upheld 'a reasonable regulation of the manner in which commercial advertising could be distributed'.

8 341 US 622 : 95 L Ed 1233 : 71 S Ct 920 (1951)
9 319 US 141 : 87 L Ed 1313 (1943)

Here, in contrast, the question whether there is a First Amendment exception for 'commercial speech' is squarely before us. Our pharmacist does not wish to editorialize on any subject, cultural, philosophical, or political. He does not wish to report any particularly newsworthy fact, or to make generalized observations even about commercial matters. The 'idea' he wishes to communicate is simply this: 'I will sell you the X prescription drug at the Y price.' Our question, then, is whether this communication is wholly outside the protection of the First Amendment.

Our question is whether speech which does 'no more than propose a commercial transaction', *Pittsburgh Press Co.* v. *Human Relations Comm'n*[10], (at p. 385) is so removed from any 'exposition of ideas', *Chaplinsky* v. *New Hampshire*[11], and from 'truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of Government', *Roth* v. *United States*[12], that it lacks all protection. Our answer is that it is not.

Generalizing, society also may have a strong interest in the free flow of commercial information. Even an individual advertisement, though entirely 'commercial', may be of general public interest. The facts of decided cases furnish illustrations: advertisements stating that referral services for legal abortions are available, *Bigelow* v. *Virginia*[6], that a manufacturer of artificial furs promotes his product as an alternative to the extinction by his competitors of fur-bearing mammals, see *Fur Information & Fashion Council, Inc* v. *E. F. Timme & Son*[13]; and that a domestic producer advertises his product as an alternative to imports that tend to deprive American residents of their jobs.

Moreover, there is another consideration that suggests that no line between publicly 'interesting' or 'important' commercial advertising and the opposite kind could ever be drawn. Advertising, however tasteless and excessive it sometimes may seem, is nonetheless dissemination of information as to who is producing and selling what product, for what reason, and at what price. So long as we preserve a predominantly free enterprise economy, the allocation of our resources in large measure will be made through numerous private economic decisions. It is a matter of public interest that those decisions, in the aggregate, be intelligent and well informed. To this end, the free flow of commercial information is indispensable. ... And if it is indispensable to the proper allocation of resources in a free enterprise system, it is also indispensable to the formation of intelligent opinions as to how that system ought to be regulated or altered. Therefore, even if the First Amendment were thought to be primarily an instrument to enlighten public decision-

10 413 US 376 : 37 L Ed 2d 669 : 93 S Ct 2553 (1973)
11 315 US 568, 572 : 86 L Ed 1031 : 62 S Ct 766 (1942)
12 354 US 474, 486 : 1 L Ed 2d 1498 : 77 S Ct 1304 (1957)
13 364 F Supp 16 (SDNY 1973)

making in a democracy, we could not say that the free flow of information does not serve that goal."

13. It is, thus, obvious that the United States Supreme Court in *Virginia Board case*[7] has virtually overruled *Valentine case*[2] decided in 1942. The Court has ruled in clear terms that the Virginia statute which had the effect of prohibiting pharmacies from advertising the price of prescription drugs violated the First Amendment protection.

14. In *John R. Bates and Van O'Steen* v. *State Bar of Arizona*[14], two attorneys licensed to practice law in Arizona placed an advertisement in a Phoenix newspaper, stating that they were offering "legal services at very reasonable fees" and listing their fees for various matters. The advertisement was in violation of disciplinary rules of the Supreme Court of Arizona which prohibited Arizona lawyers from publicizing themselves, their partners or their associates by 'commercial' means. On a complaint filed by the President of the State Bar, the Board of Governors recommended a one week suspension for each attorney. The two lawyers then sought review in the Supreme Court of Arizona which rejected their contention that the disciplinary rules infringed their First Amendment rights. On an appeal, the United States Supreme Court reversed the judgment of the Supreme Court of Arizona on the question of First Amendment rights. Speaking for the Court Blackmun, J. held that the blanket suppression of advertising by attorneys violated a free speech clause of First Amendment. The Court rejected arguments that such advertising would have an adverse effect on professionalism, would be inherently misleading, would have an adverse effect on the administration of justice, would produce undesirable economic effects, and would have an adverse effect on the quality of legal services. The Court, however, further held that such advertising, if false, deceptive or misleading could continue to be restrained, and that, as with other varieties of speech, such advertising could be made subject to reasonable restrictions on the time, place and manner of such advertising.

15. After the decision in *Virginia Board case*[7], it is almost settled law in the United States that "commercial speech" is entitled to the First Amendment protection. The Supreme Court has, however, made it clear that Government was completely free to recall "commercial speech" which is false, misleading, unfair, deceptive and which proposes illegal transactions. A political or social speech and other public-affairs-oriented discussions are entitled to full First Amendment protection whereas a "commercial speech" may be restricted more easily whenever the Government can show substantial justification for doing so.

16. More recent judgments of the Supreme Court of United States in *Central Hudson Gas and Electric Corpn.* v. *Public Service Commission*[15], *Posadas de Puerto Rico Associates* v. *Tourism Co. of Puerto Rico*[16] and

14 53 L Ed 2d 810 : 433 US 350 (1977)
15 447 US 557 : 65 L Ed 2d 341 (1980)
16 92 L Ed 2d 266

Board of Trustees of the State University of New York v. *Todd Fox*[17] clearly indicate that in "commercial speech" cases a four-part analysis has developed. At the outset, it must be determined whether the advertising is protected by the First Amendment. For commercial speech to come within that provision it must concern lawful activity and not be misleading. Next it is seen whether the asserted governmental interest is substantial. If both inquiries yield positive answers then it must be determined whether the regulation directly advances the governmental interest asserted and whether it is more extensive than is necessary to serve that interest.

17. Unlike the First Amendment under the United States Constitution, our Constitution itself lays down in Article 19(2) the restrictions which can be imposed on the fundamental right guaranteed under Article 19(1)(*a*) of the Constitution. The "commercial speech" which is deceptive, unfair, misleading and untruthful would be hit by Article 19(2) of the Constitution and can be regulated/prohibited by the State.

18. This Court in *Hamdard Dawakhana case*[1] was dealing with advertising of prohibited drugs and commodities. The Court came to the conclusion that the sale of prohibited drugs was not in the interest of the general public and as such "could not be a speech" within the meaning of freedom of speech and expression under Article 19(1)(*a*) of the Constitution. The Court further held in the said case that an advertisement is no doubt a form of speech but its true character is reflected by the object for the promotion of which it is employed. *Hamdard Dawakhana case*[1] was considered by this Court in *Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India*[18]. The observations in *Hamdard Dawakhana case*[1] to the effect that advertising by itself would not come within Article 19(1)(*a*) of the Constitution, were explained by this Court in *Indian Express Newspapers case*[18] in the following words: (SCC pp. 700-02, paras 92 and 93)

> "We have carefully considered the decision in *Hamdard Dawakhana case*[1]. The main plank of that decision was that the type of advertisement dealt with there did not carry with it the protection of Article 19(1)(*a*). On examining the history of the legislation, the surrounding circumstances and the scheme of the Act which had been challenged there namely the Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954 (21 of 1954) the Court held that the object of that Act was the prevention of self-medication and self-treatment by prohibiting instruments which may be used to advocate the same or which tended to spread the evil.
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> * * *
>
> In the abovesaid case the Court was principally dealing with the right to advertise prohibited drugs, to prevent self-medication and self-treatment. That was the main issue in the case. It is no doubt true that some of the observations referred to above go beyond the needs of the

17 106 L Ed 2d 388

18 (1985) 1 SCC 641 : 1985 SCC (Tax) 121 : (1985) 2 SCR 287

case and tend to affect the right to publish all commercial advertisements. Such broad observations appear to have been made in the light of the decision of the American Supreme Court in *Lewis J. Valentine* v. *F.J. Chrestensen*[2]. But it is worthy of notice that the view expressed in this American case has not been fully approved by the American Supreme Court itself in its subsequent decisions. We shall refer only to two of them. In his concurring judgment in *William B. Cammarano* v. *United States*[19] Justice Douglas said:

> '*Valentine* v. *Chrestensen*[2]... held that business of advertisements and commercial matters did not enjoy the protection of the First Amendment, made applicable to the States by the Fourteenth. The ruling was casual, almost off hand. And it has not survived reflection'."

In *Jeffrey Cole Bigelow* v. *Commonwealth of Virginia*[6] the American Supreme Court held that the holding in *Lewis J. Valentine* v. *F.J. Chrestensen*[2] was distinctly a limited one. In view of the foregoing we feel that the observations made in the *Hamdard Dawakhana case*[1] are too broadly stated and the Government cannot draw much support from it. We are of the view that all commercial advertisements cannot be denied the protection of Article 19(1)(*a*) of the Constitution merely because they are issued by businessmen."

19. The combined reading of *Hamdard Dawakhana case*[1] and the *Indian Express Newspapers case*[18] leads us to the conclusion that "commercial speech" cannot be denied the protection of Article 19(1)(*a*) of the Constitution merely because the same are issued by businessmen.

20. Advertising is considered to be the cornerstone of our economic system. Low prices for consumers are dependent upon mass production, mass production is dependent upon volume sales, and volume sales are dependent upon advertising. Apart from the lifeline of the free economy in a democratic country, advertising can be viewed as the lifeblood of free media, paying most of the costs and thus making the media widely available. The newspaper industry obtains 60%/80% of its revenue from advertising. Advertising pays a large portion of the costs of supplying the public with newspaper. For a democratic press the advertising 'subsidy' is crucial. Without advertising, the resources available for expenditure on the 'news' would decline, which may lead to an erosion of quality and quantity. The cost of the 'news' to the public would increase, thereby restricting its 'democratic' availability.

21. A Constitution Bench of this Court in *Sakal Papers (P.) Ltd.* v. *Union of India*[20] considered the constitutional validity of the Newspaper (Price and Page) Act, 1956. The said Act empowered the Government to regulate the prices of newspapers in relation to their pages and sizes and to regulate allocation of space for advertisement matter. This Court held that

19 358 US 498 : 3 L Ed 2d 462 (1959)
20 AIR 1962 SC 305 : (1962) 3 SCR 842

the Act placed restraints on the freedom of press to circulate. This Court further held that the curtailment of the advertisements would bring down the circulation of the newspaper and as such would be hit by Article 19(1)(*a*) of the Constitution of India. In *Sakal Papers case*[20] it was argued before this Court that the publication of advertisements was a trading activity. The diminution of advertisement revenue could not be regarded as an infringement of the right under Article 19(1)(*a*). It was further argued before this Court that devoting large volume of space to advertisements could not be the lawful exercise of the right of freedom to speech and expression or the right of dissemination of news and views. It was also contended that instead of raising the price of the newspaper the object could be achieved by reducing the advertisements. This Court rejected the contentions and held as under:

> "Again Section 3(1) of the Act insofar as it permits the allocation of space to advertisements also directly affects freedom of circulation. If the area for advertisements is curtailed the price of the newspaper will be forced up. If that happens, the circulation will inevitably go down. This would be no remote, but a direct consequence of curtailment of advertisements.
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> * * *
>
> If, on the other hand, the space for advertisement is reduced the earnings of a newspaper would go down and it would either have to run at a loss or close down or raise its price. The object of the Act in regulating the space for advertisements is stated to be to prevent 'unfair' competition. It is thus directed against circulation of a newspaper. When a law is intended to bring about this result there would be a direct interference with the right of freedom of speech and expression guaranteed under Article 19(1)(*a*)."

22. This Court in *Bennett Coleman & Co.* v. *Union of India*[21] held as under: (SCC p. 810, para 34)

> "The law which lays excessive and prohibitive burden which would restrict the circulation of a newspaper will not be saved by Article 19(2). If the area of advertisement is restricted, price of paper goes up. If the price goes up circulation will go down. This was held in *Sakal Papers case*[20] to be the direct consequence of curtailment of advertisement. The freedom of a newspaper to publish any number of pages or to circulate it to any number of persons has been held by this Court to be an integral part of the freedom of speech and expression. This freedom is violated by placing restraints upon it or by placing restraints upon something which is an essential part of that freedom. A restraint on the number of pages, a restraint on circulation and a restraint on advertisements would affect the fundamental rights under Article 19(1)(*a*) on the aspects of propagation, publication and circulation."

21 (1972) 2 SCC 788 : (1973) 2 SCR 757

23. Advertising as a "commercial speech" has two facets. Advertising which is no more than a commercial transaction, is nonetheless dissemination of information regarding the product advertised. Public at large is benefited by the information made available through the advertisement. In a democratic economy free flow of commercial information is indispensable. There cannot be honest and economical marketing by the public at large without being educated by the information disseminated through advertisements. The economic system in a democracy would be handicapped without there being freedom of "commercial speech". In relation to the publication and circulation of newspapers, this Court in *Indian Express Newspaper case*[18], *Sakal Paper case*[20] and *Bennett Coleman case*[21] has authoritatively held that any restraint or curtailment of advertisements would affect the fundamental right under Article 19(1)(*a*) on the aspects of propagation, publication and circulation.

24. Examined from another angle, the public at large has a right to receive the "commercial speech". Article 19(1)(*a*) not only guarantees freedom of speech and expression, it also protects the rights of an individual to listen, read and receive the said speech. So far as the economic needs of a citizen are concerned, their fulfilment has to be guided by the information disseminated through the advertisements. The protection of Article 19(1)(*a*) is available to the speaker as well as to the recipient of the speech. The recipient of "commercial speech" may be having much deeper interest in the advertisement than the businessman who is behind the publication. An advertisement giving information regarding a life-saving drug may be of much more importance to general public than to the advertiser who may be having purely a trade consideration.

25. We, therefore, hold that "commercial speech" is a part of the freedom of speech and expression guaranteed under Article 19(1)(*a*) of the Constitution.

26. Adverting to the question whether Tata's compilation is a telephone directory as envisaged under the Rules, we may examine the scheme of the Rules. Rule 452 provides that a copy of the telephone directory shall be supplied free of charge for each telephone, extension or party line, rented by the subscriber. Although the expression 'telephone directory" has not been defined under the Rules, but Rule 453 clearly provides that an entry in the telephone directory shall contain the telephone number, the initials, the surname and the address of the subscriber or user. Rule 457 makes a telephone directory to be the property of the department. It provides that the telephone directory shall remain the exclusive property of the department and shall be delivered to it on demand. The department reserves the right to amend or delete any entry in the telephone directory at any time and undertakes no responsibility for any omission. It shall not entertain any claim or compensation on account of any entry in or omission from the telephone directory or of an error therein. Then come the two crucial rules. Rule 458 under the heading "Publishing of Telephone Directory" provides that except with the permission of the telegraph authority, no person shall

publish any list of telephone subscribers. Rule 459 deals with 'advertisements' and lays down that the telegraph authority may publish or allow the publication of advertisements in the body of the telephone directory. It is no doubt correct that a telephone directory is an essential instrumentality in connection with the peculiar service which the Union of India offers for the public benefit and convenience. It is as much so as is the telephone receiver itself, it would be practically useless for the receipt and transmission of messages without the accompaniment of such directories. The telephone service being a public utility service, the telephone authority has rightly been given powers under the Act and the Rules to regulate the form and contents of the telephone directory. In the development of this form of public utility service, the telegraph authority has found it practicable and profitable to diminish the cost and increase the profits of operation by making use of its directories as a means and form of advertising available to its subscribers. In the typical classified telephone directory, or the "yellow pages" section of the directory published by the Nigam, there are alphabetical light-faced type listing (for which there is usually no charge), alphabetical bold-faced type listings, alphabetical in-column business card listings and display advertising. "Yellow Pages" of the telephone directory are wholly paid advertising. It cannot be disputed that the paid advertising, apart from the light-faced free listing, is not in the nature of a service rendered by a utility. The "Yellow Pages" attached to the telephone directory issued by the Nigam cannot be a part of the Nigam's public telephone service.

27. Rules 458 and 459 of the Rules have to be interpreted in the light of our findings that "commercial speech" by itself is a fundamental right under Article 19(1)(*a*) of the Constitution and the paid advertisements comprising "Yellow Pages" attached to the telephone directory is not a public utility service.

28. Right to freedom of speech and expression guaranteed under Article 19(1)(*a*) of the Constitution can only be restricted under Article 19(2). The said right cannot be denied by creating a monopoly in favour of the Government or any other authority. "Publication of advertisements" which is a "commercial speech" and protected under Article 19(1)(*a*) of the Constitution cannot be denied to the appellants on the interpretation of Rules 458 and 459 of the Rules. The plain language of the Rules indicate that the prohibition under Rule 458 of the Rules is only in respect of publishing "any list of telephone subscribers". By no stretch of imagination "publication of advertisement" can be equated with a "list of telephone subscribers". A 'list' is a number of names having something in common written out systematically one beneath the other. "List of telephone subscribes" in terms of Rule 458 of the Rules would have to be compiled only on the criterion of the persons listed being telephone subscribers. No person who is not a telephone subscriber could be eligible for inclusion. The said list would necessarily be restricted to the area serviced by the Nigam. On the other hand "Tata Press Yellow Pages" is a buyers' guide comprising of advertisements

given by traders, businessmen and professionals and the only basis/criterion applied for acceptance/publication of advertisements is that an advertiser should be a trader, businessman or professional.

29. The scheme of the Rules make it clear that advertisements are treated differently under the Rules from "list of telephone subscribers". Rule 458 of the Rules intends to protect the exclusive property rights of the Nigam/Union of India created under Rule 457 in respect of the telephone directory prepared in terms of Rule 453. "Publication of advertisements" being a non-utility service cannot come within the prohibition imposed by Rule 453 of the Rules.

30. We, therefore, hold that the Nigam/Union of India cannot restrain the appellant from publishing "Tata Press Yellow Pages" comprising paid advertisements from businessmen, traders and professionals. We are, however, of the view that the appellants cannot publish any "list of telephone subscribers" without the permission of the telegraph authority. Rule 458 of the Rules is mandatory and has to be complied with. The appellant shall not publish in the "Tata Press Yellow Pages" any entries similar to those which are printed in the "White Pages" of the "telephone directory" published by the Nigam under the Rules. We make it clear that the appellant cannot print/publish an entry containing only the telephone number, the initials, the surname and the address of the businessmen, trader or professional concerned.

31. We allow the appeal in the above terms and set aside the judgments of the learned Single Judge and the Division Bench of the High Court. While holding that Rule 458 of the Rules is mandatory, we dismiss the suit filed by the respondents. We leave the parties to bear their own costs.

[CONNECTED CASE]

(BEFORE KULDIP SINGH, B.L. HANSARIA AND S.B. MAJMUDAR, JJ.)

UDGAM BUSINESS MACHINES AND OTHERS .. Petitioners;

Versus

MAHANAGAR TELEPHONE NIGAM LIMITED AND OTHERS .. Respondents.

Writ Petition No. 664 of 1994, decided on August 3, 1995

ORDER

The writ petition is disposed of in the light of our judgment in *Tata Press Ltd.* v. *Mahanagar Telephone Nigam Ltd.*

(2011) 4 Supreme Court Cases 729

(BEFORE MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.)

MOHD. SUKUR ALI .. Appellant;

Versus

STATE OF ASSAM .. Respondent.

Criminal Appeal No. 546 of 2011†, decided on February 24, 2011

A. Criminal Trial — Practice and Procedure — Natural Justice — Adjudication against accused in absence of defence counsel — Unsustainability — Impugned order of High Court deciding criminal appeal in absence of defence counsel and upholding conviction, set aside — Even assuming that non-appearance was due to fault of defence counsel, a criminal appeal against the accused, held, cannot be decided in absence of his counsel — That would violate Arts. 21 and 22(1) — Therefore, if defence counsel could not show sufficient reason for non-appearance, another counsel practising on criminal side should be appointed as amicus curiae — Constitution of India — Arts. 21 and 22(1) — Accused's right of being defended by a counsel — Criminal Trial — Appeal — Generally — Natural justice — Criminal Procedure Code, 1973 — S. 386 — Human and Civil Rights — Right to Fair trial — Right to representation (Paras 5 and 17)

B. Constitution of India — Arts. 21 and 22(1) — Accused's right of being defended by a counsel — Importance and need of stated — Existence of such right in other countries and the importance given to it by our Founding Fathers, discussed — Criminal Trial — Fair and Speedy trial (Paras 5 and 9 to 12)

Powell v. *Alabama*, 77 L Ed 158 : 287 US 45 (1932); *A.S. Mohammed Rafi* v. *State of T.N.*, (2011) 1 SCC 688 : (2011) 1 SCC (Cri) 509; *Man Singh* v. *State of M.P.*, (2008) 9 SCC 542 : (2008) 3 SCC (Cri) 828; *Bapu Limbaji Kamble* v. *State of Maharashtra*, (2005) 11 SCC 413 : (2006) 1 SCC (Cri) 778, *relied on*

Maneka Gandhi v. *Union of India*, (1978) 1 SCC 248, *relied on*

Gideon v. *Wainwright*, 9 L Ed 2d 799 : 372 US 335 (1962); *Brewer* v. *Williams*, 51 L Ed 2d 424 : 430 US 387 (1976), *relied on*

State of Punjab v. *Ajaib Singh*, AIR 1953 SC 10 : 1953 Cri LJ 180 : 1953 SCR 254, *cited*

H.M. Seervai: *Constitutional Law of India*, 3rd Edn., Vol. I, p. 857, *relied on*

Srinivasa Sastri: Speech at Imperial Legislative Council, at introduction of Rowlatt Bill, 7-2-1919, *referred to*

Appeal allowed SS-D/47367/CR

Advocates who appeared in this case :

Fali S. Nariman, Senior Advocate [Azim H. Laskar, Bikas Kargupta, Abhijit Sengupta, Avijit Roy and Ms Vartika Sahay (for M/s Corporate Law Group), Advocates] for the appearing parties.

† Arising out of SLP (Crl.) No. 679 of 2011. From the Judgment and Order dated 1-6-2010 of the High Court of Guwahati, Assam in Crl. A. No. 137 of 2003

Chronological list of cases cited ***on page(s)***

1. (2011) 1 SCC 688 : (2011) 1 SCC (Cri) 509, *A.S. Mohammed Rafi* v. *State of T.N.* 731*d-e*
2. (2008) 9 SCC 542 : (2008) 3 SCC (Cri) 828, *Man Singh* v. *State of M.P.* 731*d-e*
3. (2005) 11 SCC 413 : (2006) 1 SCC (Cri) 778, *Bapu Limbaji Kamble* v. *State of Maharashtra* 731*d-e*
4. (1978) 1 SCC 248, *Maneka Gandhi* v. *Union of India* 731*g*
5. 51 L Ed 2d 424 : 430 US 387 (1976), *Brewer* v. *Williams* 733*c-d*
6. 9 L Ed 2d 799 : 372 US 335 (1962), *Gideon* v. *Wainwright* 733*c*
7. AIR 1953 SC 10 : 1953 Cri LJ 180 : 1953 SCR 254, *State of Punjab* v. *Ajaib Singh* 732*c-d*
8. 77 L Ed 158 : 287 US 45 (1932), *Powell* v. *Alabama* 730*h*

ORDER

1. Leave granted. Heard the learned counsel for the parties.

2. We have also heard Mr Fali S. Nariman, learned Senior Counsel, who very kindly consented to assist us as amicus curiae in this case in which an important constitutional and legal question is involved. That question is whether in a criminal case if the counsel for the accused does not appear, for whatever reasons, should the case be decided in the absence of the counsel against the accused, or should the court appoint an amicus curiae to defend the accused?

3. In the present case, it appears that Criminal Appeal No. 137 of 2003 was decided by the Gauhati High Court on 1-6-2010 in the absence of the counsel for the appellant-accused and the conviction was upheld.

4. Mr Nariman, learned Senior Counsel, pointed out that earlier the counsel for the appellant-accused was Mr A.S. Choudhury but the appellant changed his counsel and appointed Mr B. Sinha in the year 2007 as his new counsel, and this fact is corroborated by the affidavit. Unfortunately, the name of Mr Sinha as counsel for the appellant was not shown in the cause-list when the case was listed and the name of the former counsel Mr Choudhury was shown. In these circumstances, Mr Sinha who was engaged by the appellant as his new counsel did not appear.

5. We are of the opinion that even assuming that the counsel for the accused does not appear because of the counsel's negligence or deliberately, even then the court should not decide a criminal case against the accused in the absence of his counsel since an accused in a criminal case should not suffer for the fault of his counsel and in such a situation the court should appoint another counsel as amicus curiae to defend the accused. This is because liberty of a person is the most important feature of our Constitution. Article 21 which guarantees protection of life and personal liberty is the most important fundamental right of the fundamental rights guaranteed by the Constitution. Article 21 can be said to be the "heart and soul" of the fundamental rights.

6. In our opinion, a criminal case should not be decided against the accused in the absence of a counsel. We are fortified in the view we are taking by a decision of the US Supreme Court in *Powell* v. *Alabama*[1], in which it was observed: (L Ed pp. 170-71)

1. 77 L Ed 158 : 287 US 45 (1932)

"What, then, does a hearing include? Historically and in practice, in our own country at least, it has always included the right to the aid of counsel when desired and provided by the party asserting the right. The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by the counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defence, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect. If in any case, civil or criminal, a State or Federal Court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense."

The above decision of the US Supreme Court was cited with approval by this Court in *A.S. Mohammed Rafi* v. *State of T.N.*[2] vide para 24.

7. A similar view which we are taking here was also taken by this Court in *Man Singh* v. *State of M.P.*[3] and in *Bapu Limbaji Kamble* v. *State of Maharashtra*[4].

8. In this connection we may also refer to Articles 21 and 22(1) of the Constitution. Articles 21 and Articles 22(1) are as under:

"**21.** ***Protection of life and personal liberty***. No person shall be deprived of his life or personal liberty except according to procedure established by law.

* * *

22. ***Protection against arrest and detention in certain cases***.—(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor *shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice*."

(emphasis supplied)

9. In *Maneka Gandhi* v. *Union of India*[5], it has been held by a Constitution Bench of this Court that the procedure for depriving a person of his life or liberty should be fair, reasonable and just. We are of the opinion that it is not fair or just that a criminal case should be decided against an accused in the absence of a counsel. It is only a lawyer who is conversant with law who can properly defend an accused in a criminal case. Hence, in

2 (2011) 1 SCC 688 : (2011) 1 SCC (Cri) 509 : AIR 2011 SC 308
3 (2008) 9 SCC 542 : (2008) 3 SCC (Cri) 828
4 (2005) 11 SCC 413 : (2006) 1 SCC (Cri) 778
5 (1978) 1 SCC 248 : AIR 1978 SC 597

our opinion, if a criminal case (whether a trial or appeal/revision) is decided against an accused in the absence of a counsel, there will be violation of Article 21 of the Constitution.

10. The right to appear through counsel has existed in England for over three centuries. In ancient Rome there were great lawyers e.g. Cicero, Scaevola, Crassus, etc. who defended the accused. In fact the higher the human race has progressed in civilisation, the clearer and stronger has that right appeared, and the more firmly has it been held and asserted. Even in the Nuremberg trials the Nazi war criminals, responsible for killing millions of persons, were yet provided counsel. Therefore when we say that the accused should be provided counsel we are not bringing into existence a new principle but simply recognising what already existed and which civilised people have long enjoyed.

11. Apart from the above, we agree with the eminent jurist Seervai who has said in his *Constitutional Law of India*, 3rd Edn., Vol. I, p. 857:

> "The right to be defended by the counsel does not appear to have been stressed, and was clearly not considered in any detail, in *Ajaib Singh case*[6]. But the right of a person accused of an offence, or against whom any proceedings were taken under the CrPC is a valuable right which was recognised by Section 340 CrPC. Article 22(1), on its language, makes that right a constitutional right, and unless there are compelling reasons, Article 22(1) ought not to be cut down by judicial construction. ... It is submitted that Article 22(1) makes the statutory right under Section 340 CrPC a constitutional right in respect of criminal or quasi-criminal proceedings."

12. We are fully in agreement with Mr Seervai regarding his above observations. The Founding Fathers of our Constitution were themselves freedom fighters who had seen civil liberties of our people trampled under foreign rule, and who had themselves been incarcerated for long period under the formula "Na vakeel, na daleel, na appeal" (No lawyer, no hearing, no appeal). Many of them were lawyers by profession, and knew the importance of counsel, particularly in criminal cases. It was for this reason that they provided for assistance by counsel under Article 22(1), and that provision must be given the widest construction to effectuate the intention of the Founding Fathers.

13. In this connection, we may also refer to the ringing speech of Rt. Hon'ble Srinivasa Sastri, speaking in the Imperial Legislative Council, at the introduction of the Rowlatt Bill, 7-2-1919 (the Rowlatt Act prohibited counsel to appear for the accused in cases under the Act):

> "When the Government undertakes a repressive policy, the innocent are not safe. Men like me would not be considered innocent. The innocent then is he who forswears politics, who takes no part in the public movements of the times, who retires into his house, mumbles his prayers, pays his taxes, and salaams all the government officials all round. The man who interferes in politics, the man who goes about

6. *State of Punjab* v. *Ajaib Singh*, AIR 1953 SC 10 : 1953 Cri LJ 180 : 1953 SCR 254

collecting money for any public purpose, the man who addresses a public meeting, then becomes a suspect. I am always on the borderland and I, therefore, for personal reasons, if for nothing else, undertake to say that the possession, in the hands of the executive, of powers of this drastic nature will not hurt only the wicked. It will hurt the good as well as the bad, and there will be such a lowering of public spirit, there will be such a lowering of the political tone in the country, that all your talk of responsible Government will be mere mockery....

Much better that a few rascals should walk abroad than that the honest man should be obliged for fear of the law of the land to remain shut up in his house, to refrain from the activities which it is in his nature to indulge in, to abstain from all political and public work merely because there is a dreadful law in the land."

14. In *Gideon* v. *Wainwright*[7], Mr Hugo Black, J. of the US Supreme Court delivering the unanimous judgment of the Court observed: (L. Ed p. 805)

"... lawyers in criminal courts are necessities, not luxuries."

15. In *Brewer* v. *Williams*[8], Mr Stewart, J. delivering the opinion of the US Supreme Court observed: (L Ed p. 441)

"The pressures on state executive and judicial officers charged with the administration of the criminal law are great.... But it is precisely the predictability of those pressures that makes imperative a resolute loyalty to the guarantees that the Constitution extends to us all."

16. For the reasons stated above, we allow this appeal, set aside the impugned judgment of the High Court and remand the matter to the High Court for a fresh decision after hearing Mr Sinha, the new learned counsel for the appellant in the High Court, or any other counsel which has been engaged by the appellant, or in the absence of these, an amicus curiae being a lawyer practising on the criminal side. The case shall be heard by a Bench of Judges other than those who passed the impugned judgment. The order dated 24-1-2011 passed by this Court granting bail to the appellant shall continue till the appeal is decided by the High Court.

17. We reiterate that in the absence of a counsel, for whatever reasons, the case should not be decided forthwith against the accused but in such a situation the court should appoint a counsel who is practising on the criminal side as amicus curiae and decide the case after fixing another date and hearing him. If on the next date of hearing the counsel, who ought to have appeared on the previous date but did not appear, now appears, but cannot show sufficient cause for his non-appearance on the earlier date, then he will be precluded from appearing and arguing the case on behalf of the accused. But, in such a situation, it is open to the accused to either engage another counsel or the court may proceed with the hearing of the case by the counsel appointed as amicus curiae.

7. 9 L Ed 2d 799 : 372 US 335 (1962)
8. 51 L Ed 2d 424 : 430 US 387 (1976)

(2016) 14 Supreme Court Cases 416

(Record of Proceedings)

(BEFORE DIPAK MISRA, R. BANUMATHI AND ASHOK BHUSHAN, JJ.)

MUKESH AND ANOTHER . . Petitioners;

Versus

STATE (NCT OF DELHI) . . Respondent.

SLPs (Crl.) Nos. 3119-20 of 2014* with
Nos. 5027-28 of 2014, decided on July 18, 2016

Practice and Procedure —Amicus Curiae — Role and responsibility — Held, it is duty of Amicus Curiae to assist court with regard to the case and not with regard to any particular party — Advocates — Amicus Curiae (Para 2)

Mukesh v. *State (NCT of Delhi)*, SLP (Cri) No. 3119 of 2014, order dated 11-7-2016 (SC), *referred to*

P-D/57441/SVRL

Advocates who appeared in this case :

Raju Ramachandran (Amicus Curiae) and Sanjay R. Hegde (Amicus Curiae), Senior Advocates [K. Parameshwar, Ms Mythili Vijay Kr. Thakam, Vikram Aditya Narayan, Anil Kr. Mishra-I, S. Nithin, Atal Shankar Vinod, Parnjal Kishore, Manohar Lal Sharma, Ms Suman, Nitin Kr. Thakur (Advocate-on-Record), G.S. Mani, A.P. Singh, B.P. Sinha, Ms Geeta Singh Chauhan, Ms Richa Singh, Ms Pratima Rani, A.A. Raj and M.M. Kashyap, Advocates] for the Petitioners;

Sidharth Luthra, Senior Advocate [D.S. Mahra (Advocate-on-Record), Ajay Sharma, Ms Supriya Juneja, V. Gandhi, S. Chaudhary, K.L. Janjani, Jaggi, Jaspreet S. Rai, Ishan Rohan, Siddhant Sharma, Shyamal Kumar (Advocate-on-Record), Rajan Bobde, Ms Richa Relhan, Ms Sanyya Pawar, Ms Prameeta Bose and Rajat Joseph (Advocate-on-Record), Advocates] for the Respondent.

Chronological list of cases cited ***on page(s)***

1. SLP (Cri) No. 3119 of 2014, order dated 11-7-2016 (SC), *Mukesh* v. *State (NCT of Delhi)* 416*f g*

ORDER

1. At the commencement of the hearing, Mr Raju Ramachandran and Mr Sanjay R. Hegde, learned Senior Counsel who have been appointed as friends of the Court expressed some reservation regard being had to some kind of communication by two of the petitioners.

2. We can appreciate the anguish expressed by the learned Amici Curiae. We have clarified vide our order dated 11-7-2016[1] about the role ascribed to the

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* From the Judgment and Order dated 13-3-2014 of the High Court of Delhi in Death Sentence Reference No. 6 of 2013 : 2014 SCC OnLine Del 1138 : (2014) 212 DLT 99

1 *Mukesh* v. *State (NCT of Delhi)*, SLP (Cri) No. 3119 of 2014, order dated 11-7-2016 (SC), wherein it was directed:

"1. Crl. MPs Nos. 8954-55 and 9158-59 in SLPs (Crl.) Nos. 3119-20 of 2014, 8956-57 and 9099-100 in SLPs (Crl.) Nos. 5027-28 of 2014 are allowed. Let the matters be listed on 18-7-2016 at 2.00 p.m. The learned counsel for the parties are requested to come ready to argue the matter.

Amicus Curiae by the court. We repeat at the cost of repetition that this Court has complete faith in the intellectual integrity in the objective assistance of the learned Amici Curiae who have been appointed by this Court and, therefore, they should not feel any agony on any score. Their duty is to assist the court and we are sure they will do the same. We may hasten to clarify, the learned friends of the Court shall assist the Court with regard to the case and not with regard to any particular petitioner.

3. Heard Mr Manohar Lal Sharma, learned counsel for the petitioners. The matter remains part-heard. Let the matter be listed for further hearing at 2.00 p.m. on 22-7-2016.

(footnote 1 *contd.*)

2. It is submitted by Mr M.L. Sharma and Mr G.S. Mani, learned counsel for the petitioners that there is an erroneous impression in the mind of the people that the engaged counsel appearing for the petitioners are unable to assist the Court and that is why the Court has appointed two Amici Curiae to assist the Court. On a query being made, Mr Luthra, learned Senior Counsel appearing for the State fairly stated that the Amicus Curiae appointed by this Court was meant to have the perceptions from all spectrums. Be it clarified, when the Court appoints an Amicus Curiae, even when the counsel are engaged by the parties, it does not mean that the counsel are not able to assist. The Court appoints Amicus Curiae depending upon multiple factors and in the present case, two Senior Counsel were appointed to assist the Court regard being had to the gravity of the matter. Mr Anil Kumar Mishra, learned Advocate-on-Record is permitted to appear along with Mr Santosh Hegde, learned Amicus Curiae.

3. Call on the date fixed. Registry is directed to list the matter as Item 1 on that day."

3-Judge Bench
2019
Dec. 18

(2019) 20 Supreme Court Cases 196

(BEFORE UDAY U. LALIT, INDU MALHOTRA AND KRISHNA MURARI, JJ.)

ANOKHILAL .. Appellant;

Versus

STATE OF MADHYA PRADESH .. Respondent.

Criminal Appeals Nos. 62-63 of 2014†, decided on December 18, 2019

A. **Constitution of India — Arts. 21 and 39-A — Free legal aid and equal justice — Principles relating to, summarised — Right to free legal services is an essential ingredient of "reasonable, fair and just" procedure for a person accused of an offence and it must be held implicit in guarantee of Art. 21**

— Art. 39-A emphasises that free legal service is an inalienable element of "reasonable, fair and just" procedure for without it a person suffering from economic or other disabilities would be deprived of opportunity for securing justice — Right to free legal services is the fundamental right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and State is under mandate to provide lawyer to accused person if circumstances of case and needs of justice so require, provided of course the accused person does not object to provision of such lawyer — Criminal Trial — Practice and Procedure — Amicus Curiae/Pleader (Para 11)

Hussainara Khatoon (4) v. *State of Bihar*, (1980) 1 SCC 98 : 1980 SCC (Cri) 40, *relied on*

B. **Constitution of India — Arts. 21 and 39-A — Right to adequate legal representation — Extension of real and meaningful representation — Necessity of — Amicus Curiae (AC) representing accused not afforded sufficient opportunity to study matter — AC did not have sufficient time to go through even basic documents, nor had advantage of any discussion or interaction with accused, and time to reflect over matter — Thus, even before AC could come to grips of matter, charges were framed — Aforesaid infraction resulted in miscarriage of justice — Therefore, conviction and sentence passed against accused by courts below, set aside — Directions for de novo consideration given**

— Case of kidnapping, rape and murder of girl child of about 9 years of age

As no advocate entered appearance on behalf of appellant-accused, Legal Services Authority appointed Amicus Curiae (AC) to represent him in trial court — On the same day of such appointment, charges were framed against appellant, and within 1 month of incident, he was convicted under Ss. 302, 363, 366, 376(2)(f) & 377 IPC and S. 6 of the POCSO Act, 2012, and sentenced to death, besides sentences under other sections, which was confirmed by High Court

Held, in instant case, AC was appointed, and on same date, AC was called upon to defend appellant-accused at the stage of framing of charges — AC, thus, did not have sufficient time to go through even basic documents, nor

† Arising from the Final Judgment and Order in *Anokhilal, In re*, 2013 SCC OnLine MP 4713 (Madhya Pradesh High Court, Jabalpur Bench, Crl. Reference No. 4 of 2013 and Crl. A. No. 748 of 2013, dt. 27-6-2013)

advantage of any discussion or interaction with accused, and time to reflect over matter — Thus, even before AC could come to grips of matter, charges were framed

Provisions concerned viz. Ss. 227 and 228 CrPC, contemplate framing of charge upon consideration of record of case and documents submitted therewith, and after "hearing the submissions of the accused and the prosecution in that behalf" — If hearing for purposes of aforesaid provisions is to be meaningful, and not just a routine affair, right under said provisions stood denied to appellant

— Trial court on its own, ought to have adjourned matter for some time, so that AC could have had advantage of sufficient time to prepare matter — Approach adopted by trial court, may have expedited conduct of trial, but did not further cause of justice — Not only were charges framed same day, but trial itself was concluded within a fortnight thereafter In the process, assistance that appellant was entitled to in the form of legal aid, could not be real and meaningful

— There are other issues which also arise in instant matter, namely, that examination of 13 witnesses within 7 days, examination of accused under provisions of S. 313 CrPC even before complete evidence was led by prosecution, and not waiting for FSL and DNA reports in present case — DNA report definitely formed foundation of discussion by High Court — However, record shows that DNA report was received almost at fag end of matter, and after such receipt, though technically opportunity was given to accused, issue on the point was concluded on the very same day Concluding paragraphs of judgment of trial court show, that entire trial was completed in less than 1 month with assistance of prosecution as well as defence, but, such expeditious disposal definitely left glaring gaps

In aforesaid circumstances, held, counsel appointed through Legal Services Authority to represent appellant in present case ought to have been afforded sufficient opportunity to study matter and infraction in that behalf resulted in miscarriage of justice In matters where death sentence could be one of alternative punishments, courts must be completely vigilant and see that full opportunity at every stage is afforded to accused

— Therefore, held, judgments of conviction and orders of sentence passed by trial court and High Court against appellant, are set aside, directing de novo consideration

— Further, it shall be open to counsel representing appellant in trial court, to make any submissions touching upon issues: (i) whether charges framed by trial court are required to be amended or not; (ii) whether any of prosecution witnesses need to be recalled for further cross-examination; and (iii) whether any expert evidence is required to be led in response to FSL report and DNA report Matter shall, thereafter, be considered on basis of available material on record in accordance with law Criminal Trial Practice and Procedure — Amicus Curiae/Pleader — Penal Code, 1860 — Ss. 302, 363, 366, 376(2)(f)

and 377 Crimes Against Women and Children Protection of Children from Sexual Offences Act, 2012 — S. 6 — Criminal Procedure Code, 1973, Ss. 227, 228 and 313 (Paras 7 to 30)

Bashira v. *State of U.P.*, (1969) 1 SCR 32 : AIR 1968 SC 1313 : 1968 Cri LJ 1495, *followed*

Mohd. Hussain v. *State (NCT of Delhi)*, (2012) 9 SCC 408 : (2012) 3 SCC (Cri) 1139; *Hussainara Khatoon (4)* v. *State of Bihar*, (1980) 1 SCC 98 : 1980 SCC (Cri) 40; *Rajoo* v. *State of M.P.*, (2012) 8 SCC 553 : (2012) 3 SCC (Cri) 984; *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158 : 2004 SCC (Cri) 999; *Ambadas Laxman Shinde* v. *State of Maharashtra*, (2018) 18 SCC 788 : (2019) 3 SCC (Cri) 452; *Imtiyaz Ramzan Khan* v. *State of Maharashtra*, (2018) 9 SCC 160 : (2018) 3 SCC (Cri) 721; *V.K. Sasikala* v. *State*, (2012) 9 SCC 771 : (2013) 1 SCC (Cri) 1010, *relied on*

Ankush Maruti Shinde v. *State of Maharashtra*, (2009) 6 SCC 667 : (2009) 3 SCC (Cri) 308, *held, recalled*

Anokhilal, In re, 2013 SCC OnLine MP 4713, *reversed*

Anokhilal v. *State of M.P.*, 2018 SCC OnLine SC 3511; *Anokhilal* v. *State of M.P.*, (2019) 20 SCC 225; *Mohd. Hussain* v. *State (NCT of Delhi)*, (2012) 2 SCC 584 : (2012) 1 SCC (Cri) 919; *State* v. *Mohd. Hussain*, 2006 SCC OnLine Del 867 : (2007) 140 DLT 428; *State of Maharashtra* v. *Ankush Maruti Shinde*, 2007 SCC OnLine Bom 1483; *Ankush Maruti Shinde* v. *State of Maharashtra*, 2008 SCC OnLine SC 15; *Ankush Maruti Shinde* v. *State of Maharashtra*, (2019) 15 SCC 470 : (2020) 1 SCC (Cri) 315, *referred to*

Alla Nageswara Rao, In re, 1954 SCC OnLine AP 115 : AIR 1957 AP 505; *Mathai Thommen* v. *State*, AIR 1959 Ker 241; *Khatri (2)* v. *State of Bihar*, (1981) 1 SCC 627 : 1981 SCC (Cri) 228; *Suk Das* v. *State (UT of Arunachal Pradesh)*, (1986) 2 SCC 401 : 1986 SCC (Cri) 166; *Machander* v. *State of Hyderabad*, (1955) 2 SCR 524 : AIR 1955 SC 792 : 1955 Cri LJ 1644; *Gopi Chand* v. *Delhi Admn.*, AIR 1959 SC 609 : 1959 Cri LJ 782; *Tyron Nazareth* v. *State of Goa*, 1994 Supp (3) SCC 321 : 1994 SCC (Cri) 1716; *Tyron Nazareth* v. *State*, 1988 SCC OnLine Bom 44 : (1989) 1 Bom CR 293; *S. Gain* v. *Grindlays Bank Ltd.*, (1986) 1 SCC 654 : 1986 SCC (Cri) 64; *Abdul Rehman Antulay* v. *R.S. Nayak*, (1992) 1 SCC 225 : 1992 SCC (Cri) 93; *Hussainara Khatoon (1)* v. *State of Bihar*, (1980) 1 SCC 81 : 1980 SCC (Cri) 23; *Hussainara Khatoon (3)* v. *State of Bihar*, (1980) 1 SCC 93 : 1980 SCC (Cri) 35; *Raghubir Singh* v. *State of Bihar*, (1986) 4 SCC 481 : 1986 SCC (Cri) 511; *Kartar Singh* v. *State of Punjab*, (1994) 3 SCC 569 : 1994 SCC (Cri) 899; *Imtiyaz Ramzan Khan* v. *State of Maharashtra*, (2018) 9 SCC 163; *Barker* v. *Wingo*, 1972 SCC OnLine US SC 154 : 33 L Ed 2d 101 : 407 US 514 (1972); *United States* v. *Ewell*, 1966 SCC OnLine US SC 24 : 15 L Ed 2d 627 : 383 US 116 (1966), *cited*

C. Criminal Trial — Practice and Procedure — Amicus Curiae/Pleader — Appointment of — Principles regarding, summarised — Constitution of India, Arts. 21 and 39-A

Held :

Certain norms regarding appointment of Amicus Curiae are laid down below:

(1) In all cases where there is a possibility of life sentence or death sentence, advocates who have put in minimum of 10 years' practice at the Bar alone be considered to be appointed as Amicus Curiae or through legal services to represent an accused.

(2) In all matters dealt with by the High Court concerning confirmation of death sentence, Senior Advocates of the Court must first be considered to be appointed as Amicus Curiae.

(3) Whenever any counsel is appointed as Amicus Curiae, some reasonable time may be provided to enable the counsel to prepare the matter. There cannot

be any hard-and-fast rule in that behalf. However, a minimum of seven days' time may normally be considered to be appropriate and adequate.

(4) Any counsel, who is appointed as Amicus Curiae on behalf of the accused, must normally be granted to have meetings and discussion with the accused concerned. Such interactions may prove to be helpful as was noticed in *Imtiyaz Ramzan Khan*, (2018) 9 SCC 160. (Paras 31 to 31.4)

Imtiyaz Ramzan Khan v. *State of Maharashtra*, (2018) 9 SCC 160 : (2018) 3 SCC (Cri) 721, *relied on*

D. **Criminal Trial — Generally — Object of — What is — Reiterated, object of criminal trial is to search for truth and trial is not a bout over technicalities and must be conducted in such manner as will protect innocent and punish guilty (Para 20.2)**

Zahira Habibulla H. Sheikh v. *State of Gujarat*, (2004) 4 SCC 158 : 2004 SCC (Cri) 999; *Mohd. Hussain* v. *State (NCT of Delhi)*, (2012) 9 SCC 408 : (2012) 3 SCC (Cri) 1139, *relied on*

E. **Criminal Trial — Fair and Speedy trial — Time-bound/Expeditious disposal — Requirement of, in criminal matters — Should not be at expense of basic elements of fairness and opportunity to accused**

— Held, expeditious disposal is undoubtedly required in criminal matters and that would naturally be part of guarantee of fair trial However, attempts to expedite process should not be at expense of basic elements of fairness and opportunity to accused, on which postulates, entire criminal administration of justice is founded In pursuit of expeditious disposal, cause of justice must never be allowed to suffer or be sacrificed — What is paramount, is cause of justice and keeping basic ingredients, which secure, that as a core idea and ideal, process may be expedited, but fast tracking of process must never ever result in burying cause of justice Constitution of India, Art. 21 (Paras 25 and 26)

V.K. Sasikala v. *State*, (2012) 9 SCC 771 : (2013) 1 SCC (Cri) 1010, *relied on*

F. **Criminal Trial — Sentence — Death sentence — Generally — Caution in matters where death sentence could be one of alternative punishments — Held, caution is, that courts must be completely vigilant and see that full opportunity at every stage is afforded to accused (Para 28)**

Y-D/63481/SR

Advocates who appeared in this case :

Varun Chopra, Deputy Advocate General, Sidharth Luthra and Ms Sonia Mathur, Senior Advocates (Anoopam N. Prasad, Ms Mehaak Jaggi, Ms K.V. Bharathi Upadhyaya, Gurtejpal Singh, Harsh Parashar, Sushil Kr. Dubey, Ms Divya A. Nair, Puneet Pathak, Anuj Aggarwal, Anmol Chandan, Ms Priyanka Das, Sumit Upadhyay and Arvind Kr. Sharma, Advocates), for the appearing parties.

Chronological list of cases cited ***on page(s)***

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2. (2019) 15 SCC 470 : (2020) 1 SCC (Cri) 315. *Ankush Maruti Shinde* v. *State of Maharashtra* 221*c*
3. (2018) 18 SCC 788 : (2019) 3 SCC (Cri) 452. *Ambadas Laxman Shinde* v. *State of Maharashtra* 221*a*, 222*g*
4. (2018) 9 SCC 163, *Imtiyaz Ramzan Khan* v. *State of Maharashtra* 221*e*

5. (2018) 9 SCC 160 : (2018) 3 SCC (Cri) 721. *Imtiyaz Ramzan Khan* v. *State of Maharashtra* 221*c d*. 225*b c*
6. 2018 SCC OnLine SC 3511. *Anokhilal* v. *State of M.P.* 208*g*. 209*e*, 225*c*
7. 2013 SCC OnLine MP 4713. *Anokhilal, In re* **(reversed)** 201*a*, 208*a b*
8. (2012) 9 SCC 771 : (2013) 1 SCC (Cri) 1010. *V.K. Sasikala* v. *State* 223*f-g*
9. (2012) 9 SCC 408 : (2012) 3 SCC (Cri) 1139. *Mohd. Hussain* v. *State (NCT of Delhi)* 209*g h*. 215*d*. 219*a b*. 222*d*
10. (2012) 8 SCC 553 : (2012) 3 SCC (Cri) 984. *Rajoo* v. *State of M.P.* 212*g*
11. (2012) 2 SCC 584 : (2012) 1 SCC (Cri) 919. *Mohd. Hussain* v. *State (NCT of Delhi)* 215*d-e*, 218*g*
12. (2009) 6 SCC 667 : (2009) 3 SCC (Cri) 308. *Ankush Maruti Shinde* v. *State of Maharashtra* 220*e*. 220*g*. 221*b-c*
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14. 2007 SCC OnLine Bom 1483. *State of Maharashtra* v. *Ankush Maruti Shinde* 220*e f*
15. 2006 SCC OnLine Del 867 : (2007) 140 DLT 428. *State* v. *Mohd. Hussain* 218*f-g*
16. (2004) 4 SCC 158 : 2004 SCC (Cri) 999. *Zahira Habibulla H. Sheikh* v. *State of Gujarat* 219*c*, 219*g-h*, 222*d*
17. (1994) 3 SCC 569 : 1994 SCC (Cri) 899. *Kartar Singh* v. *State of Punjab* 218*e*
18. 1994 Supp (3) SCC 321 : 1994 SCC (Cri) 1716. *Tyron Nazareth* v. *State of Goa* 216*e f*
19. (1992) 1 SCC 225 : 1992 SCC (Cri) 93. *Abdul Rehman Antulay* v. *R.S. Nayak* 217*f g*, 218*a*
20. 1988 SCC OnLine Bom 41 : (1989) 1 Bom CR 293. *Tyron Nazareth* v. *State* 217*a-b*
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22. (1986) 2 SCC 401 : 1986 SCC (Cri) 166. *Suk Das* v. *State (UT of Arunachal Pradesh)* 214*d-e*, 215*a*. 216*f-g*
23. (1986) 1 SCC 654 : 1986 SCC (Cri) 64. *S. Guin* v. *Grindlays Bank Ltd.* 217*a b*
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26. (1980) 1 SCC 93 : 1980 SCC (Cri) 35. *Hussainara Khatoon (3)* v. *State of Bihar* 217*g*
27. (1980) 1 SCC 81 : 1980 SCC (Cri) 23. *Hussainara Khatoon (1)* v. *State of Bihar* 217*g*
28. 1972 SCC OnLine US SC 154 : 33 L Ed 2d 101 : 407 US 514 (1972). *Barker* v. *Wingo* 218*d-e*
29. (1969) 1 SCR 32 : AIR 1968 SC 1313 : 1968 Cri LJ 1495. *Bashira* v. *State of U.P.* 209*g h*. 210*a*. 210*c d*. 210*f*. 212*a*. 222*e*. 222*e-f*. 222*g*. 224*b*
30. 1966 SCC OnLine US SC 24 : 15 L Ed 2d 627 : 383 US 116 (1966). *United States* v. *Ewell* 218*d-e*
31. AIR 1959 SC 609 : 1959 Cri LJ 782. *Gopi Chand* v. *Delhi Admn.* 216*a*
32. AIR 1959 Ker 241. *Mathai Thommen* v. *State* 211*d e*
33. (1955) 2 SCR 524 : AIR 1955 SC 792 : 1955 Cri LJ 1644. *Machander* v. *State of Hyderabad* 215*g*
34. 1954 SCC OnLine AP 115 : AIR 1957 AP 505. *Alla Nageswara Rao, In re* 211*h*, 222*f*

The Judgment of the Court was delivered by

UDAY U. LALIT, J.— These appeals by special leave challenge the final judgment and order dated 27-6-2013 passed by the High Court[1] in *Anokhilal, In re*[2].

2. The relevant facts for the purposes of these appeals, in brief, are as under:

2.1. On 30-1-2013 a missing report was lodged by one Ramlal that his daughter (hereinafter referred to as "the victim") aged about nine years was missing since 6 p.m. and that the appellant, his neighbour had sent the victim to get a bidi from a kirana shop but the victim never returned back. Pursuant to this reporting, FIR No. 38 of 2013 was registered on 30-1-2013 with Police Station Chaigaon Makhan, Khandwa for the offences under Sections 363 and 366 of the Penal Code, 1860 ("IPC" for short) against the appellant.

2.2. The body of the victim was found in an open field on 1-2-2013.

2.3. The appellant was arrested on 4-2-2013, and after completion of investigation charge-sheet was filed on 13-2-2013 in the court concerned and the case was committed to the Sessions Court on 18-2-2013. The case was posted for 19-2-2013 to consider whether charges be framed or not.

2.4. It appears that since no advocate had entered appearance on behalf of the appellant, on 18-2-2013 a learned advocate was appointed by the Legal Aid Services Authority to represent the appellant on 19-2-2013. That the learned advocate, however, did not appear on 19-2-2013 when the case was taken up, and as such another learned advocate came to be appointed through Legal Aid Services to represent the appellant. Such appointment was done on 19-2-2013 and on the same day the charges were framed against the appellant for the offences punishable under Sections 302, 363, 366, 376(2)(*f*) and 377 IPC and under Sections 4, 5 and 6 of the Protection of Children from Sexual Offences Act, 2012.

2.5. In the next seven days i.e. by 26-2-2013, all thirteen prosecution witnesses were examined.

2.6. Thereafter, the case was dealt with on 27-2-2013, 28-2-2013, 1-3-2013, 2-3-2013 and 4-3-2013 and the orders passed by the trial court were:

> "(*i*) 27-2-2013
>
> State through Shri B.L. Mandloi, P.P.
>
> Accused Anokhilal present from judicial custody. Shri D.S. Chauhan, Advocate present on his behalf.
>
> The prosecution filed application together with letter of District Prosecution Officer and with copy of warrant, etc. documents. Copies are supplied. The defence has no objection in taking above documents on record, hence considering the reasons of as explained for delay the application is liable to be accepted and above documents are taken on record.

1 The High Court of Madhya Pradesh at Jabalpur.
2 2013 SCC OnLine MP 4713

The prosecution stated that it does not want to produce any other oral evidence it has been requested that DNA report and FSL report will be placed on record as and when they are received, which is immediately to be received, not any other oral evidence is to be adduced and besides placing on record above report, rest of evidence was declared to be ended.

It would be just and proper to examine accused under Section 313 CrPC for evidence available. Hence, accused examined under Section 313 CrPC. On entering in defence, the accused stated that he does not want to adduce any evidence in defence. Not any written statement under Section 233(2) CrPC has been filed.

Put up on 28-2-2013 for placing on record DNA report, etc. and final arguments.

sd/- (illegible)
Sessions Judge and Special Judge
Under the Protection of Children from Sexual Offences Act,
Khandwa

(*ii*) 28-2-2013

State through Shri B.L. Mandloi, P.P.

Accused Anokhilal present from judicial custody. Shri D.S. Chauhan, Advocate present on his behalf.

An application was filed on behalf of prosecution with FSL reports. Copies supplied. Heard arguments.

Since there is no effective objection regarding allowing above application and taking on record above FSL report and even otherwise these may be helpful in providing justice, hence reports are taken on record.

Above reports may be acceptable under Section 293 CrPC, on this basis it was requested to mark exhibit on above reports. Defence has not raised any objection in this regard, hence with consent of both the parties above reports presented by Regional Forensic Science Laboratory, Jhumarghat Rau, Indore (M.P.) are marked as Exts. C-1, C-2 and C-3.

The prosecution has not yet received DNA report, the same will be placed on record as and when it is received, saying such like earlier it was stated that any other evidence is not to be produced, hence hearing final arguments in case started, which remained incomplete.

Put up on 1-3-2013 for placing on record DNA report and rest final arguments.

sd/-
Sessions Judge, Khandwa

(*iii*) 1-3-2013

State through Shri B.L. Mandloi, P.P.

Accused Anokhilal present from judicial custody. Shri D.S. Chauhan, Advocate present on his behalf.

The prosecution has not received DNA report, same will be placed on record on receipt.

Hearing of rest of final arguments started which remained incomplete.

Put up on 2-3-2013 for placing on record DNA report and rest of final arguments.

sd/-
Sessions Judge
Khandwa

(*iv*) 2-3-2013

State through Shri B.L. Mandloi, P.P.

Accused Anokhilal present from judicial custody. Shri D.S. Chauhan, Advocate present on his behalf.

The accused is being tried under Section 9 of the Protection of Children from Sexual Offences Act, 2012 and according to provisions of Section 5(*f*) of above Act, the situation of previous conviction for the sexual offence under Section 377 IPC is also clear and above fact has found mention in Charge 8 framed in earlier with intention that despite being previously convicted for sexual offence under Section 377 IPC but in above charge date, time and place, etc. is not mentioned regarding conviction according to provisions of Section 211(7) CrPC. Hence, as is provided under Section 211(7) CrPC the Court before passing order of conviction may add statement of fact, date and place of conviction, hence in this regard both the parties were heard. In the earlier copy of judgment of previous conviction was not filed due to which date, place, etc. were not mentioned in charge and during examination under Section 313 CrPC in Question 14 in this regard by giving reference of copy of judgment together with date, time and place, etc. conviction was passed and appeal was filed or not in this regard clear questions were asked, hence it also does not reflect that any prejudice has been caused to accused nevertheless to avoid technical fault, according to provisions of Section 211(7) CrPC, charge was modified and amended charge was read over and explained to accused and his plea was recorded.

Giving opportunity of additional evidence/cross-examination to both parties regarding amended charge would be just and proper, in this regard both the parties were intimated.

Prosecution today by placing on record certain additional documents articles, etc. led additional evidence and application under Section 311 CrPC has been filed. Besides this, he stated not to adduce any other additional evidence in regard to amendment in charge. On the other hand defence also in this regard stated not to conduct cross-examine any witness already examined and also stated not to furnish any additional evidence or evidence in defence.

The prosecution presented articles relating to case in sealed condition and an application with documents was filed under Section 311 CrPC. Copy supplied. Arguments heard.

It is proposed to file received DNA report and correspondent of FSL/ DNA and in above regard also request has been made to re-examine Investigating Officer K.K. Mishra (PW 13) and Head Constable Harikaran PW 12 and accordingly, permission has been sought.

It has been stated that document and report concerned since were received in delay and it was filed as earliest and by virtue of this correspondence relating to above are being filed now. It is mentioned that DNA report was received on 1-3-2013 itself hence considering the reason so disclosed during arguments defence has not raised any effective objection hence, application stands allowed and documents concerned are taken on record and witness K.K. Mishra, PW 13 and Hari Karan, PW 12 are permitted to be re-examined.

It has been stated by the Public Prosecutor that above witnesses are present today, hence, both the above witnesses were additionally examined with consent of defence and they were discharged after re-examination. Prosecution stated not to adduce any other evidence as such closed its evidence.

The packet of article so filed is in sealed condition, which was opened in presence of both the parties. After evidence let same be deposited in malkhana by duly sealing with memo of property.

In regard to additional evidence so adduced accused was re-examined under Section 313 CrPC and again on entering in defence, the accused stated not to adduce any evidence in defence nor any written statement was filed under Section 233(2) CrPC and as such defence closed its evidence. Put up again for final arguments.

sd/-
Sessions Judge and Special Judge
Under the Protection of Children from Sexual Offences Act,
Khandwa

Again

State through Shri B.L. Mandloi, P.P.

Accused Anokhilal present from judicial custody.

Shri D.S. Chauhan, Advocate present on his behalf.

Heard final arguments. Put up on 4-3-2013 for judgment.

sd/-
Sessions Judge and Special Judge
Under the Protection of Children from Sexual Offences Act,
Khandwa

(v) 4-3-2013

State through Shri B.L. Mandloi, P.P.

Accused Anokhilal present from judicial custody. Shri D.S. Chauhan, Advocate present on his behalf. The judgment pronounced and signed separately in open court, according to which accused was convicted under Sections 363, 366, 377, 376(2)(*f*) and Section 302 IPC read with Section 6 of the Protection of Children from Sexual Offences Act, 2012.

Arguments were heard on the question of sentence. It was informed to both the parties that if they wish, they may adduce evidence regarding order of sentence.

It was stated by the prosecution that due to framing charge under Section 211(7) CrPC regarding previous conviction of accused, it has already adduced evidence at evidence stage regarding previous conviction of accused and his previous criminal conduct, hence now he does not want to adduce evidence regarding conviction.

On the other hand, the learned counsel for the defence Shri D.S. Chauhan has stated that during whole trial not any member of family of accused has appeared and in regard to his conduct in jail the prosecution itself has already adduced certificate, etc. hence he stated not to adduce any evidence regarding order of sentence, nevertheless both the parties were informed that if they wish to adduce any evidence in this regard, then they may do so. By giving above information to both the parties, detailed arguments were heard regarding order of sentence.

Put up again after some time for order of sentence.

sd/-

Sessions Judge and Special Judge

Under the Protection of Children from Sexual Offences Act, Khandwa

Again

State through Shri B.L. Mandloi, P.P.

Accused Anokhilal present from judicial custody. Shri D.S. Chauhan, Advocate present on his behalf.

Both the parties again stated not to adduce any evidence regarding order of sentence, hence order of sentence was pronounced separately in open court according to which accused is convicted and sentenced as follows regarding charges:

No.	*Offence u/S.*	*Sentence of rigorous imprisonment*	*Fine*	*In default of payment of fine, additional sentence of rigorous imprisonment*
1.	302 IPC	Death sentence	-	-
2.	363 IPC	Seven years	1000	One month
3.	366 IPC	Seven years	1000	One month
4.	377 IPC	Seven years	1000	One month
5.	376(2) IPC	Life imprisonment	1000	One month

Due to being similar act, no separate sentence is being awarded for the offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012.

By preparing warrant of conviction in this regard let accused be sent to jail.

The accused has been sentenced to death also and in above regard according to Section 366 CrPC it has also been directed that death penalty be not executed so long as it is not confirmed by the Hon'ble High Court, hence in that regard according to provision of Section 366(2) CrPC warrant of handing over accused sentenced to death to be taken in custody of jail, is attached separately with warrant. Copy of judgment is given to accused and according to provisions of Section 363(4) CrPC accused is informed that he has right to appeal and period of appeal.

Let entire record of this case be sent for placing before the Hon'ble High Court forthwith for confirmation of death penalty as per provisions of Section 366 CrPC.

sd/-
Sessions Judge and Special Judge
Under the Protection of Children from Sexual Offences Act,
Khandwa"

2.7. In its judgment and order dated 4-3-2013, the trial court accepted the case of the prosecution and stated:

"65. From above analysis it is clear that present case having similar facts like judicial citation of Rajendra Prahladrao Vasnic is in the category of "the rarest of the rare" case and excess to that in the present case accused is previous convict in sexual offence of similar nature. Hence, in view of above analysis imposing punishing of only imprisonment for life cannot be adequate and death sentence is necessary.

66. Accused Anokhilal son of Sitaram has been convicted in charge of offence punishable under Sections 363, 366, 376(2)(*f*), 377 and 302 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 hence, according to analysis so done:

(One) For the offence under Section 302 IPC accused Anokhilal son of Sitaram is awarded "death sentence". By tying knot in neck, he be hanged till his death. It is also directed that the above death sentence be not executed unless it is confirmed by the Hon'ble High Court.

(Two) For the offence under Section 363 IPC the accused is sentenced to seven years' rigorous imprisonment with fine of Rs 1000, in default of payment of fine, he is directed to undergo another one month rigorous imprisonment.

(Three) For the offence under Section 366 IPC, the accused is sentenced to seven years' rigorous imprisonment with fine of Rs 1000,

in default of payment of fine, the accused is directed to undergo another one month rigorous imprisonment.

(Four) For the offence under Section 376(2)(*f*) IPC the accused is sentenced to imprisonment for life with fine of Rs 1000, in default of payment of fine, he is directed to undergo another one month rigorous imprisonment.

(Five) For the offence under Section 377 IPC the accused is sentenced to imprisonment for seven years with fine of Rs 1000 in default of payment of fine, he is directed to undergo another one month rigorous imprisonment.

(Six) Considering the provisions of Section 42 of the Act, where for similar act the accused has been convicted under the sections of Act and IPC, then he should be sentenced for the offences having larger punishment and in this regard principle of Section 71 IPC is also perusable and in Section 376(2)(*f*) IPC and in Section 6 of the Act, there is provision of punishment for imprisonment for life and minimum sentence of 10 years' rigorous imprisonment and for similar act, order of sentence is being passed for the offence under Section 376(2)(*f*) and Section 377 IPC also, hence separate order of sentence for the offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012 is not being passed.

All the sentences of imprisonment shall run concurrently.

67. The accused is in detention since 4-2-2013 hence, let certificate of the period undergone by him in detention during trial be attached with warrant as per provisions of Section 428 CrPC which may be used for setting off under Section 428 CrPC or as per requirement for computing sentence as provided in Section 433 CrPC.

68. On payment of fine, entire amount of fine means Rs 4000 unless otherwise directed, after expiry of period of appeal be paid to Shantubai, PW 3 mother of the deceased as compensation.

69. According to the provisions of Section 366 CrPC let entire records and proceeding of the case be placed before the Hon'ble High Court, Jabalpur for confirmation of death sentence and death sentence be not executed till it is confirmed by the Hon'ble Madhya Pradesh High Court and for keeping the accused in custody in above period let he be handed over with warrant in the above regard for jail custody.

70. I appreciate for assistance of all where in regard to incident which happened in midnight of 30-31 January, after arrest of accused on 4-2-2013, completing investigation immediately charge-sheet was submitted on 18th February and to prosecution which ensured quick trial by placing entire evidence from 19-2-2013 to 2-3-2013 and specially for assistance of defence because disposal of case is ensured within only 1 month of incident only because of above assistance and completing trial only in 12 working days could be possible."

2.8. Criminal Reference No. 4 of 2013 was accordingly registered in the High Court for confirmation of death sentence. The appellant also preferred Criminal Appeal No. 748 of 2013 challenging his conviction and sentence. The High Court by its judgment and order presently under appeal, affirmed the view taken by the trial court and upheld the death sentence and other sentences imposed by the trial court. It was observed by the High Court[2] as under: (*Anokhilal, In re case*[2], SCC OnLine MP paras 8-9)

> "*8.* ... The victim was, thus, last seen alive with the accused by Kirti Bai whose evidence discloses that the victim and accused were seen together at the point of time in proximity with the time and date of the commission of crime. Also after the incident no one saw the accused alone because he had absconded. We are, therefore, of the view that the prosecution has successfully established the last seen theory beyond any reasonable doubt against the accused.
>
> *9.* We also find that the report, Ext. 58, of the DNA Finger Printing Unit completely connects the accused with the commission of crime. The report clearly states that the hairs seized from the fist of victim and the skin found in the cut-nails of victim belonged to the accused. The report further states that the semen found on the pajama of victim was of the accused. Not only this, according to the report, blood found on the underwear of accused was of the victim. The cremation of the body of victim was done on 1-2-2013 whereas the accused was arrested on 4-2-2013. There was, therefore, no possibility of the blood of victim having been put on the seized underwear of the accused.
>
> * * *
>
> *11.* The evidence on record clearly establishes that the accused was close to the family of Ramlal and the victim trusted him. She, therefore, on his asking immediately rushed to buy "bidi" for him from a kirana shop. The accused then followed the victim with a premeditated mind to commit the crime. The accused, taking advantage of the trust of victim, after kidnapping and subjecting her to brutal rape and carnal sex most gruesomely throttled her to death. The numerous injuries on the body of victim testify this fact. He even dumped the body of victim in the field. Earlier also, the accused was convicted vide judgment dated 21-10-2010, Ext. 49, for committing carnal sex with a small boy. Thus, an innocent hapless girl of nine years was subjected to a barbaric treatment showing extreme depravity and arouses a sense of revulsion in the mind of a common man. We feel that the crime committed satisfies the test of "the rarest of the rare" cases. We, therefore, uphold the death sentence and also other sentences imposed by the trial court."

3. During the pendency of these appeals in this Court, it was observed by this Court in its order dated 12-12-2018[3] as under: (*Anokhilal case*[3], SCC OnLine SC paras 1-2)

> "*1.* One of the issues that has arisen in the present case is compliance with the statutory time-frame fixed by proviso to Section 309(1) of

2 *Anokhilal, In re*, 2013 SCC OnLine MP 4713
3 *Anokhilal* v. *State of M.P.*, 2018 SCC OnLine SC 3511

the CrPC (as amended in 2018). That Section provides a time-limit of 60 days within which the trial is supposed to be completed. In this context, we consider it appropriate to explore the possibility of using videoconferencing for the purpose of recording evidence since it is believed that such use will eliminate the time taken for summoning the witnesses to Court.

2. However, an apprehension is expressed at the Bar that the videoconferencing facility is not always available throughout the trial in various parts of the country and in the present state of the art, it cannot be wholly relied on. Since, this appears to be surmountable, we consider it appropriate to hear National Informatics Centre (NIC) and Department of Justice in the matter. Accordingly, issue notice…"

4. When these appeals came up for final hearing, certain issues were highlighted by Mr Sidharth Luthra, learned Senior Advocate who appeared for the appellant on behalf of the Supreme Court Legal Services Authority. According to him, the way the trial was conducted, there was no fairness at all and the interest of the appellant-accused was put to prejudice on more than one count. The principal submission was recorded in the order dated 10-12-2019[4] passed by this Court as under: (*Anokhilal case*[1], SCC p. 226, para 1)

"1.2. In the submission of the learned Senior Counsel, following aspects are, therefore, very clear:

(*a*) The learned Amicus Curiae came to be appointed the same day when the charges were framed, which effectively means that the learned Amicus Curiae did not have sufficient opportunity to study the matter nor did he have any opportunity to have any interaction with the accused to seek appropriate instructions;"

5. The other issues noted in the order dated 12-12-2018[3] were referred to but it was observed: (*Anokhilal case*[4], SCC p. 227, para 3)

"3. As presently advised, we will deal first with the issue pertaining to the present trial and whether the approach adopted by the trial court in the present matter could be accepted or whether there was any infraction or error on the part of the trial court in adopting the approach in the present matter. Other issues, namely applicability of Section 309 and advisability of having videoconferencing in the matter will be dealt with at a later stage and the consideration of these issues, for the time being, is deferred."

6. The consideration at present is thus confined to the issue as stated above.

7. In support of his submissions, Mr Sidharth Luthra, learned Senior Advocate, relied upon certain decisions of this Court and, particularly, in *Bashira* v. *State of U.P.*[5] and *Mohd. Hussain* v. *State (NCT of Delhi)*[6]. Mr Varun Chopra, Deputy Advocate General appearing for the State, however, submitted

4 *Anokhilal* v. *State of M.P.*, (2019) 20 SCC 225
3 *Anokhilal* v. *State of M.P.*, 2018 SCC OnLine SC 3511
5 (1969) 1 SCR 32 : AIR 1968 SC 1313 : 1968 Cri LJ 1495
6 (2012) 9 SCC 408 : (2012) 3 SCC (Cri) 1139

that the evidence on record, without any doubt, pointed towards the guilt of the accused and as such the order of conviction recorded by the courts below was correct and did not call for any interference.

8. In *Bashira*[5], the trial court had fixed 28-2-1967 as the date for starting the actual trial and, on that very day, before beginning the trial, an Amicus Curiae was appointed to represent the accused. On that very day, the trial court amended the charge to which the accused pleaded not guilty and two principal prosecution witnesses were examined. The other witnesses were examined on 1-3-1967 and the accused was also examined under Section 342 of the Code of Criminal Procedure, 1898 (equivalent to Section 313 of the Code of Criminal Procedure, 1973 or "the Code", for short). The case was thereafter fixed on 10-3-1967 for arguments, on which date the Amicus Curiae presented an application for recall of one of the prosecution witnesses for further cross-examination. The application was rejected. Arguments were then heard on the same day and the judgment was delivered on 13-3-1967 convicting the accused for the offence under Section 302 IPC and sentencing him to death. In the backdrop of these facts, the submissions of the Amicus Curiae appearing in this Court were recorded as under: (*Bashira case*[5], AIR p. 1315, para 2)

> "2. In this case, the principal ground urged on behalf of the appellant raises an important question of law. The learned counsel appearing for the appellant emphasised the circumstance that the amicus curiae counsel to represent the appellant was appointed by the Sessions Judge on 28-2-1967, just when the trial was about to begin and this belated appointment of the counsel deprived the appellant of adequate legal aid, so that he was unable to defend himself properly. It was urged that the procedure adopted by the court was not in accordance with law, so that, if the sentence of death is carried out, the appellant will be deprived of his life in breach of his fundamental right under Article 21 of the Constitution which lays down that no person shall be deprived of his life or personal liberty, except according to procedure established by law."

9. The submissions were dealt with as under: (*Bashira case*[5], AIR pp. 1317-18, paras 8-9)

> "*8*. There is nothing on the record to show that, after his appointment as counsel for the appellant, Shri Shukla was given sufficient time to prepare the defence. The order-sheet maintained by the Judge seems to indicate that, as soon as the counsel was appointed, the charge was read out to the accused and, after his plea had been recorded, examination of witnesses began. The counsel, of course, did his best to cross-examine the witnesses to the extent it was possible for him to do in the very short time available to him. It is true that the record also does not contain any note that the counsel asked for more time to prepare the defence, but that, in our opinion, is immaterial. *The Rule casts a duty on the court itself to grant sufficient time to the counsel for this purpose* and the record should show that the Rule was

5 *Bashira v. State of U.P.*, (1969) 1 SCR 32 : AIR 1968 SC 1313 : 1968 Cri LJ 1495

complied with by granting him time which the court considered sufficient in the particular circumstances of the case. In this case, the record seems to show that the trial was proceeded with immediately after appointing the amicus curiae counsel and that, in fact, if any time at all was granted, it was nominal. In these circumstances, it must be held that there was no compliance with the requirements of this Rule.

9. In this connection, we may refer to the decisions of two of the High Courts where a similar situation arose. *Alla Nageswara Rao, In re*[7] reference was made to Rule 228 of the Madras Criminal Rules of Practice which provided for engaging a pleader at the cost of the State to defend an accused person in a case where a sentence of death could be passed. It was held by Subba Rao, Chief Justice as he then was, speaking for the Bench, that: (SCC OnLine AP para 4)

> '4. A mere formal compliance with this Rule will not carry out the object underlying the Rule. A sufficient time should be given to the advocate engaged on behalf of the accused to prepare his case and conduct it on behalf of his client. We are satisfied that the time given was insufficient and, in the circumstances, no real opportunity was given to the accused to defend himself.'

This view was expressed on the basis of the fact found that the advocate had been engaged for the accused two hours prior to the trial. In *Mathai Thommen* v. *State*[8] the Kerala High Court was dealing with a sessions trial in which the counsel was engaged to defend the accused on 2-8-1958, when the trial was posted to begin on 4-8-1958, showing that barely more than a day was allowed to the counsel to get prepared and obtain instructions from the accused. Commenting on the procedure adopted by the Sessions Court, the High Court finally expressed its opinion by saying:

> 'Practices like this would reduce to a farce the engagement of counsel under Rule 21 of the Criminal Rules of Practice which has been made for the purpose of effectively carrying out the duty cast on courts of law to see that no one is deprived of life and liberty without a fair and reasonable opportunity being afforded to him to prove his innocence. We consider that in cases like this counsel should be engaged at least some 10 to 15 days before the trial and should also be furnished with copies of the records.'

In our opinion, no hard-and-fast rule can be laid down as to the time which must elapse between the appointment of the counsel and the beginning of the trial; but, on the circumstances of each case, the Court of Session must ensure that the time granted to the counsel is sufficient to prepare for the defence. In the present case, when the counsel was appointed just before the trial started, it is clear that there was failure to comply with the requirements of the rule of procedure in this behalf." (emphasis supplied)

7 1951 SCC OnLine AP 115 : AIR 1957 AP 505
8 AIR 1959 Ker 241

10. It was also stated that the violation of the mandate of the rule concerned would amount to breach of rights conferred by Article 21 of the Constitution as under: (*Bashira case*[5], AIR p. 1318, para 10)

> "*10.* ... In these circumstances, conviction of the appellant in a trial held in violation of that Rule and the award of sentence of death will result in the deprivation of his life in breach of the procedure established by law."

The operative part of the decision was: (AIR p. 1319, para 12)

> "*12.* As a consequence, we set aside the conviction and sentence of the appellant. Since we are holding that the conviction is void because of an error in the procedure adopted at the trial, we direct that the appellant shall be tried afresh for this charge after complying with the requirements of law, so that the case is remanded to the Court of Session for this purpose."

11. In *Hussainara Khatoon (4)* v. *State of Bihar*[9] it was observed as under: (SCC p. 105, para 7)

> "7. We may also refer to Article 39-A the fundamental constitutional directive which reads as follows:
>
> > '**39-A.** ***Equal justice and free legal aid.***—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.'
>
> This article also emphasises that free legal service is an inalienable element of "reasonable, fair and just" procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal services is, therefore, clearly an essential ingredient of "reasonable, fair and just" procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer."

12. The developments in the matter of providing free legal aid as translated in various schemes and dealt with in the decisions of this Court, were noted in *Rajoo* v. *State of M.P.*[10] as under: (SCC pp. 554-56, paras 6-18)

> "6. By the Forty-second Amendment to the Constitution, effected in 1977, Article 39-A was inserted. This article provides for free legal aid

5 *Bashira* v. *State of U.P.*, (1969) 1 SCR 32 : AIR 1968 SC 1313 : 1968 Cri LJ 1495
9 (1980) 1 SCC 98 : 1980 SCC (Cri) 40
10 (2012) 8 SCC 553 : (2012) 3 SCC (Cri) 981

by suitable legislation or schemes or in any other manner, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

7. Article 39-A of the Constitution reads as follows:

> '**39-A.** ***Equal justice and free legal aid.***—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.'

8. Subsequently, with the intention of providing free legal aid, the Central Government resolved (on 26-9-1980) and appointed the "Committee for Implementing the Legal Aid Schemes". This Committee was to monitor and implement legal aid programmes on a uniform basis throughout the country in fulfilment of the constitutional mandate.

9. Experience gained from a review of the working of the Committee eventually led to the enactment of the Legal Services Authorities Act, 1987 (for short "the Act").

10. The Act provides, inter alia, for the constitution of a National Legal Services Authority, a Supreme Court Legal Services Committee, State Legal Services Authorities as well as Taluk Legal Services Committees. Section 12 of the Act lays down the criteria for providing legal services. It provides, inter alia, that every person who has to file or defend a case shall be entitled to legal services, if he or she is in custody. Section 13 of the Act provides that persons meeting the criteria laid down in Section 12 of the Act will be entitled to legal services provided the authority concerned is satisfied that such person has a prima facie case to prosecute or defend.

11. It is important to note in this context that Sections 12 and 13 of the Act do not make any distinction between the trial stage and the appellate stage for providing legal services. In other words, an eligible person is entitled to legal services at any stage of the proceedings which he or she is prosecuting or defending. In fact the Supreme Court Legal Services Committee provides legal assistance to eligible persons in this Court. This makes it abundantly clear that legal services shall be provided to an eligible person at all stages of the proceedings, trial as well as appellate. It is also important to note that in view of the constitutional mandate of Article 39-A, legal services or legal aid is provided to an eligible person free of cost.

Decisions of this Court

12. Pending the enactment of the Legal Services Authorities Act, the issue of providing free legal services or free legal aid or free legal representation (all terms being understood as synonymous) came up for consideration before this Court.

13. Among the first few decisions in this regard is *Hussainara Khatoon (4)* v. *State of Bihar*[9]. In that case, reference was made to Article 39-A of the Constitution and it was held that (SCC p. 105, para 7) free legal service is an inalienable element of " 'reasonable, fair and just', procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 [of the Constitution]". It was noted that: "This is a constitutional right of every accused person who is unable to engage a lawyer and secure [free] legal services on account of reasons such as poverty, indigence or incommunicado situation." It was held that the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, subject of course to the accused person not objecting to the providing of a lawyer.

14. The essence of this decision was followed in *Khatri (2)* v. *State of Bihar*[11]. In that case, it was noted that the Judicial Magistrate did not provide legal representation to the accused persons because they did not ask for it. This was found to be unacceptable. This Court went further and held that it was the obligation of the Judicial Magistrate before whom the accused were produced to inform them of their entitlement to legal representation at State cost. In this context, it was observed that the right to free legal services would be illusory unless the Magistrate or the Sessions Judge before whom the accused is produced informs him of this right. It would also make a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal services thereby rendering the constitutional mandate a mere paper promise.

15. *Suk Das* v. *State (UT of Arunachal Pradesh)*[12] reiterated the requirement of providing free and adequate legal representation to an indigent person and a person accused of an offence. In that case, it was reiterated that an accused need not ask for legal assistance the Court dealing with the case is obliged to inform him or her of the entitlement to free legal aid. This Court observed that (SCC p. 407, para 5) it was now

> 'settled law that free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21 [of the Constitution]'.

16. Since the requirements of law were not met in that case, and in the absence of the accused person being provided with legal representation at State cost, it was held that there was a violation of the fundamental right of the accused under Article 21 of the Constitution. The trial was held to be vitiated on account of a fatal constitutional infirmity and the conviction and sentence were set aside.

9 (1980) 1 SCC 98 : 1980 SCC (Cri) 40
11 (1981) 1 SCC 627 : 1981 SCC (Cri) 228
12 (1986) 2 SCC 401 : 1986 SCC (Cri) 166

17. We propose to briefly digress and advert to certain observations made, both in *Khatri (2)*[11] and *Suk Das*[12]. In both cases, this Court carved out some exceptions in respect of grant of free legal aid to an accused person. It was observed that: [*Khatri (2) case*[11], SCC p. 632, para 6]

> '6. ... There may be cases involving offences such as economic offences or offences against law prohibiting prostitution or child abuse and the like, where social justice may require that free legal services need not be provided by the State.'

We have some reservations whether such exceptions can be carved out particularly keeping in mind the constitutional mandate and the universally accepted principle that a person is presumed innocent until proven guilty. If such exceptions are accepted, there may be a tendency to add some more, such as in cases of terrorism, thereby diluting the constitutional mandate and the fundamental right guaranteed under Article 21 of the Constitution. However, we need not say anything more on this subject since the issue is not before us.

18. The above discussion conclusively shows that this Court has taken a rather proactive role in the matter of providing free legal assistance to persons accused of an offence or convicted of an offence."

13. In *Mohd. Hussain* v. *State (NCT of Delhi)*[6] one of the submissions advanced on behalf of the accused was that he was denied right of a counsel and thus was not given fair and impartial trial. H.L. Dattu, J. (as the learned Chief Justice then was) in para 7 of his decision[13] quoted orders passed by the trial court and in paras 10 to 12 observed that the evidence of 56 witnesses was recorded by the trial court without providing a counsel to the appellant-accused. It was stated: (SCC pp. 417-20, paras 18-25)

> "*18*. Section 311 of the Code empowers a criminal court to summon any person as a witness though not summoned as a witness or recall and re-examine any person already examined at any stage of any enquiry, trial or other proceeding and the court shall summon and examine or recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.
>
> *19*. If the appellate court in an appeal from a conviction under Section 386 orders the accused to be retried, on the matter being remanded to the trial court and on retrial of the accused, such trial court retains the power under Section 311 of the Code unless ordered otherwise by the appellate court.
>
> *20*. In *Machander* v. *State of Hyderabad*[14], it has been stated by this Court that while it is incumbent on the court to see that no guilty person

11 *Khatri (2)* v. *State of Bihar*, (1981) 1 SCC 627 : 1981 SCC (Cri) 228
12 *Suk Das* v. *State (UT of Arunachal Pradesh)*, (1986) 2 SCC 401 : 1986 SCC (Cri) 166
6 (2012) 9 SCC 408 : (2012) 3 SCC (Cri) 1139
13 *Mohd. Hussain* v. *State (NCT of Delhi)*, (2012) 2 SCC 584 : (2012) 1 SCC (Cri) 919
14 (1955) 2 SCR 524 : AIR 1955 SC 792 : 1955 Cri LJ 1644

escapes but the court also has to see that justice is not delayed and the accused persons are not indefinitely harassed. The Court further stated that the scale must be held even between the prosecution and the accused.

21. In *Gopi Chand* v. *Delhi Admn.*[15], a Constitution Bench of this Court was concerned with the criminal appeals wherein plea of the validity of the trial and of the orders of conviction and sentence was raised by the appellant. That was a case where the appellant was charged for three offences which were required to be tried as a warrant case by following the procedure prescribed in the Criminal Procedure Code, 1898 but he was tried under the procedure prescribed for the trial of a summons case. The procedure for summons case and warrants case was materially different. The Constitution Bench held that having regard to the nature of the charges framed and the character and volume of evidence led, the appellant was prejudiced; the trial of the three cases against the appellant was vitiated and the orders of conviction and sentence were rendered invalid. The Court, accordingly, set aside the orders of conviction and sentence. While dealing with the question as to what final order should be passed in the appeals, the Constitution Bench held as under: (AIR pp. 619-20, para 29)

> '*29.* ... The offences with which the appellant stands charged are of a very serious nature; and though it is true that he has had to undergo the ordeal of a trial and has suffered rigorous imprisonment for some time that would not justify his prayer that we should not order his retrial. In our opinion, having regard to the gravity of the offences charged against the appellant, the ends of justice require that we should direct that he should be tried for the said offences de novo according to law. We also direct that the proceedings to be taken against the appellant hereafter should be commenced without delay and should be disposed of as expeditiously as possible.'

22. A two-Judge Bench of this Court in *Tyron Nazareth* v. *State of Goa*[16], after holding that the conviction of the appellant was vitiated as he was not provided with legal aid in the course of trial, ordered retrial. The brief order reads as follows: (SCC p. 322, para 2)

> '*2.* We have heard the learned counsel for the State. We have also perused the decisions of this Court in *Khatri (2)* v. *State of Bihar*[11] and *Suk Das* v. *State (UT of Arunachal Pradesh)*[12]. We find that the appellant was not assisted by any lawyer and perhaps he was not aware of the fact that the minimum sentence provided under the statute was 10 years' rigorous imprisonment and a fine of Rs 1 lakh. We are, therefore, of the opinion that in the circumstances the matter should go back to the tribunal. The appellant if not represented by a lawyer may make a

15 AIR 1959 SC 609 : 1959 Cri LJ 782
16 1994 Supp (3) SCC 321 : 1994 SCC (Cri) 1716
11 (1981) 1 SCC 627 : 1981 SCC (Cri) 228
12 (1986) 2 SCC 401 : 1986 SCC (Cri) 166

request to the court to provide him with a lawyer under Section 304 of the Criminal Procedure Code or under any other legal aid scheme and the court may proceed with the trial afresh after recording a plea on the charges. The appeal is allowed accordingly. The order of conviction and sentence passed by the Special Court and confirmed[17] by the High Court are set aside and a de novo trial is ordered hereby.'

23. This Court in *S. Guin* v. *Grindlays Bank Ltd.*[18] was concerned with the case where the trial court acquitted the appellants of the offence punishable under Section 341 IPC read with Section 36-AD of the Banking Regulation Act, 1949. The charge against the appellants was that they had obstructed the officers of the Bank, without reasonable cause, from entering the premises of a branch of the Bank and also obstructed the transaction of normal banking business. Against their acquittal, an appeal was preferred before the High Court which allowed it after a period of six years and remanded the case for retrial. It was from the order of remand for retrial that the matter reached this Court. This Court while setting aside the order of remand in para 3 of the Report held as under: (SCC pp. 655-56)

'3. After going through the judgment of the Magistrate and of the High Court we feel that whatever might have been the error committed by the Magistrate, in the circumstances of the case, it was not just and proper for the High Court to have remanded the case for fresh trial, when the order of acquittal had been passed nearly six years before the judgment of the High Court. The pendency of the criminal appeal for six years before the High Court is itself a regrettable feature of this case. In addition to it, the order directing retrial has resulted in serious prejudice to the appellants. We are of the view that having regard to the nature of the acts alleged to have been committed by the appellants and other attendant circumstances, this was a case in which the High Court should have directed the dropping of the proceedings in exercise of its inherent powers under Section 42 of the Criminal Procedure Code even if for some reason it came to the conclusion that the acquittal was wrong. A fresh trial nearly seven years after the alleged incident is bound to result in harassment and abuse of judicial process.'

24. The Constitution Bench of this Court in *Abdul Rehman Antulay* v. *R.S. Nayak*[19] considered right of an accused to speedy trial in light of Article 21 of the Constitution and various provisions of the Code. The Constitution Bench also extensively referred to the earlier decisions of this Court in *Hussainara Khatoon (1)* v. *State of Bihar*[20], *Hussainara Khatoon (3)* v. *State of Bihar*[21], *Hussainara Khatoon (4)* v. *State of Bihar*[9] and

17 *Tyron Nazareth* v. *State*, 1988 SCC OnLine Bom 44 : (1989) 1 Bom CR 293
18 (1986) 1 SCC 654 : 1986 SCC (Cri) 64
19 (1992) 1 SCC 225 : 1992 SCC (Cri) 93
20 (1980) 1 SCC 81 : 1980 SCC (Cri) 23
21 (1980) 1 SCC 93 : 1980 SCC (Cri) 35
9 (1980) 1 SCC 98 : 1980 SCC (Cri) 40

Raghubir Singh v. *State of Bihar*[22] and noted that the provisions of the Code are consistent with the constitutional guarantee of speedy trial emanating from Article 21. In para 86 of the Report, the Court framed guidelines. Sub-paras (9) and (10) thereof read as under: (*Abdul Rehman Antulay case*[19], SCC p. 272)

> '*86.* (*9*) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order — including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded — as may be deemed just and equitable in the circumstances of the case.
>
> (*10*) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused* to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.'

25. In *Kartar Singh* v. *State of Punjab*[23], it was stated by this Court that no doubt liberty of a citizen must be zealously safeguarded by the courts; nonetheless the courts while dispensing justice should keep in mind not only the liberty of the accused but also the interest of the victim and their near and dear and above all the collective interest of the community and the safety of the nation so that the public may not lose faith in the system of judicial administration and indulge in private retribution. In that case, the Court was dealing with a case under the TADA Act."

14. It was thus held that the impugned judgment[24] was required to be reversed and the matter was to be remanded for fresh trial. C.K. Prasad, J. concurred[13] with **H.L.** Dattu, J. and accepted that the judgments of conviction

22 (1986) 4 SCC 481 : 1986 SCC (Cri) 511

19 *Abdul Rehman Antulay* v. *R.S. Nayak*, (1992) 1 SCC 225 : 1992 SCC (Cri) 93

* **Ed.:** The reference seems to be to *Barker* v. *Wingo*, 1972 SCC OnLine US SC 154 : 33 L. Ed 2d 101 : 407 US 514 (1972) and *United States* v. *Ewell*, 1966 SCC OnLine US SC 24 : 15 L. Ed 2d 627 : 383 US 116 (1966)

23 (1994) 3 SCC 569 : 1994 SCC (Cri) 899

24 *State* v. *Mohd. Hussain*, 2006 SCC OnLine Del 867 : (2007) 140 DLT 428

13 *Mohd. Hussain* v. *State (NCT of Delhi)*, (2012) 2 SCC 584 : (2012) 1 SCC (Cri) 919

and sentence be set aside as the appellant-accused was not given assistance of a lawyer to defend himself during trial. However, in his view, the case was not required to be remanded for fresh trial and the benefit of complete acquittal be given to the appellant-accused.

15. On this difference of opinion, the matter went to a Bench of three Judges which accepted[6] the view taken by H.L. Dattu, J. and directed de novo trial. It was observed[6]: (*Mohd. Hussain case*[6], SCC pp. 416 & 426-28, paras 15, 38 & 40)

"*15.* Section 304 of the Code mandates legal aid to the accused at State's expense in a trial before the Court of Session where the accused is not represented by a pleader and where it appears to the court that the accused has not sufficient means to engage a pleader.

* * *

38. In *Best Bakery case*[25], the Court also made the following observations: (SCC p. 187, paras 38-40)

'*38.* A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.

39. Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty, stage-managed, tailored and partisan trial.

40. The fair trial for a criminal offence consists not only in technical observance of the frame and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice.'

The Bench emphasised that: (*Best Bakery case*[25], SCC p. 192, para 52)

'*52.* Whether a retrial under Section 386 of the Code or taking up of additional evidence under Section 391 of the Code [in a given case]

6 *Mohd. Hussain* v. *State (NCT of Delhi)*, (2012) 9 SCC 408 : (2012) 3 SCC (Cri) 1139
25 *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158 : 2004 SCC (Cri) 999

is the proper procedure will depend on the facts and circumstances of each case for which no straitjacket formula of universal and invariable application can be formulated.'

* * *

40. "Speedy trial" and "fair trial" to a person accused of a crime are integral part of Article 21. There is, however, qualitative difference between the right to speedy trial and the accused's right of fair trial. Unlike the accused's right of fair trial, deprivation of the right to speedy trial does not per se prejudice the accused in defending himself. The right to speedy trial is in its very nature relative. It depends upon diverse circumstances. Each case of delay in conclusion of a criminal trial has to be seen in the facts and circumstances of such case. Mere lapse of several years since the commencement of prosecution by itself may not justify the discontinuance of prosecution or dismissal of indictment. The factors concerning the accused's right to speedy trial have to be weighed vis-à-vis the impact of the crime on society and the confidence of the people in judicial system. Speedy trial secures rights to an accused but it does not preclude the rights of public justice. The nature and gravity of crime, persons involved, social impact and societal needs must be weighed along with the right of the accused to speedy trial and if the balance tilts in favour of the former the long delay in conclusion of criminal trial should not operate against the continuation of prosecution and if the right of the accused in the facts and circumstances of the case and exigencies of situation tilts the balance in his favour, the prosecution may be brought to an end. These principles must apply as well when the appeal court is confronted with the question whether or not retrial of an accused should be ordered."

16. In *Ankush Maruti Shinde* v. *State of Maharashtra*[26] the High Court had upheld[27] the conviction and death sentence imposed upon Accused 1, 2 and 4 while Accused 3, 5 and 6 were sentenced to imprisonment for life. The appeals were preferred by Accused 1, 2 and 4 against their conviction and sentence while Criminal Appeals Nos. 881-882 of 2009 were preferred by the State seeking enhancement of sentence of life imprisonment to death sentence in respect of Accused 3, 5 and 6. In the appeals preferred by the State, notice was served upon Accused 3, 5 and 6 only on 6-12-2008. However, even before service of such notice, the hearing in respect of all the appeals had begun on 4-12-2008. On 10-12-2008[28] the learned counsel who was appearing for Accused 1, 2 and 4 was appointed as Amicus Curiae to represent Accused 3, 5 and 6. The hearing was concluded the same day and the judgment was reserved. By its decision dated 30-4-2009[26] this Court allowed the appeals preferred by the State and imposed death sentence upon Accused 3, 5 and 6 while confirming the death sentence in respect of Accused 1, 2 and 4. All six accused were thus sentenced to death.

26 (2009) 6 SCC 667 : (2009) 3 SCC (Cri) 308
27 *State of Maharashtra* v. *Ankush Maruti Shinde*, 2007 SCC OnLine Bom 1483
28 *Ankush Maruti Shinde* v. *State of Maharashtra*, 2008 SCC OnLine SC 15

17. Thereafter, Review Petitions (Crl.) Nos. 34-35 of 2010 were preferred by Accused 1, 2 and 4 while Review Petitions (Crl.) Nos. 18-19 of 2011 were preferred by Accused 3, 5 and 6. While allowing review petitions by its order dated 31-10-2018[29], this Court observed: (*Ambadas Laxman case*[29], SCC p. 791, para 9)

> "9. From the above narration of facts, it is evident that Accused 3, 5 and 6 had no opportunity to be heard by the Bench, before the appeals filed by the State of Maharashtra for enhancement of sentence were decided. They have been deprived of an opportunity of engaging counsel and of urging such submissions as they may have been advised to urge in defence to the appeals filed by the State for enhancement."

18. This Court, therefore, recalled the judgment and order dated 30-4-2009[26] and the criminal appeals were restored to the file of this Court to be considered on merits. Subsequently, a Bench of three Judges by its decision dated 5-3-2019[30] acquitted the accused concerned of the charges levelled against them. This Court also dismissed the appeals preferred by the State for enhancement of sentence qua Accused 3, 5 and 6.

19. In *Imtiyaz Ramzan Khan* v. *State of Maharashtra*[31] it was observed by this Court: (SCC pp. 161-62, paras 4-5)

> "*4.* We now come to the common feature between these two matters. Mr Shikhil Suri, learned advocate appeared for the accused in both the matters. On previous dates letters were circulated by the learned advocate appearing for the petitioners that the matters be adjourned so as to enable the counsel to make arrangements for conducting videoconferencing with the accused concerned. The letter further stated that this exercise was made mandatory as per the directions of the Supreme Court Legal Services Committee. This Court readily agreed[32] and adjourned the matters. On the adjourned date, we enquired from Mr Shikhil Suri, learned advocate whether he could successfully get in touch with the accused concerned. According to the learned advocate he could not get in touch with the accused in the first matter but could speak with his sister whereas in the second matter he could have video conference with the accused.
>
> *5.* In our view such a direction on the part of the Supreme Court Legal Services Committee is quite commendable and praiseworthy. Very often we see that the learned advocates who appear in matters entrusted by the Supreme Court Legal Services Committee, do not have the advantage of having had a dialogue with either the accused or those who are in the know of the details about the case. This at times seriously hampers the efforts on

29 *Ambadas Laxman Shinde* v. *State of Maharashtra*, (2018) 18 SCC 788 : (2019) 3 SCC (Cri) 452 : (2018) 14 Scale 730

26 *Ankush Maruti Shinde* v. *State of Maharashtra*, (2009) 6 SCC 667 : (2009) 3 SCC (Cri) 308

30 *Ankush Maruti Shinde* v. *State of Maharashtra*, (2019) 15 SCC 470 : (2020) 1 SCC (Cri) 315

31 (2018) 9 SCC 160 : (2018) 3 SCC (Cri) 721

32 *Imtiyaz Ramzan Khan* v. *State of Maharashtra*, (2018) 9 SCC 163

the part of the learned advocates. All such attempts to facilitate dialogue between the counsel and his client would further the cause of justice and make legal aid meaningful. We, therefore, direct all Legal Services Authorities/Committees in every State to extend similar such facility in every criminal case wherever the accused is lodged in jail. They shall extend the facility of videoconferencing between the counsel on one hand and the accused or anybody in the know of the matter on the other, so that the cause of justice is well served."

20. The following principles, therefore, emerge from the decisions referred to hereinabove:

20.1. Article 39-A inserted by the 42nd Amendment to the Constitution, effected in the year 1977, provides for free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The statutory regime put in place including the enactment of the Legal Services Authorities Act, 1987 is designed to achieve the mandate of Article 39-A.

20.2. It has been well accepted that right to free legal services is an essential ingredient of "reasonable, fair and just" procedure for a person accused of an offence and it must be held implicit in the right guaranteed by Article 21. The extract from the decision of this Court in *Best Bakery case*[25] (as quoted in the decision in *Mohd. Hussain*[6]) emphasises that the object of criminal trial is to search for the truth and the trial is not a bout over technicalities and must be conducted in such manner as will protect the innocent and punish the guilty.

20.3. Even before insertion of Article 39-A in the Constitution, the decision of this Court in *Bashira*[5] put the matter beyond any doubt and held that the time granted to the Amicus Curiae in that matter to prepare for the defence was completely insufficient and that the award of sentence of death resulted in deprivation of the life of the accused and was in breach of the procedure established by law.

20.4. The portion quoted in *Bashira*[5] from the judgment of the Andhra Pradesh High Court authored[7] by Subba Rao, J., the then Chief Justice of the High Court, stated with clarity that mere formal compliance of the rule under which sufficient time had to be given to the counsel to prepare for the defence would not carry out the object underlying the rule. It was further stated that the opportunity must be real where the counsel is given sufficient and adequate time to prepare.

20.5. In *Bashira*[5] as well as in *Ambadas*[29], making substantial progress in the matter on the very day after a counsel was engaged as Amicus Curiae, was

25 *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158 : 2004 SCC (Cri) 999
6 *Mohd. Hussain* v. *State (NCT of Delhi)*, (2012) 9 SCC 408 : (2012) 3 SCC (Cri) 1139
5 *Bashira* v. *State of U.P.*, (1969) 1 SCR 32 : AIR 1968 SC 1313 : 1968 Cri LJ 1495
7 *Alla Nageswara Rao, In re*, 1954 SCC OnLine AP 115 : AIR 1957 AP 505
29 *Ambadas Laxman Shinde* v. *State of Maharashtra*, (2018) 18 SCC 788 : (2019) 3 SCC (Cri) 452 : (2018) 14 Scale 730

not accepted by this Court as compliance with "sufficient opportunity" to the counsel.

21. In the present case, the Amicus Curiae, was appointed on 19-2-2013, and on the same date, the counsel was called upon to defend the accused at the stage of framing of charges. One can say with certainty that the Amicus Curiae did not have sufficient time to go through even the basic documents, nor the advantage of any discussion or interaction with the accused, and time to reflect over the matter. Thus, even before the Amicus Curiae could come to grips of the matter, the charges were framed.

22. The provisions concerned viz. Sections 227 and 228 of the Code contemplate framing of charge upon consideration of the record of the case and the documents submitted therewith, and after "hearing the submissions of the accused and the prosecution in that behalf". If the hearing for the purposes of these provisions is to be meaningful, and not just a routine affair, the right under the said provisions stood denied to the appellant.

23. In our considered view, the trial court on its own, ought to have adjourned the matter for some time so that the Amicus Curiae could have had the advantage of sufficient time to prepare the matter. The approach adopted by the trial court, in our view, may have expedited the conduct of trial, but did not further the cause of justice. Not only were the charges framed the same day as stated above, but the trial itself was concluded within a fortnight thereafter. In the process, the assistance that the appellant was entitled to in the form of legal aid, could not be real and meaningful.

24. There are other issues which also arise in the matter, namely, that the examination of 13 witnesses within seven days, the examination of the accused under the provisions of Section 313 of the Code even before the complete evidence was led by the prosecution, and not waiting for the FSL and DNA reports in the present case. DNA report definitely formed the foundation of discussion by the High Court. However, the record shows that the DNA report was received almost at the fag end of the matter, and after such receipt, though technically an opportunity was given to the accused, the issue on the point was concluded the very same day. The concluding paragraphs of the judgment of the trial court show that the entire trial was completed in less than one month with the assistance of the prosecution as well as the defence, but, such expeditious disposal definitely left glaring gaps.

25. In *V.K. Sasikala* v. *State*[33] a caution was expressed by this Court as under: (SCC p. 790, para 23.4)

> "*23.4.* While the anxiety to bring the trial to its earliest conclusion has to be shared it is fundamental that in the process none of the well-entrenched principles of law that have been laboriously built by illuminating judicial precedents are sacrificed or compromised. In no circumstance, can the cause of justice be made to suffer, though, undoubtedly, it is highly desirable that the finality of any trial is achieved in the quickest possible time."

33 (2012) 9 SCC 771 : (2013) 1 SCC (Cri) 1010

26. Expeditious disposal is undoubtedly required in criminal matters and that would naturally be part of guarantee of fair trial. However, the attempts to expedite the process should not be at the expense of the basic elements of fairness and the opportunity to the accused, on which postulates, the entire criminal administration of justice is founded. In the pursuit for expeditious disposal, the cause of justice must never be allowed to suffer or be sacrificed. What is paramount is the cause of justice and keeping the basic ingredients which secure that as a core idea and ideal, the process may be expedited, but fast tracking of process must never ever result in burying the cause of justice.

27. In the circumstances, going by the principles laid down in *Bashira*[5], we accept the submission made by Mr Luthra, the learned Amicus Curiae and hold that the learned counsel appointed through Legal Services Authority to represent the appellant in the present case ought to have been afforded sufficient opportunity to study the matter and the infraction in that behalf resulted in miscarriage of justice. In light of the conclusion that we have arrived at, there is no necessity to consider other submissions advanced by Mr Luthra, the learned Amicus Curiae.

28. All that we can say by way of caution is that in matters where death sentence could be one of the alternative punishments, the courts must be completely vigilant and see that full opportunity at every stage is afforded to the accused.

29. We, therefore, have no hesitation in setting aside the judgments of conviction and orders of sentence passed by the trial court and the High Court against the appellant and directing de novo consideration. It shall be open to the learned counsel representing the appellant in the trial court to make any submissions touching upon the issues (*i*) whether the charges framed by the trial court are required to be amended or not; (*ii*) whether any of the prosecution witnesses need to be recalled for further cross-examination; and (*iii*) whether any expert evidence is required to be led in response to the FSL report and DNA report. The matter shall, thereafter, be considered on the basis of available material on record in accordance with law.

30. It must be stated that the discussion by this Court was purely confined to the issue whether, while granting free legal aid, the appellant was extended real and meaningful assistance or not. The discussion in the matter shall not be taken to be a reflection on the merits of the matter, which shall be considered and gone into, uninfluenced by any observations made by us.

31. Before we part, we must lay down certain norms so that the infirmities that we have noticed in the present matter are not repeated:

31.1. In all cases where there is a possibility of life sentence or death sentence, learned advocates who have put in minimum of 10 years' practice at the Bar alone be considered to be appointed as Amicus Curiae or through legal services to represent an accused.

5 *Bashira v. State of U.P.*, (1969) 1 SCR 32 : AIR 1968 SC 1313 : 1968 Cri LJ 1495

31.2. In all matters dealt with by the High Court concerning confirmation of death sentence, Senior Advocates of the Court must first be considered to be appointed as Amicus Curiae.

31.3. Whenever any learned counsel is appointed as Amicus Curiae, some reasonable time may be provided to enable the counsel to prepare the matter. There cannot be any hard-and-fast rule in that behalf. However, a minimum of seven days' time may normally be considered to be appropriate and adequate.

31.4. Any learned counsel, who is appointed as Amicus Curiae on behalf of the accused must normally be granted to have meetings and discussion with the accused concerned. Such interactions may prove to be helpful as was noticed in *Imtiyaz Ramzan Khan*[31].

32. In the end, we express our appreciation and gratitude for the assistance given by Mr Luthra, the learned Amicus Curiae and request him to assist this Court for deciding other issues as noted in the orders dated 12-12-2018[3] and 10-12-2019[4] passed by this Court, for which purpose these matters be listed on 18-2-2020 before the appropriate Bench.

33. With the aforesaid observations, the substantive appeals stand disposed of, but the matter be listed on 18-2-2020 as directed.

[CONNECTED ORDER]

3-Judge Bench
2019
Dec. 10

(2019) 20 Supreme Court Cases 225

(Record of Proceedings)

(BEFORE UDAY U. LALIT, INDU MALHOTRA AND KRISHNA MURARI, JJ.)

ANOKHILAL . . Appellant;

Versus

STATE OF MADHYA PRADESH . . Respondent.

Criminal Appeals Nos. 62-63 of 2014[‡], Order dated December 10, 2019

D/63482/SR

Advocates who appeared in this case :

Sidharth Luthra, Senior Advocate [Anoopam N. Prasad, Ms Mehaak Jaggi and Ms K.V. Bharathi Upadhyaya (Advocate-on-Record), Advocates], for the Appellant;

Varun Chopra, Deputy Advocate General, Sonia Mathur, Senior Advocate [Gurtejpal Singh, Harsh Parashar (Advocate-on-Record), Sushil Kr. Dubey, Ms Divya A. Nari, Puneet Pathak, Anuj Aggarwal, Anmol Chandan, Ms Priyanka Das, Sumit Upadhyay and Arvind Kr. Sharma (Advocate-on-Record), Advocates], for the Respondent.

31 *Imtiyaz Ramzan Khan* v. *State of Maharashtra*, (2018) 9 SCC 160 : (2018) 3 SCC (Cri) 721

3 *Anokhilal* v. *State of M.P.*, 2018 SCC OnLine SC 3511

4 *Anokhilal* v. *State of M.P.*, (2019) 20 SCC 225

‡ Arising from the Judgment and Order in *Anokhilal, In re*, 2013 SCC OnLine MP 4713 (Madhya Pradesh High Court, Jabalpur Bench, Crl. Reference No. 4 of 2013 and Crl. A. No. 748 of 2013, dt. 27-6-2013)