INDIAN BAR ASSOCIATION

(THE ADVOCATES' ASSOCIATION OF INDIA)

Office: 9/15, Bansilal Building, 3rdFloor, HomiModi Street, Fort, Mumbai – 23

Tel: +91-22-62371750, Cell: +91-9594837837

Email:indianbarassociation.mah@gmail.com

CASE NO BEFORE HON'BLE PRESIDENT OF INDIA: PRSEC/E/2019/22287

To,

Hon'ble President of India

Hon'ble Chief Justice of India

Sub:- **1.** Direction for appointing a committee as per **'In-House - Procedure'** to enquire serious offences against Justice D. S. Naidu, Judge of Bombay High Court.

2. Direction to C.B.I. to investigate the charges under section **211, 218, 219, 385, 220,465, 466, 469,471, 474, 192, 166, 167 r/w 120 (B) & 34 of I.P.C.**

3. Direction as per **'In-House-Procedure'** to Chief Justice Bombay High Court to not to assign any judicial work to Shri. D. S. Naidu.

4. Direction to Justice D. S. Naidu to resign forthwith as per **'In-House-Procedure'** and as per law laid down by Constitution Bench in **K. Veeraswami Vs. Union of India (UOI) (1991) 3 SCC 655** as his incapacity, fraud on power and offences against administration of justice areex-facie proved.

5. Action against Justice D. S. Naidu for abating the Public and Lawyers to not to follow the Supreme Court & High Court judgments and to do some experiment which is prohibited by Full Bench of Hon'ble Supreme Court in **Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd. (1997) 6 SCC 450**.

6. Taking Suo-Moto action under Contempt of Court's Act and section 219,220 r/w 120 (B) & 34 of IPC against Justice **D. S. Naidu & Justice P. N. Ravindran** for deliberate disregard and defiance of law laid down by Full Bench of Hon'ble Supreme Court in Re: Vinay Chandra's case **(1995) 2 SCC 584** and **Sukhdev Singh Sodhi VS. Chief Justice S. Teja Singh, 1954 SCR 454** and in **Dr. L.P. Mishra Vs. State (1998) 7 SCC 379 (F.B.)** for

convicting Adv. C. K. Mohanan who made allegations against Justice Naidu.

7. Direction to Justice P. Nandrajog, Chief Justice of Bombay High Court to act as per law laid down in **Re: M. P. Dwivedi AIR 1996 SC 2299** to take immediate action to prevent further Contempt of Supreme Court when serious criminal offences by Justice D.S. Naidu or any other Judges of Bombay High Court are brought to his notice.

Hon'ble Sir,

1. In "Outlook Magazine" an article was published on **29th September, 2016** titled as;

> ***"Disquiet On Tilak Marg - Why India's chief justice finds solace in Gujarat, not Delhi"***

In the said article it was mentioned that Justice D.S.Naidu, now Judge of Bombay High Court, was transferred out of Andhra Pradesh for his acquaintance with former Chief Minister Chandrababu Naidu.

The relevant portion of the article reads as under;

> *"But dig a little deeper and the picture changes.* ***The collegium decided to defer a decision on the transfer request of Kerala High Court judge Justice Dama Seshadri Naidu back to his home state of Andhra Pradesh****. Apparently, two members of a past collegium have confirmed the decision that Justice Naidu would be transferred out of the Andhra Pradesh HC was taken when he was elevated.* ***The interest of justice entailed transfer because of his professional association with Justice Chelameswar's son and his relationship with CM N. Chandrababu Naidu.*** *Appropriately, Justice Chelameswar recused himself from the collegium meeting but didn't leave the room, upon which a decision on the issue was kept pending.*
>
> *Given his own insistence on judicial transparency and accountability, Justice Chelameswar's disinclination to publicly explain* ***his conduct sits strangely with Justice Naidu's***

impeccable reticence. *Justice Chelameswar should also have explained why he preferred not to recuse himself from that item under discussion and later be recalled to decide other matters."*

2. The same Judge Mr. D.S. Naidu while sitting at Kerala High Court had misused his position of a High Court Judge and in deliberate disregard and defiance of the law laid down by Full Bench of Hon'ble Supreme Court and punished an advocate **Mr. C.K.Mohanan.**

3. The illegality and misuse of power by Justice D.S. Naidu in convicting Adv. C.K.Mohanan is capulized in following paras:

3.1. That, in a case related with custody of one daughter one Adv. C. K. Mohanan was appearing for Petitioner Shri. N. D. Balaram.

3.2. The matter was kept on 27th October, 2016. On 27th October, 2016 following order is passed;

> ***8.*** *After taking into consideration the events that transpired in this court on 24.10.2016 and the conduct of Sri C.K. Mohanan, learned counsel appearing for the petitioner in W.P.(Crl) No. 351 of 2016 on that day, after extracting the previous orders, as have been mentioned above, we passed the following order:*
>
> ". . .
>
> *3. Sri Mohanan also stated in the post lunch session that Judges should not encourage such backdoor practices, meaning thereby, the practice of parties changing counsel midway without approaching the counsel engaged in the first instance. Even assuming that the petitioner should have first met his counsel and requested him for a no objection certificate to engage another counsel, that by itself is not, in our opinion, a reason which would justify the intemperate conduct on the part of Sri C.K. Mohanan when the statement made by the petitioner in person in that regard was brought to his notice. We did not, when we alerted the learned counsel for the petitioner about the statement made by the party, intend to interfere with his rights as a counsel. We were only informing the petitioner's counsel that the*

petitioner does not want him to appear for him any longer. True to the traditions of the profession he ought to have in our opinion made a submission that he will look into the matter, talk to his client and revert back to the court later. He ought to have, in our opinion, in the light of the statement made by the petitioner, voluntarily and with grace, conceded to give a no objection certificate. Instead of upholding the traditions of the noble profession, he raised his voice (as he is even now doing while this order is being dictated) and disrupted the proceedings of the court. He even threatened in a derisive voice to initiate contempt proceedings against my learned brother, Naidu, J.

4. Having regard to the contumacious conduct of Sri C.K. Mohanan, learned counsel in court today which was being repeated even when this order was being dictated, as also his conduct in relying on the article written by Sri Upendra Baxi, which has nothing to do with this case or the events that transpired in this court, we deem it appropriate to initiate proceedings against him under section 14 of the Contempt of Courts Act, 1971 read with section 345 of the Code of Criminal Procedure, 1973 and other enabling provisions in that regard. We also deem it appropriate to place on record the fact that Sri C.K. Mohanan, learned counsel for the petitioner did not, at any point of time before this order was dictated or while it was being dictated, express regret or tender apology. Sri C.K. Mohanan, learned counsel for the petitioner has in our opinion scandalised and lowered the authority of this court and has also interfered with the due course of a judicial proceeding. We accordingly find him guilty of having committed criminal contempt of this court and call upon him to file his defence, if any, in answer to the said charge on or before 27.10.2016.

5. Registry shall register a suo motu case and issue notice by special messenger to Sri C.K. Mohanan, Advocate, enclosing a copy of this order, calling upon him to file his defence, if any, in

answer to the charge that he has today committed criminal contempt of this court, on or before 27.10.2016. Though Sri C.K. Mohanan prayed for two weeks time to file his answer to the charge and stated that heavens will not fall if two weeks time is granted, having regard to the fact that contempt was committed in the presence of this court and during the hearing of this writ petition, we find no reason or justification to grant two weeks time to Sri C.K. Mohanan to file his defence to the charge. However, having regard to the fact that Sri C.K. Mohanan, the person charged with contempt, is a lawyer practicing in this court and has undertaken to appear in person on the next posting date, we do not deem it necessary to detain him in custody or to pass any order or direction to ensure his presence in this court on the next posting date. Call on 27.10.2016."

11.....In view of the fact that the notice had not been served on Sri C.K. Mohanan from this court, we adjourned the contempt case to 28.10.2016. The order passed by this court on 27.10.2016 is extracted below:

"This contempt case was registered pursuant to the orders passed by this court on 24.10.2016 in W.P.(Crl.) No. 351 of 2016. After passing that order whereby we called upon Sri. C.K. Mohanan, a lawyer practicing in this court and was appearing for the petitioner in W.P. (Crl.) No. 351 of 2016, to file his defence if any to the charge that he had committed criminal contempt of this court on 24.10.2016. We had also recorded the statement made by him that he will be present in this court today.

2. *The process server deputed from this court pursuant to the order passed by this court on 24.10.2016 in W.P.(Crl.) No. 351 of 2016 has reported that notice could not be served on Sri. C.K. Mohanan for the reason that his office was locked. Be that as it may, Sri. C.K. Mohanan was not present in this court when this petition was taken*

up today at 11.10 am. ***As the order passed by this court on 24.10.2016 was passed in his presence and he was aware of it, even without a formal notice being served on him from this court, as a counsel of this court, he had a duty to be present today."***

3.3 Though there was no notice being served either personally or otherwise, the Ld. Judges asked Adv. C. K. Mohanan to file reply to the charge.

The order dated 28th October, 2016 is reproduced as under;

> ***"12****.....When this case was taken up today, the respondent who was present in person in lawyer's robes, prayed for two weeks' time to file his answer to the charge. He stated that notice has not so far been served on him from this court, that he is not aware of the charges levelled against him and that he proposes to engage a lawyer from Madras. The records disclose that the process server deputed from this court could not serve notice on the respondent for the reason that his office was locked.*
>
> ***2.*** *When we pointed out to the respondent that he cannot appear in the robes of a lawyer when he is appearing in person, he asked us to point out to him the provision of law which prohibits him from doing so. He submitted that in the absence of any prohibition on a lawyer, who is a party to the litigation, from appearing in the robes of a lawyer, it is embarrassing for him to remove the robes of the lawyer. He also stated that he will go, remove his robes and come back half an hour later. He also stated that though he has not seen the order passed by this court on 24.10.2016, 'someone' told him that certain things which were dictated in open court do not find a place therein. He stated that he was told that in the order dictated in open court, there was a statement that he had abused two Government Pleaders, but he has been told that it is not there in the final order. It is relevant in this context to note that it was in the presence of the respondent that orders were passed on 24.10.2016. It is true that when the order was dictated in open court on 24.10.2016, we had referred to the fact that Sri. C.K.*

Mohnanan had abused Sri. K.B. Ramanand and Sri. Johnson, learned Government Pleaders attached to this court, about a month back. As that conduct was not relevant and that was not the reason why we initiated action against the respondent for contempt of court, we deleted that portion of the order which was dictated in open court when the order was finalised.

3. In our opinion, the conduct of the respondent continues to be contumacious and he appears to be bent on further ridiculing this court. He has not shown any remorse. It is evident from the conduct of the respondent that he does not propose to file his defence in answer to the charge. The time granted by this court for that purpose has already expired. His request for two weeks' time to file objections was rejected by us on 24.10.2016. Though this case was called yesterday, since the respondent was not present in person and there was no appearance on his behalf, the case was adjourned to today, so as to enable him to appear in person. Today, the response of the respondent is as stated above. However, notwithstanding the fact that the respondent appeared today in the robes of a lawyer though he is not entitled to do so and his response was as stated above, we deem it appropriate to grant the respondent time till 31.10.2016 to file his answer to the charge. To a query from us as to whether he will be present in this court in person on 31.10.2016, the respondent stated that he will be present in person on 31.10.2016. In the light of the aforesaid submission and undertaking, we do not deem it necessary to pass an order or direction to ensure the respondent's presence in this court on Monday 31.10.2016. Registry shall forthwith serve notice of the contempt case on the respondent.

Call on 31.10.2016."

3.4. Since this Bench did not sit on 31.10.2016, the case was adjourned to 1st November, 2016.

3.5. The order dated 1st November, 2016 shows that, without service of notice and without framing and serving of any proper charge the Advocate was convicted and this itself is sufficient ground

to prove the misuse of power and criminal offences by Justice D. S. Naidu and Justice P.N. Ravindran.

3.6. The said illegal conviction of an advocate vide order dated 1.11.2016 was later on set aside by Full Bench of Hon'ble Supreme Court in **Adv. C.K. Mohanan Vs. State 2018 SCC OnLine SC 2415.**

The illegal order passed by Justice Naidu's Bench on 1st November 2016 reads as under;

> ***"29.*** *The respondent has not so far filed his defence. He is not even prepared to address the court as a party in person. Having regard to the facts stated above and the conduct of the respondent, we are of the opinion that his request for two weeks' time to file his defence in answer to the charge cannot be entertained. Apart from the respondent's ipse dixit, there is nothing on record to show that no lawyer of this court is willing to appear for him. The statement in the petition handed over to us to day (as stated in para 13 above) is that "no lawyer from Kerala High Court Bar Association is willing to appear for him in the above case". He has no case that no lawyer from any other Bar Association in the State of Kerala is willing to appear for him. His case is that members of the Kerala High Court Bar Association are not willing to appear for him. In such circumstances, we are satisfied that the respondent's request for two weeks time from today to file his defence in answer to the charge is not bonafide. If, as stated by the respondent when the case was taken up today, there is no basis for proceeding against him under the Contempt of Courts Act, 1971, being a lawyer, the respondent could have in our opinion filed his defence in answer to the charge by now. We accordingly reject the respondent's request for further time to file his defence in answer to the charge.*
>
> ***41.*** *Here Sri C.K. Mohanan has committed contempt in the face of the court--not only on the first day; in fact, on every subsequent day of hearing, too. He has, regrettably, transgressed the threshold of*

decency and decorum this noble profession demands. He has wilfully disregarded the court's directives, contumaciously conducted himself, and malevolently mocked at the court at every given opportunity. He has made us think that the enumerated instances of contempt in Vinay Chandra Mishra, In re can be committed all by one person.

46. *Having concluded that Sri C.K. Mohanan is guilty of criminal contempt in the face of court and having regard to his still unrepentant conduct, we sentence him to undergo simple imprisonment for a term of three months and to pay a fine of Rs. 1,000/- (Rupees One Thousand only). Registry shall take appropriate further steps as are required."*

4. # **CHARGE 1#: SECTION 219,220 166 R/W 120 (B) & 34 OF IPC JUSTICE D.S. NAIDU & P.N. RAVINDRAN ARE GUILTY OF CONTEMPT OF FULL BENCH JUDGMENT IN DR. L.P. MISHRA (1998) 7 SCC 379 & SUKHDEV SINGH SODHI 1954 SCR 454 CASE:-**

4.1 That, the law of Contempt is settled by Full Bench of Hon'ble Supreme Court in following cases.

i) Sukhdev Singh Sodhi v. Chief Justice S. Teja Singh, 1954 SCR 454

ii) Dr. L.P. Mishra Vs. State (1998) 7 SCC 379 (F.B.)

iii) Vinay Chandra Mishra's case AIR 1995 SC 2348(F.B.)

iv) R.K. Anand Vs. Delhi High Court (2009) 8 SCC 106

Where it is ruled that, whenever any Contempt is committed and more particularly on the face of the Court is committed then the procedure of Section 14 of the Contempt of Court's Act has to be followed.

4.2. Full Bench of Hon'ble Supreme Court in **Dr. L.P. Misra Vs. State of U.P. 1998 Cri.L.J. 4603: (1998) 7 SCC 379** decided the ratio that;

"A group of advocate entered the Court room, shouting slogans and asking the Court to stop its

proceedings. As the Court continued, the advocates went on to the Dias and tried to manhandle the Judges and uttered very abusive language against one of the Members of the Bench. The learned Judges retired to their Chambers and then re-assembled and passed an order holding the Advocates guilty by imposing sentence of imprisonment and fine. In doing so, the learned Judges invoked the High Court's power under Article 215 of the Constitution.

Against that order, an appeal was filed to Supreme Court – The Three Judge Bench of Supreme Court set aside the order of Allahabad High Court as the same was passed without following the procedure prescribed under the law. In doing so the learned Judges referred to Section 14 of the said Act. Supreme Court also held that the power of the High Court under Article 215 ***has to be exercised in accordance with the procedure prescribed by law.***

> ***8.*** *Mr. Dwivedi, Learned Senior Counsel appearing for the appellant in Crl. Appeal No. 483 of 1994 assailed the impugned order principally on the ground that the court while passing the said order did not follow the procedure prescribed by law. Counsel urged that the court had failed to give a reasonable opportunity to the appellants of being heard. Assuming that the incident as recited in the impugned order had taken place, the court could not have passed the impugned order on the same day after it reassembled without issuing a show cause notice or giving an opportunity to the appellants to explain the alleged contemptuous conduct. The minimal requirement of following the procedure prescribed by law had been over looked by the Court. In support of his*

submission, Counsel drew our attention to Section 14 of the Contempt of Courts Act, 1971 as also to the provisions contained in Chapter XXXV-E of the Allahabad High Court Rules, 1952. Emphasis was laid on Rule 7 and 8 which read as under :-

7. "When it is alleged or appears to the Court upon its own view that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and at any time before the rising of the Court, on the same day or as early as possible thereafter, shall -

(a) cause him to be informed in writing of the contempt with which he is charged, and if such person pleads guilty to the charge, his plea shall be recorded and the Court may in its discretion, convict him thereon,

(b) if such person refuses to plead, or does not plead, or claims to be tried or the Court does not convict him, on his plea of guilt, afford him an opportunity to make his defence to the charge, in support of which he may file an affidavit on the date fixed for his appearance or on such other date as may be fixed by the court in that behalf.

(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed either forthwith or after the adjournment, to determine the matter of the charge, and

(d) make such order for punishment

or discharge of such person as may be just.

8. Notwithstanding anything contained in Rule 7, where a person charged with contempt under the rule applies, whether orally or in writing to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the court is of opinion that it is practicable to do so and, that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof."

12. *After hearing learned counsel for the parties and after going through the materials placed on record,*

we are of the opinion that the Court while passing the impugned order had not followed the procedure prescribed by law. It is true that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution of India but such a jurisdiction has to be exercised in accordance with the procedure prescribed by law. It is in these circumstances, the impugned order cannot be sustained.

13. *The next question that needs to be considered by us is as to what proper order could be passed in the circumstances of this case.*

14. *The incident in question had taken place at Lucknow Bench of the Allahabad High Court. With a view to avoid embarrassment to the parties and since both the learned Judges ceased to be the Judges of the Allahabad High Court, it would be in the interest of justice to transfer the contempt proceedings to the principal seat of the High Court at Allahabad. The learned Chief Justice of the Allahabad High Court is requested to nominate the Bench to hear and dispose of the above contempt proceedings. It is needless to state that the procedure prescribed under Chapter XXXV-E of the Allahabad High Court Rules, 1952 will be followed. We also request the High Court to dispose of the case as early as possible and preferably within six months from the date of receipt of the copy of this order.*

4.3. Hon'ble Supreme Court **in Re: Vinay Chandra Mishra AIR 1995 SC 2348** case it is ruled as under;

"Section 14 of Contempt of Court's Act:-

9*. …. However the fact that process is sumary does not mean that the procedure requirement. Viz., that an opportunity of making the charge is denied to the Contemnor. The degree of precision with which the charge may be stated depends upon the circumstances……..*

So long as the Contemor's interest are adequately safeguard by giving him an opportunity of being heard in his defence, even……."

10. *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 interest. The contemner was issued a notice intimating him the specific allegation 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."

4.4. Full Bench of Supreme Court in the case of **Sukhdev Singh Sodhi Vs. The Hon'ble Chief Justice S. Teja Singh AIR 1954 SC 186 : 1954 SCR 454** had ruled as under;

*"**21**. .....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 (LR 2 PC 106 at 120)** and was followed in India and in Burma in **In re Vallabhdas (ILR 27 Bom 394 at 399)** and **Ebrahim Mamoojee Parekh v. King Emperor (ILR 4 Rang 257 at 259-261)** In our view that is still the law."*

4.5. The Judgment relied and approved by Full Bench of Hon'ble Supreme Court in **Re: Pollard LR 2 PC 106 [5-Judge Bench Judicial Committee]** ruled as under;

*"**Contempt of Court — Barrister — Fine — One fine for several offences Jurisdiction — Judicial Committee — Statute, 3 & 4 Will. 4, c. 41, s. 4.***

A contempt of Court being a criminal offence, no person can be punished for such unless the specific offence charged against him be distinctly stated, and an opportunity given him of answering.

A Barrister engaged in his professional duty before the Supreme Court at Hong Kong , was, without notice of the alleged contempt, or rule to shew cause, and without being heard in defence, by an Order of that Court, fined, and adjudged to have been guilty of several contempts of Court in disrespectfully addressing the Chief Justice while conducting a cause. Such Order, upon a reference by the Crown to the Judicial Committee, under the Statute, 3 & 4 Will. 4, c. 41, s. 4, set aside, and the fine ordered to be remitted, first, on the ground that the Order was bad, inasmuch as the offences charged were not of themselves

such contempts of Court as legally constituted an offence; and secondly, that even if they had been so, no distinct charge of the several alleged offences was stated, and no opportunity given to the party accused of being heard, before passing sentence.

Again, it was not competent for the Court to punish the Appellant for an alleged contempt of Court committed on days anterior to that on which the judgment was pronounced, and after having heard the Appellant as Counsel in Court in the meantime.

In their judgment no person should be punished for contempt of Court, which is a criminal offence, unless the specific offence charged against him be distinctly stated, and an opportunity of answering it given to him, and that in the present case their Lordships are not satisfied that a distinct charge of the offence was stated, with an offer to hear the answer thereto, before sentence was passed.

Their Lordships further report to your Majesty that, on the proceedings before them, it appears that Mr. Pollard has received one sentence as for six several offences, and that in the statement of those alleged offences in the judgment pronounced by the Chief Justice, their Lordships are not satisfied that each of the six amounted to a contempt of Court, or was legally an offence: for these reasons their Lordships humbly recommend to your Majesty that your Majesty should be graciously pleased to remit the fine of 200 dollars which was imposed on Edward Hutchinson Pollard by the Order of the 2nd of July, 1867." Her Majesty, having taken this report into consideration, was pleased, by and with the advice of Her Privy Council, to approve thereof, and of what was therein recommended, and to order, that the fine of 200 dollars, which was imposed on Edward Hutchinson Pollard by the Order of the 2nd of July, 1867, be remitted. Whereof the Governor, Lieutenant-Governor, or Commander-in-Chief of the Colony of Hong Kong for the time being, and all other persons whom it may concern, were to take notice, and govern themselves accordingly.

Mr. James , Q.C., and Mr. Ayrton , appeared for the Chief Justice:—

The Chief Justice has not deemed it consistent with his duty to bring forward evidence in reply to the affidavits of the Appellant, or to appear as a litigant in the matter. Without contesting the case brought forward, we submit that the tone of the affidavits filed by the Appellant is not respectful to the Chief Justice or the Supreme Court.

At the close of the argument, their Lordships intimated that they would certify their opinion to Her Majesty upon the matter.

No judgment was given, but the following report was made by their Lordships, and confirmed by Her Majesty's Order in Council, dated the 19th of June, 1868

Both the proceedings as well as the sentence here were irregular, and, therefore, void. The Appellant had no notice of the offence with which he was charged, neither was he heard in defence before sentence was pronounced. He had a right to know what offence he had committed, and notice, and a rule to shew cause, ought to have been served on him before any sentence of suspension could be pronounced against him. No such course was pursued here. The Chief Justice entirely overlooked the maxim, "Audi alteram partem," so universally recognised — Bagg's Case [9] — and refused to hear the Appellant in explanation or defence."

4.6. Full Bench of this Hon'ble Court is ratio laid down in the case of **Ebrahim Mammojec Parekh Vs. Emperor ILR 4 Rang 257 (AIR 1926 Rangoon 188)** where it isruled as under;

"JUDICIAL COMMITTEE OF 5 - JUDGES – Contempt – Even if it is a gross contempt and the person admitted said contempt then also the person cannot be punished without framing specific charge against him and giving opportunity to answering the said charge – The provisions of Criminal Procedure Code stating about no-necessity in summary proceedings to frame charges is not applicable to the Contempt Proceedings – In Contempt proceedings framing of charge is must – Sentence in Contempt set aside.

The matter of the learned Judge's alleged failure to frame

a specific charge and to give appellant an opportunity of answering that charge is more difficult. As we have already said the learned Judge recorded that the learned advocate, who is now appearing for appellant but who was at that time appearing for the plaintiffs in the suit, drew his attention to the fact that appellant should be given an opportunity to show cause before action was taken against him, and it seems clear that if appellant had actually been called on to show cause the learned Judge would at that time have stated that that procedure had been followed. We are constrained therefore to find that appellant was not formally called upon to show cause against the proposed order of commitment.

If, therefore, the principle stated in Pollards' case [1868] 2 P. C. 106=5 Moor. P.C (N.S.) 111 must be applied we shall be bound to set aside the order as having been illegally made. The facts of this case are clearly different from those in Pollard's case [1868] 2 P. C. 106=5 Moor. P.C (N.S.) 111. There the alleged contempt had always been denied. Here it cannot be donied; but, on the contrary, it was repeatedly admitted by appellant during his examination as a witness. Nevertheless we cannot avoid the conclusion that, ***what the Privy Council laid down in Pollard's case [1868] 2 P. C. 106=5 Moor. P.C (N.S.) 111*** *and repeated in Chang Hang Kiu's case [1909] A. C. 312=78 L. J. P. C. 89=100 L. T. 310=21 Cox. C.C. 778=25 T.L.R. 381* ***was intended to be a general principle which must be applied in all cases of contempt, however, gross and that even if a witness has in evidence, given immediately before the proceedings for contempt, admitted the contempt, and even if the contempt which he has admitted is a gross contempt, nevertheless he cannot be punished for that contempt unless the specific offence charged against him has been distinctly stated and unless he has had an opportunity of answering the charge****.*

We have considered whether the principle embodied in S. 535 of the Code of Criminal Procedure could be applied to the case, but we have come to the conclusion that it ought not to be applied because although a formal charge may in

certain circumstances be dispensed with in regular criminal cases, where evidence is taken and the depositions of the witnesses show for what offence the accused is being tried, we are of opinion that a formal charge is essentially necessary in summary proceedings for contempt, where possibly no evidence to establish the offence may be recorded and where ***in the absence of a formal charge the person alleged to be in contempt may not know exactly what particular conduct of his is alleged to have amounted to contempt.***

The recent case or of Bason v. Skone A. I. R. 1926 Cal. 701=53 Cal. 401 as authority for the proposition that ***the jurisdiction of the Court in contempt ought not to be invoked in cases where the matter is one which can be dealt with adequately in a Magistrate's Court and where there is no necessity for the matter being dealt with immediately. This is the principle laid down in Davies case [1903] 1 K. B. 32 where it was said that: "the summary remedy is not to be resorted to if the ordinary methods of prosecution can satisfactorily accomplish the desired result, namely, to put an efficient and timely check upon such malpractices." That principle is part of the common law of England which has been held by the Privy Council in Surendra Na Banerjee v. Chief Justice of Bengal [1884] 10 Cal. 109=10 I. A. 171=4 Sar. 474 (P. C.) to be applicable in the jurisdiction of the High Courts in India for contempt, and it is clearly binding on us."***

The learned Judge's order that appellant do stand committed of contempt for 30 days and be kept in prison and fed on jail diet is set aside, and appellant will be released forthwith."

4.7. In the recent judgment in the case of **R.S. Sherawat Vs. Rajeev Malhotra 2018 SCC Online SC 1347**, it is ruled as under ;

"20 As a matter of fact, the appellant ought to succeed on the singular ground that the High Court unjustly proceeded against him without framing formal charges or furnishing such charges to him; and moreso because filing of affidavit by the

appellant was supported by contemporaneous official record, which cannot be termed as an attempt to obstruct the due course of administration of justice. Accordingly, this appeal ought to succeed."

It is further ruled that ;

*" **12.** Be that as it may, the law relating to contempt proceedings has been restated in the case of **Sahdeo Alias Sahdeo Singh Versus State of Uttar Pradesh and Others (2010) 3 SCC 705** in paragraph 27 as follows:*

"27. In view of the above, the law can be summarised that the High Court has a power to initiate the contempt proceedings suo motu for ensuring the compliance with the orders passed by the Court. However, contempt proceedings being quasi-criminal in nature, the same standard of proof is required in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the criminal jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The alleged contemnor is to be informed as to what is the charge, he has to meet. Thus, specific charge has to be framed in precision. The alleged contemnor may ask the Court to permit him to cross-examine the witnesses i.e. the deponents of affidavits, who have deposed against him. In spite of the fact that contempt proceedings are quasi-criminal in nature, provisions of the Code of Criminal Procedure, 1973 (hereinafter called "CrPC") and the Evidence Act are not attracted for the reason that proceedings have to be concluded expeditiously. Thus, the trial has to be concluded as early as possible. The case should not rest only on surmises and conjectures. There must be clear and reliable evidence to substantiate the allegations against the alleged contemnor. The proceedings must be concluded giving strict adherence to the statutory rules framed for the purpose.

***13.** We may usefully refer to two other decisions dealing*

with the issue under consideration. In ***Muthu Karuppan, Commissioner of Police, Chennai Vs. Parithi Ilamvazhuthi and Anr.(2011) 5 SCC 496****, 2 this Court observed thus:*

"15. Giving false evidence by filing false affidavit is an evil which must be effectively curbed with a strong hand.

Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent, but there must be a prima facie case of „deliberate falsehood" on a matter of substance and the court should be satisfied that there is a reasonable foundation for the charge."

"17. The contempt proceedings being quasi-criminal in nature, burden and standard of proof is the same as required in criminal cases. The charges have to be framed as per the statutory rules framed for the purpose and proved beyond reasonable doubt keeping in mind that the alleged contemnor is entitled to the benefit of doubt. Law does not permit imposing any punishment in contempt proceedings on mere probabilities, equally, the court cannot punish the alleged contemnor without any foundation merely on conjectures and surmises. As observed above, the contempt proceeding being quasi-criminal in nature require strict adherence to the procedure prescribed under the rules applicable in such proceedings."

4.8. Hon'ble Supreme Court in the case of **R.K. Anand Vs. Delhi High Court (2009) 8 SCC 106** it is rule as under;

A) CONTEMPT – COURT CANNOT GO BEYOND THE CHARGE SET OUT IN NOTICE ISSUED.

B) Court cannot reject the defence of Respondent without giving him the opportunity to give evidence in support of his defence. Court should give notice for proving the defence before rejecting it.

*"**210.** 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's was being manipulated by the defence.

4.9. Hon'ble Supreme Court in **Three Cheers Entertainment Private Limited Vs. CESC Limited (2008) 16 SCC 592** had ruled as under;

> ***"Contempt proceedings Dropped with cost of Rs. 1Lacs- The proceedings was highly irregular and conviction was illegal.***
>
> ***Single Judge without holding trial on issues proceeded to hold appellants guilty of Contempt. Such illegal order was confirmed by Division Bench of High Court.***
>
> ***If finding of fact was necessary for ascertaining whether contemnors had violated order of Court, trial ought to have been completed. Reliance placed on statement of witnesses was not in conformity with section 145 of the Evidence Act. There was no willful disobedience or contumacious conduct on the part of appellants- Contempt proceedings directed to be dropped- Amount of fine deposited by appellants to be refunded by High Court forewith- Costs assessed at Rs-1,00,000.***
>
> ***Indisputably, majesty of Court is required to be upheld- But for said purpose, a roving enquiry is not permissible.***
>
> ***25.*** *Indisputably, the majesty of the Court is required to be upheld. The Court must see that its orders are complied with. But for the said purpose, a roving enquiry is not permissible.Several proceedings which seek to achieve the same purpose are unknown to the process of law. If the trial was to be held on the issues framed by the learned Single Judge, it should have been allowed to be brought to its logical conclusion. When the trial was incomplete, we fail to see any reason why the contempt proceeding was heard on affidavits. Even if that was done, reliance was sought to be placed on the depositions of the witnesses in the said enquiry, which was admittedly incomplete. Witnesses affirming affidavits before the learned Single Judge were not being cross- examined so as to enable the counsel for the parties to draw their attention to the earlier statement made by them in terms of Section 145 of the*

Evidence Act.

28. *Mr. Rao, when asked, failed to satisfy us that the rules framed by the High Court had been complied with. If the trial had begun with a view to find as to whether the statement of the appellant that he had handed over the materials to the CECS officials was correct or not, why another proceeding should be initiated simultaneously before another learned Judge is beyond anybody's comprehension.*

30.*In Chhotu Ram v. UrvashiGulati&Anr. [(2001) 7 SCC 530], this Court held that a contempt of court proceeding being quasi criminal in nature, the burden to prove would be upon the person who made such an allegation.*

A person cannot be sentenced on mere probability. Willful disobedience and contumacious conduct is the basis on which a contemnor can be punished. Such a finding cannot be arrived at on ipse dixit of the court. It must be arrived at on the materials brought on record by the parties.

Yet again in Anil RatanSarkar&Ors. v. HirakGhosh&Ors. [(2002) (4) SCC 21], it was opined :

"15. It may also be noticed at this juncture that mere disobedience of an order may not be sufficient to amount to a 'civil contempt' within the meaning of Section 2(b) of the Act of 1971 – the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act and lastly, in the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation – the act or acts cannot be ascribed to be otherwise contumacious in nature. A doubt in the matter as regards the willful nature of the conduct if raised, question of success in a contempt petition would not arise."

31.*In Dr. Prodip Kumar Biswas v. Subrata Das &Ors. [(2004) (4) SCC 573], after noticing various provisions of the Calcutta High Court Rules held :*

"The Court may, however, in a contempt proceeding take such evidence as may be considered necessary. Admittedly, rule nisi was not drawn up. In fact, it seems that neither was any notice of contempt issued to the appellant nor any hearing took place except what has

been noticed hereinbefore.

Recently in SushilaRajeHolkar v. Anil Kak (Retd.) [2008 (7) SCALE 484], this Court held :

"It is a well settled principle of law that if two interpretations are possible of the order which is ambiguous, a contempt proceeding would not be maintainable." It was furthermore opined that the effect and purport of the order should be taken into consideration and the same must be read in its entirety.

32. *The Division Bench of the High Court, with great respect, did not advert to any of the aforementioned contentions of the appellant.*

4.10. Division Bench of Hon'ble High Court in the case of **D.D. Samudra, Judge, Court of Small Causes Vs. Vaziralli Pvt. Ltd. 2006 Cri.L.J. 2628** ruled as under;

14. We deem it proper to make it clear that our judicial officers should not resort to action under the Contempt of Courts Act too frequently and, in any case, too lightly. If, at all, any action is warranted then the judicial officers should better ensure that it is properly taken, due enquiry is made and the required procedure is followed so that the action can be maintained. Otherwise it unnecessarily causes loss of valuable time of the Courts. Besides, such haphazardly and improper action may cause damage to the dignity of the Courts instead of maintaining it.

6. *We cannot overlook that from time to time the Apex Court has cautioned the Courts to use contempt power very sparingly, with utmost care and caution and only for larger interest. Contempt power is to be used for upholding the majesty of law and dignity of the Court. In Chhotu Ram v. Urvashi Gulati and Anr. MANU/SC/0492/2001 : 2001CriLJ4204 , the Supreme Court observed:*

The introduction of the Contempt of Courts Act, 1971 in the statute book has been for the purposes of securing a feeling of confidence of the people in general and for due and proper administration of justice in the country. It is a powerful weapon in the

hands of the law courts by reason where for the exercise of jurisdiction must be with due care and caution and for larger interest.

7. *It would be also useful to refer observations of the Supreme Court in the case of Mrityunjoy Das v. Saved Hasibur Rahaman MANU/SC/0177/2001 : [2001]2SCR471 . The Supreme Court has set out essence of the underlying philosophy of the law of Contempt as follows:*

Before however, proceeding with the matter any further, be it noted that exercise of powers under the Contempt of Courts Act shall have to be rather cautious and use of it rather sparingly after addressing itself to the true effect of the contemptuous conduct. The Court must otherwise come to a conclusion that the conduct complained of tantamounts to obstruction of justice which if allowed, would even permeate in our societ*y vide Murray and Co. v. Ashok Kr. Newatia MANU/SC/0042/2000 : 2000CriLJ1394), this is a special jurisdiction conferred on to the law Courts to punish an offender for his contemptuous conduct or obstruction to the majesty of law.*

11*……after due hearing the subordinate Court is further required to write a concise order of reference indicating why contempt appears to have been committed.*

12. *The order under reference reveals that "why" part is absent therefrom. Learned Small Causes Judge has only vaguely referred to the contents of the letter and has observed:*

Considering the contents of letter I find that there is a prima facie case to accept that the said letter prejudices or interferes or tends to interfere with due course of judicial proceedings namely the hearing of the notice pending before the court.

After going through the letter dated 19th August, 2003 (Exhibit "A"), notice itself is sufficient to prove that it tends to interfere with administration of justice. Thus, prima

facie, that contempt appears to have been committed by Defendants / Respondents.

As a matter of fact, these observations are vague and do not spell out which part of the letter tends to interfere with the judicial proceedings or that whether the act of sending letter itself is treated as interference in the course of judicial proceedings. The order prepared by the learned Small Causes Judge (Shri D. D. Samudra) does not reveal reasons for his conclusion that the letter itself is sufficient to prove that it tends to interfere with the administration of justice.How we wish, the learned Small Causes Judge should have written a well reasoned order and instead of preparing the order in form it should have been with better substance.

4.11. Division Bench of Hon'ble Bombay High Court in **Re: Dattatraya Venkatesh Belvi 1904 SCC OnLine Bom 41 : (1904) 1 Cri.L.J. 612** it is ruled as under

"1. Per Curiam:— *The accused has been convicted by Mr. Alcock, Assistant Sessions Judge of Belgaum under s. 228, Penal Code, 1860. The section requires that the insult or interruption to the Court should be intentional.*

2. In this case there is no evidence of any intention on the part of the pleader to insult or interrupt the Court. The whole affair has been given undue importance and might have been more quietly settled. Some latitude should be allowed to a member of the "bar, insisting in the conduct of his case upon his question being taken down or his objections noted, where the Court thinks the question inadmissible or the objections untenable. *There ought to be a spirit of give and take between the Bench and the Bar in such matters and every little persistence on the part of a pleader should not be turned into an occasion for a criminal trial unless the pleader's conduct is so clearly vexatious as to lead to the inference that his intention is to insult or interrupt the Court.*

3. *We do not say that we approve of Mr. Belvi's persistence, but after he had apologized it would have been a proper exercise of discretion if Mr. Alcock had let the matter drop.*

4. *We reverse the conviction recorded against and sentence passed upon the accused and direct the fine of two annas, if paid, to be refunded."*

4.12. Hon'ble 5 Judge Bench of **Privy Council in Appeal No.21 of 1977** in the matter between **Ramesh Maharaj Vs. The Attorney General (1978) 2 WLR 902** had ruled that;

*"According their Lordships in agreement with Phillips J.A. would answer question (2): "**Yes; the failure of Maharaj J. to inform the appellant of the specific nature of the contempt of Court with which he was charged did contravene a constitutional right of the appellant** in respect of which he was entitled to protection under s.1(a)."*

The order of Maharaj J. committing the appellant to prison was made by him in the exercise of the judicial powers of the State; the arrest and detention of the appellant pursuant to the judge's order was effected by the executive arm of the State. So if his detention amounted to a contravention of his rights under S.1(a), it was a contravention by the State against which he was entitled to protection.

*…**This is not vicarious liability; it is a liability of the State itself. It is not a liability in tort at all; it is a liability in the public law of the State, not of the judge himself, which has been newly created by S.6(1) and (2) of the Constitution.***

*.. It is only **in the case of imprisonment or corporal punishment already undergone before an appeal can be heard that the consequences of the judgment or order cannot be put right on appeal to an appellate court. It is true that instead of, or even as well as, pursuing the ordinary course of appealing directly to an appellate court, a party to legal proceeding who alleges that a fundamental rule of natural justice has been infringed in the course of the determination of his case, could in theory seek collateral relief in an application to the High Court under.***

*For these reasons the appeal must be allowed and **the case remitted to the high court with a direction to***

assess the amount of monetary compensation to which the appellant is entitled .The respondent must pay the costs of this appeal and of the proceeding in both Courts below."

4.13. In **Rajesh Kumar Singh vs High Court Of Judicature Of Madhya Pradesh (2007) 14 SCC 126** it is ruled as under;

"A] Contempt of Courts Act , 1971 - Misuse of Contempt jurisdict/ion by High Court - some Judges are showing oversensitiveness with a tendency to treat even technical violations or unintended acts as contempt. It is possible that it is done to command respect. But Judges, like everyone else, will have to earn respect. They cannot demand respect by demonstration of 'power'. The power of Judiciary lies, not in punishing for contempt, but in the trust, confidence and faith of the common man. It should be remembered that exercise of such power, results in eroding the confidence of the public, rather than creating trust and faith in the judiciary. The purpose of the power to punish for criminal contempt is to ensure that the faith and confidence of the public in administration of justice is not eroded. Such power, vested in the High Courts, carries with it great responsibility. Care should be taken to ensure that there is no room for complaints of ostentatious exercise of power. Supreme Court set aside the order of the High Court in contempt petition No.5 of 2000 and acquit and exonerate the appellant of all charges.

Three acts, which are misuse of exercise of such power are :

(i) punishing persons for unintended acts or technical violations, by treating them as contempt of court;

(ii) frequent summoning of Government officers to court (to sermonize or to take them to task for perceived violations); and

(iii) making avoidable adverse comments and observations against persons who are not parties.

It should be remembered that exercise of such power, results in eroding the confidence of the public, rather than creating trust and faith in the judiciary.

This Court has repeatedly cautioned that the power to punish for contempt is not intended to be invoked or exercised routinely or mechanically, but with circumspection and restraint. Courts should not readily infer an intention to scandalize courts or lowering the authority of court unless such intention is clearly established. Nor should they exercise power to punish for contempt where mere question of propriety is involved. In Rizwan-ul-Hasan v. The State of Uttar Pradesh (1953 SCR 581), this Court reiterated the well-settled principle that jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice. Of late, a perception that is slowly gaining ground among public is that sometimes, some Judges are showing oversensitiveness with a tendency to treat even technical violations or unintended acts as contempt. It is possible that it is done to uphold the majesty of courts, and to command respect. But Judges, like everyone else, will have to earn respect. They cannot demand respect by demonstration of 'power'. Nearly two centuries ago, Justice John Marshall, the Chief Justice of American Supreme Court warned that the power of Judiciary lies, not in deciding cases, nor in imposing sentences, nor in punishing for contempt, but in the trust, confidence and faith of the common man. The purpose of the power to punish for criminal contempt is to ensure that the faith and confidence of the public in administration of justice is not eroded. Such power, vested in the High Courts, carries with it great responsibility. Care should be taken to ensure that there is no room for complaints of ostentatious exercise of power. Three acts, which are often cited as examples of exercise of such power are : (i) punishing persons for unintended acts or technical violations, by treating them as contempt of court; (ii) frequent summoning

of Government officers to court (to sermonize or to take them to task for perceived violations); and (iii) making avoidable adverse comments and observations against persons who are not parties. It should be remembered that exercise of such power, results in eroding the confidence of the public, rather than creating trust and faith in the judiciary. Be that as it may.

19. There is no material to show that the appellant acted with any ulterior motive. But for the complaint and request by the learned Magistrate that action should be taken against Raghuvanshi and the directions issued by the I.G. and Superintendent of Police to hold an inquiry, the appellant would not have held the inquiry. Any such preliminary inquiry warrants recording of statements. Any bona fide act in the course of discharge of duties and complying with the directions of the superior officers, should not land the Inquiry officer in a contempt proceedings. Though, common contempt proceedings were initiated against the IG of Police and the appellant, the High Court dropped the proceedings against the IG of Police who directed the inquiry, but chose to proceed against the appellant who merely complied with the directions of the IG of Police. It even ignored the declaration of bonafides and unconditional apology. The finding of guilt is totally warranted.

20. We, therefore, hold that the appellant is not guilty of contempt of court. Consequently, we allow this appeal and set aside the order of the High Court dated 2.3.2001 in contempt petition No.5 of 2000 and acquit and exonerate the appellant of all charges.

B] Hearing of party before cognizance under contempt – Respondent entitled to show cause against the initiation of contempt proceedings- No finding could have been recorded in the order against appellant, as he was not a party to that proceeding.

The observations in the order dated 22/29.5.2000 were made in the context of initiating suo moto contempt proceedings against the appellant and the

IG of Police. The appellant was entitled to show cause against the initiation of contempt proceedings. *The order dated 22/29.5.2000 does not contain a finding that Appellant had "without any authority of law recorded the statements of persons in a manner to give handle to Raghuvanshi to make allegations of malice against the Presiding Officer".*

In fact no finding could have been recorded in the order dated 22/29.5.2000 against appellant, as he was not a party to that proceeding. ***The observations in the order dated 22/29.5.2000 were made in the context of initiating suo moto contempt proceedings against the appellant and the IG of Police. The appellant was entitled to show cause against the initiation of contempt proceedings.*** *The appellant in fact produced documents to show that the statements of witnesses were recorded, in a preliminary inquiry directed by the IG of Police, on the complaint of the Magistrate. The explanation that he held the inquiry and recorded the statements on the directions of the IG of Police conveyed by the Superintendent of Police and that the statements of witnesses were recorded at the instance of and on the request of Raghuvanshi has been completely ignored or overlooked by the High Court."*

4.14. Full Bench Hon'ble Supreme Court in the case of **National Human Rights Commission Vs State MANU/2009/SC/0713** ruled as under **;**

"*In Zahira Habibullah Sheikh (5) and Anr. v. State of Gujarat and Ors. MANU/SC/1344/2006: 2006CriLJ1694 it was observed as under:*

If the court acts contrary to the role it is expected to play, it will be destruction of the fundamental edifice on which the justice delivery system stands. People for whose benefit the courts exist shall start doubting the efficacy of the system. "Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking: `The Judge was biased.

The perception may be wrong about the Judge's bias, but the Judge concerned must be careful to see that no such impression gains ground. Judges like Caesar's wife should be above suspicion.

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 in 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.

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 over hasty stage- managed, tailored and partisan trial.

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.

It was significantly said that law, to be just and fair has to be seen devoid of flaw. It has to keep the promise to justice and it cannot stay petrified and sit nonchalantly. The law should not be seen to sit by limply, while those who defy it go free and those who seek its protection lose hope (see Jennison v. Baker). Increasingly, people are

believing as observed by Salmon quoted by Diogenes Laertius in Lives of the Philosophers, "Laws are like spiders' webs: if some light or powerless thing falls into them, it is caught, but a bigger one can break through and get away." Jonathan Swift, in his "Essay on the Faculties of the Mind" said in similar lines: "Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through.

Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice. The operative principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial: the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences.

"Too great a price ... for truth".

Restraints on the processes for determining the truth are multifaceted. They have emerged in numerous different ways, at different times and affect different areas of the conduct of legal proceedings. By the traditional common law method of induction there has emerged in our jurisprudence the principle of a fair trial. Oliver Wendell Holmes described the process:

It is the merit of the common law that it decides the case first and determines the principles afterwards.... It is only after a series of determination on the same subject-matter, that it becomes necessary to `reconcile the cases', as it is called, that is, by a true induction to state the principle which has until then been obscurely felt. And this statement is often modified more than once by new decisions before the abstracted general rule takes its final shape. A well-settled legal doctrine embodies the work of many minds, and has been tested in form as well as substance by trained critics whose practical interest is to resist it at every step.

The principle of fair trial now informs and energises many areas of the law. It is reflected in numerous rules and practices. It is a constant, ongoing development process continually adapted to new changing circumstances, and exigencies of the situation--peculiar at times and related to the nature of crime, persons involved--directly or operating behind, social impact and societal needs and even so many powerful balancing factors which may come in the way of administration of criminal justice system.

This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affects the whole community as a community and is harmful to society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as persona non grata. The courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice--often referred to as the duty to vindicate and uphold the "majesty of the law". Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. The courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators.

*The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted.***"**

4.15. Needless to mention here that, Bench of Justice Naidu itself relied on the abovesaid judgment of Full Bench of Hon'ble Supreme Court **In Re: Vinay Chandra (1995) 2 SCC 584** *(Supra)* and in **R.K. Anand Vs. Delhi High Court (2009) 8 SCC 106** *(supra)* but they acted in utter disregard and defiance of said judgments. Hence they are guilty of gross Contempt.

Hon'ble Supreme Court in **Superintendent of Central Excise and others Vs. Somabhai Ranchhodhbhai Patel AIR 2001 SC 1975** , ruled as under;

"(A) Contempt of Courts Act (70 of 1971), S.2 – Misinterpritation of judgment of Hon'ble Supreme Court. The level of judicial officer's understanding can have serious impact on other litigants-

Misinterpretation of order of Supreme Court - Civil Judge of Senior Division erred in reading and understanding the Order of Supreme Court - Contempt proceedings initiated against the Judge - Judge tendered unconditional apology saying that with his limited understanding, he could not read the order correctly. While passing the Order, he inadvertently erred in reading and understanding the Order of Supreme Court - Supreme Court issued severe reprimand – Held, The officer is holding a responsible position of a Civil Judge of Senior Division. Even a new entrant to judicial service would not commit such mistake assuming it was a mistake - It cannot be ignored that the level of judicial officer's understanding can have serious impact on other litigants. There is no manner of doubt that the officer has acted in

most negligent manner without any caution or care whatsoever- Without any further comment, we would leave this aspect to the disciplinary authority for appropriate action, if any, taking into consideration all relevant facts. We do not know whether present is an isolated case of such an understanding? We do not know what has been his past record? In this view, we direct that a copy of the order shall be sent forthwith to the Registrar General of the High Court.".

4.16. In the case of **Official Liquidator Vs. Dayananad (2008) 10 SCC 1** ruled as under;

" Court cannot act contrary to law and expect others to obey their orders- If the courts command others to act in accordance with the provisions of the Constitution and the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

Held, by virtue of Art. 141, the judgment of the Constitution Bench in Umadevi (2006) 4 SCC 1 Case is binding on all courts including the Supreme Court till the same is overruled by a larger Bench-The attempt to dilute the ruilings in Umadevi by the suggestion in Pooran Chandra Pandey case (2007) 11 SCC 92 that Umadevi case cannot be applied to a case where regularisation has been sought for in pursuance of Art. 14, is obiter and the two-Judge Bench in Pooran Chandra Pandey case had no occasion to make any adverse comment on the binding character of the Constitution Bench judgment in Umadevi case – The said comments and observations made in Pooran Chandra Pandey case should be read as obiter and should neither be treated as binding by the High Courts, tribunals and other judicial foras nor should they be relied upon or made the basis for bypassing the principles laid down in Umadevi case."

4.17. In **Special Deputy Collector (L.A.) Vs. N. Vasudeva Rao (2007) 14 SCC 165** it is ruled that, the High Court referring the Supreme Court judgment and not applying the ratio is violative of judicial discipline.

It is ruled as under;

"Contempt of Court – Abrupt conclusions arrived at by court without addressing basic issues – No materials to conclude anything regarding these conclusions - Held, directions on merits cannot be given in a contempt petition on the basis of abrupt conclusions arrived at without addressing the basic issues- Letters patent appeal, against such order is maintainable – High Court distinguishing Supreme Court's judjment and that to erroneously and not applying the same– Held, the is not graceful and violative of judicial discipline.

Neither learned Single Judge nor the Division Bench addressed the basic issues and on the other hand came to abrupt conclusions. Therefore, the orders passed by learned Single Judge and the Division Bench deserve to be set aside, which we direct.

11.It appears that there is also dispute about the area, so in the contempt petition no direction could have been given in the manner done. The Division Bench has held that the LPA is not maintainable. In view of what has been stated in ***Midnapore Peoples' Coop. Bank Ltd. & Ors. v. Chunilal Nanda and Others*** ***[2006(5) SCC 399],*** *the LPA was clearly maintainable.*

Reliance was placed on two Division Bench Judgments holding that contempt petition was not maintainable before Learned Single Judge as his order had merged with the Division Bench order. As regards Lalith Mathur's case (supra), the High Court distinguished the judgment on the ground that there was no elaborate discussion in the judgment and therefore no reason is discernible. To say the least, the alleged distinguishing feature as pointed out by the High Court not to follow the judgment cannot be said to be graceful. It is clearly violative of the judicial discipline. It has been stated that payments have been made to some persons and no departure could be made in the present case.

13. Actually there is no definite material as to whether the land was resumed or it was an excavated land.

14. It appears from record that three counter affidavits have been filed and one of the basic issues was whether

the land was resumed or excavated land. There is no definite material in this regard brought by the respondents on record. Three counter affidavits filed by the respondents clearly indicate their definite stand. Neither learned Single Judge nor the Division Bench addressed the basic issues and on the other hand came to abrupt conclusions. Therefore, the orders passed by learned Single Judge and the Division Bench deserve to be set aside, which we direct. The authorities shall however consider the matter in detail and record findings keeping in view the GO, the factual position and evidence led before it. The appeals are accordingly disposed of without any order as to costs."

5. # CHARGE # 2:- RELYING ON PER-INCURIAM JUDGMENT AND IGNORING BINDING PRECEDENTS.

5.1. That, Hon'ble Supreme Court in **Sandeep Kumar Bafna Vs. State of Maharashtra (2014) 16 SCC 623** had ruled as under;

*"**A) PER-INCURIAM JUDGMENTS- NOT TO BE FOLLOWED** - It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam.*

B) LAW OF PRECEDENTS - JUDGE SHOULD NOT BLINDLY FOLLOW THE EDITORIAL NOTE IN THE CITATIONS - SHOULD SEE IN WHAT CONTEXT THE OBSERVATIONS ARE MADE.

In the present case, in the impugned Order the learned Single Judge appears to have blindly followed the incorrect and certainly misleading editorial note in the Supreme Court Reports without taking the trouble of conscientiously apprising himself of the context in which Rashmi Rekha appears to hold Niranjan Singh per incuriam, and equally importantly, to which previous judgment. An earlier judgment cannot possibly be seen as per incuriam a later judgment as the latter if numerically stronger only then it would overrule the former.

A perusal of the impugned Order discloses that the learned Single Judge was of the mistaken opinion that Niranjan Singh was per incuriam, possibly because of an editorial error in the reporting of the later judgment in Rashmi RekhaThatoi vs State of Orissa (2012) 5 SCC 690.

In the common law system, the purpose of precedents is to impart predictability to law, regrettably the judicial indiscipline displayed in the impugned Judgment, defeats it. If the learned Single Judge who had authored the impugned Judgment irrepressibly held divergent opinion and found it unpalatable, all that he could have done was to draft a reference to the Hon'ble Chief Justice for the purpose of constituting a larger Bench; whether or not to accede to this request remains within the discretion of the Chief Justice.

However, in the case in hand, this avenue could also not have been traversed since Niranjan Singh binds not only Co-equal Benches of the Supreme Court but certainly every Bench of any High Court of India. Far from being per incuriam, Niranjan Singh has metamorphosed into the structure of stare decisis, owing to it having endured over two score years of consideration, leading to the position that even Larger Benches of this Court should hesitate to remodel its ratio.

5.2. There are two conflicting ratios of Hon'ble Supreme Court. The law laid down in **Leila David's case (2009) 10 SCC 337** is "Per Incuriam" as it is passed against the law laid down by earlier Full Bench of Hon'ble Supreme Court in following cases;

i) Dr. L.P. Mishra Vs. State (1998) 7 SCC 379

ii) Re: Vinay Chandra Mishra (1995) 2 SCC 584

iii) Sukhdev Singh Sodhi v. Chief Justice S. Teja Singh, 1954 SCR 454

Needless to mention here that, the judgment in Vinay Chandra is approved by Constitution Bench of Hon'ble Supreme Court in **Supreme Court Bar Association Vs. Union of India (1998) 4 SCC 409.**

Ratio laid down in **Sukhdev Singh Sodhi v. Chief Justice S. Teja Singh, 1954 SCR 454** is approved by Constitution Bench in **C.K.Daphtary Vs. O.P.Gupta (1971) 1 SCC 626.** It was also referred in many judgments of the Supreme Court.

5.3. Moreover Justice D. S. Naidu & Justice P.N. Ravindran was dealing a case of contempt by an Advocate of insulting a Judge and of inappropriate argument and for the cases of Advocates the ratio's are laid down in **Dr. L.P. Mishra's** case **(1998) 7 SCC 379** *(supra)* and in **Vinay Chandra's** case **(1995) 2 SCC 584** *(supra)*.

But these two binding precedents are ignored by Justice D.S. Naidu and the Per-Incuriam and unrelated ratio of a case of throwing footwear at the Judge by a litigant in **Leila David's case** *(supra)* is relied to convict the Lawyer.

5.4. This shows immaturity, incapacity of Justice D. S. Naidu & Justice P.N. Ravindran as they don't know the basic law of precedent and this itself is a ground for their removal from the post of a Judge so that the other Citizens and Advocates should not suffer.

5.5. In **Anil Kumar Dubey Vs. Pradeep Shukla (Full Bench) 2017 SCC OnLine Chh 95** while dealing with Section 14 of the Contempt Act had observed as under;

> ***"29.*** *In Union of India & Others v. Dhanwati Devi & Others { MANU/SC/1272/1996 : (1996) 6 SCC 44} the Apex Court held that the High Court should analyze the decision of the Supreme Court and decide what is the ratio decidendi. It is only this ratio which is binding. The relevant portion of the judgment reads as follows:*
>
> ***"9.....It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it, is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding....."***
>
> ***30.*** *In Haryana Financial Corporation & Another v. Jagdamba Oil Mills & Another { MANU/SC/0056/2002 : (2002) 3 SCC 496}, the Apex Court dealing with the law of*

precedents, held as follows:

"19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Elucid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear."

Same view was taken by the Apex Court in Natwar Singh v. Director of Enforcement & Another { MANU/SC/0795/2010 : (2010) 13 SCC 255}.

31. *In Offshore Holdings Private Limited v. Bangalore Development Authority & Others { MANU/SC/0060/2011 : (2011) 3 SCC 139} the Apex Court held as follows:*

"85....The dictum stated in every judgment should be applied with reference to the facts of the case as well as its cumulative impact."

32. *A Constitution Bench of the Apex Court, in Natural Resources Allocation, In Re, Special Reference No. 1 of 2012 { MANU/SC/0793/2012 : (2012) 10 SCC 1} held as follows:*

"70. Each case entails a different set of facts and a decision is a precedent on its own facts; ***not everything said by a Judge while giving a judgment can be ascribed as precedential value. The essence of a decision that binds the parties to the case is the principle upon which the case is decided and for this reason, it is important to analyse a decision and cull out from it the ratio decidendi..."***

5.6. In **Promotee Telecom Engineers Forum and Ors Vs. D.S. Mathur, Secretary, Department of Telecommunications (2008) 11 SCC 579**it is ruled as under;

*"**Contempt of Courts Act (70 of 1971), Wrong or Misinterpretation of Supreme Court judgment is Contempt Of Court.The respondent took completely wrong view and adopted wholly incorrect interpretation.***

Under such circumstances, to push them again to file Original Application challenging the obviously erroneous orders passed by the respondent disposing of the representations of the petitioners would be a travesty of

justice."

5.7. In **Sunil Goyal Vs. Additional District Judge, Court No. 8, Jaipur City, Jaipur & Others. 2011(2) I.L.R. (Raj.)530** it is ruled as under;

> *"**POOR LEVEL OF UNDERSTANIG OF JUDGE - first appellate court without considering the ratio laid down in the above referred judgments, made distinction in a cursory manner, which is not proper for a Judicial Officer - The wrong interpretation or distinction of a judgment of Hon'ble Supreme Court and this Court by subordinate court amounts to disobedience of the order of Hon'ble Supreme Court and this Court, therefore, the impugned order passed by first appellate court is contemptous. It also shows that legal knowledge or appreciation of judgment of Hon'ble Apex Court, of the first appellate court is very poor. The distinction made by first appellate court that Hon'ble Apex court has passed the order in S.L.P. is also not proper. The Apex Court, under Article 136 of the Constitution of India may, in its discretion grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India. Learned first appellate court has also committed an illegality in making a distinction for not following the judgments of this Court on the ground that the orders have been passed in second appeal whereas it was dealing first appeal.***
>
> *First appellate court has distinguished the judgment of Hon'ble Apex Court delivered in M/s. Atma Ram Properties(P) Ltd. Vs. M/s. Federal Motors (P) Ltd.(supra) on the ground that the said judgment relates to Delhi Rent Control Act, whereas present case is under the provisions of Rajasthan Rent Control Act, and further that Hon'ble Apex Court has passed the order in Special Leave Petition.*
>
> *It appears that learned first appellate court without considering the ratio laid down in the above referred judgments, made distinction in a cursory manner, which*

is not proper for a Judicial Officer. The provisions of C.P.C. are applicable throughout the country and even if Atma Ram's case was relating to Delhi Rent Control Act, the provisions of Order 41 Rule 5 C.P.C. were considered and interpreted by Hon'ble Apex Court in the said judgment, therefore, the ratio laid down by the Hon'ble Apex Court was binding on first appellate court under Article 141 of the Constitution of India. Learned court below failed to take into consideration that judgments of this Court were relating to cases decided under the provisions of Rajasthan Rent Control Act and judgment of Hon'ble Apex Court in Atma Ram Properties(P) Limited Vs. Federal Motors (P) Limited(supra) was relied upon. When this Court relied upon a judgment of Hon'ble Apex Court, then there was no reason for the first appellate court for not relying upon the said judgment and in observing that the judgment of Hon'ble Apex Court in Atma Ram Properties(P) Limited Vs. Federal Motors (P) Limited(supra) is on Delhi Rent Control Act and the same has been passed in S.L.P. If in the opinion of learned court below, the judgment of Atma Ram Properties(P) Limited Vs. Federal Motors (P) Limited(supra) was with regard to Delhi Rent Control Act, then at least the judgments of this Court, which were relating to Rajathan Rent Control Act itself, were binding on it. The distinction made by first appellate court is absolutely illegal.

From the above, it reveals that first appellate court deliberately made a distinction and did not follow the ratio laid down by Hon'ble Apex Court in Atma Ram's case and this Court in Madan Bansal and Datu Mal's cases. ”

Above said judgment of Hon’ble Rajasthan High Court is upheld by Supreme Court in **Smt. Prabha Sharma Vs. Sunil Goyal and Ors. (2017) 11 SCC 77** where it is ruled as under;

“Article 141 of the Constitution of India - disciplinary proceedings against Additional District Judge for not following the Judgments of the High Court and Supreme Court - judicial officers are bound to follow the Judgments of the High Court and also the binding nature of the Judgments of this Court in terms of Article 141 of the

Constitution of India. We make it clear that the High Court is at liberty to proceed with the disciplinary proceedings and arrive at an independent decision.

BRIEF HISTORY (From : (MANU/RH/1195/2011))

High Court initiated disciplinary proceedings against Appellant who is working as Additional District Judge, Jaipur City for not following the Judgments of the High Court and Supreme Court. Appellant filed SLP before Supreme Court - Supreme Court dismissed the petition.

Held, the judgment, has mainly stated the legal position, making it clear that the judicial officers are bound to follow the Judgments of the High Court and also the binding nature of the Judgments of this Court in terms of Article 141 of the Constitution of India. We do not find any observation in the impugned judgment which reflects on the integrity of the Appellant. Therefore, it is not necessary to expunge any of the observations in the impugned Judgment and to finalise the same expeditiously.

Based on this Judgment, disciplinary proceedings have been initiated against the Appellant by the High Court. We make it clear that the High Court is at liberty to proceed with the disciplinary proceedings and arrive at an independent decision and to finalise the same expeditiously."

6. # CHARGE 3 # <u>OFFENCE UNDER SECTION 219 OF I.P.C. BY JUSTICE D.S.NAIDU & P.N. RAVINDRAN.</u>

<u>ALSO CONTEMPT OF SUPREME COURT IN ZAHIR KHAN AIR 1992 SC 642 FOR NOT GIVING ANY OPPORTUNITY TO ADV. SRI. C.K. MOHANAN TO BE TRIED BY ANOTHER BENCH.</u>

6.1. Section 14(2) of Contempt of Court's Act mandates that, the alleged contemnor should be given opportunity to make a choice to be tried by other Bench before whom the Contempt is committed.

In **<u>Zahir Khan Vs. Vijay Singh AIR 1992 SC 642</u>** it is ruled as under;

<u>"even if the alleged contemnor did not make application for change of the Bench i.e.trasfer of the case then it is duty of the Judge to bring it to the notice of the alleged contemnor the he has a right to get his matter transferred to other Bench. It is ruled as under;</u>

5. *Before proceeding with the matter we informed the contemner that under* ***Section 14(2) of the Contempt of Courts Act, 1971 he had an option to have the charge against him heard by some judge or judges other than the judge or judges in whose presence or hearing he is alleged to have committed contempt. We felt it necessary to do so since his written reply was silent in this behalf. We thought it our duty to inform him of this provision.*** *He stated that we may dispose of the matter ourselves and he did not desire it to be placed before any other judge or judges."*

In **Suo Motu Courts On Its Own Motion Vs. Satish Mahadeorao Uke 2019 OnLine Bom_____** it is ruled as under;

"Satish Mahadeorao Uke-respondent (Contemner), relying on Section 14(2) of the Contempt of Courts Act, 1971, has requested that the charge against him be tried by a Bench comprising of Judges other than both of us (Z.A.Haq and V.M.Deshpande, JJ). Judgment delivered in the case of Mohd. Zahir Khan Vs. Vijai Singh, reported in AIR 1992 SC 642 is also relied upon. We find that sub-section(2) of Section 14 of the Contempt of Courts Act, 1971 gives such right to the person who is charged for contempt in the circumstances mentioned in sub-section (1) of Section 14 of Contempt of Courts Act, 1971. We are of the opinion that it is in the interest of justice that the request made by Satish Mahadeorao Uke respondent (Contemner) requires consideration.

Hence, Registry is directed to place the papers (including the order passed on 21st November 2018) before the Hon'ble the Chief Justice of High Court of Judicature at Bombay for appropriate directions."

6.2. Hon'ble Bombay High Court in **Fadiah Saad Al-Abduyllah Al-Sabah Vs. Sanjay Mishrimal Punamiya 2015 (1) Bom CR 842 : 2014 SCC OnLine Bom 665** it is observed as under;

"7. *I deem it appropriate that the contempt in the face of my Court made as aforesaid be tried by another Judge of this Court as per Section 14(2) of the Contempt of Courts Act. Hence I direct the Prothonotary & Senior Master, High Court, Bombay to place this matter before the Hon'ble Chief Justice together with my*

statement of the facts of the case for passing directions for the trial thereof as per Section 14(2) of the Contempt of Courts Act, 1971."

6.3. Eve, J., in the case of **Law v. Chartered Institute of Patent Agents, (1919 (2) Ch 276 at p. 289)** made a similar observation:

> ***"If he has bias which renders him otherwise than an impartial Judge he is disqualified from performing his duty. Nay, more (so jealous is the policy of our law of the purity of administration of justice), if there are circumstances so affecting a person acting in a judicial capacity as to be calculated to create in the mind reasonable man a suspicion of that persons impartiality, those circumstances are themselves sufficient to disqualify although in fact no bias exists. One such circumstance which has always been held to bring about disqualification is the fact that the person whose impartiality is impugned has taken part in the proceedings, either by himself or his agent, as prosecutor or accuser."***

6.4. In the case of **R.V. Lee, (1882) 9 Q.B.D. 394** Field, J., observed;

> ***"There is no warrant for holding that, where the Justice has acted as member by directing a prosecution for an offence under the Act, he is sufficiently disqualified person so as to be sit as Judge at the hearing of the information."***

6.5. Justice Beweb in **Lession Vs. General Council of Medical Educationand registration, (1889) 43 Ch. D. 366 at P. 384)** has held as under;

> *"**** nothing can be clearer than the principle of law that a person who has judicial duty to perform disqualifies himself for performing it if has a interest in the decision which he is about to give, or a bias which renders him otherwise than an impartial Judge, if he is an accuser he must not be a Judge."*

Also there is observation of Justice Esher in **Allinson Vs. General Council**

of Medical Education and Registration, (1894) 1 QB 750 at p. 758) which is set out below;

> *"The question is not, whether in fact he was or was not biased. The Court cannot enquire into that. There is something between these two propositions. In the administration of Justice, whether by a recognized legal Court or by persons who although not a legal public Court, are acting in a similar capacity, public policy requires that in order that there should be no doubt the purity of the administration, any person who is to take part in it should not be in such a position that he might be suspected of being biased."*

6.6. In **Balogh Vs St. Albans Crown Court [1975] 1 QB 73** It is ruled in Balog's case as under;

> ***"A Judge should act of his own motion only when it is urgent and imperative to act immediately. In all other cases he should not take it upon himself to move. He should leave it to the Attorney-General or to the party aggrieved to make a motion in accordance with the rules in R.S. C., Ord. 52. The reason is so that he should not appear to be both prosecutor and judge: for that is a role which does not become him well.***
>
> *A considerable body of authority supports the view that the power of the court to commit for contempt by summary procedure should be jealously watched: see per Sir George Jessel M.R. in In re Clements (1877) 46 L.J.Ch. 375, 383, that* ***it should be exercised only in rare cases where there is no other remedy to preserve the dignity of the court and protect the public. The reason is that it is an inherently despotic and arbitrary power in which the judge often acts as prosecutor, witness, jury and judge."***

6.7. Full Bench of Hon'ble Supreme Court in Re: **Vinay Chadra Mishra's case AIR 1995 SC 2348** had followed the ratio of **Balogh**' s case *(supra)* as under;

> ***9**. ..... **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. (1975) QB 73 : (1974) 3 All ER 283. 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.

10. 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.

6.8. Hon'ble Apex Court in the matter of **Mohd. Yanus Khan Vs. State of U.P. (2010) 10 SCC 539** has held that,

"No person should adjudicate which he has dealt with in another capacity. The Hon'ble Supreme Court, time and again has reiterated that the contempt proceeding is sui generis. The Court is both the accuser as well as the Judge of the accusation. The principle that no man shall be the Judge of his own case, is cardinal principle of jurisprudence and the same squarely applicable in the present case. The two-fold position of a prosecutor and a Judge in one man is a manifest contradiction. The undesirability of allowing the prosecutor to be the Judge

has been stated and restated in noble language of both England and this Country."

Hon'ble Apex Court in the matter of **State Vs.Rajangam (2010) 15 SCC 369 : (2012) 4 SCC (Cri.) 714** has, in no unclear terms, held that, the person at whose instance prosecution is launched, cannot enquire the case.

Same law is affirmed by Full Bench of Hon'ble Supreme Court in recent case of **Mohan Lal Vs. State of Punjab (2018) 17 SCC 627: 2018 SCC OnLine SC 974,** where it is ruled that;

"The informant and the person enquiring should not be the same person. Justice is not only to be done but appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. The prosecution is vitiated due to conducted by same person."

6.9. Full Bench of Hon'ble Supreme Court in **Mohan Lal Vs. The State of Punjab AIR 2018 SC 3853: (2018) 17 SCC 627** had ruled as under;

"31. *In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair investigation from the point of view of an Accused as a guaranteed constitutional right Under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the Accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that* ***the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.***

32. *Resultantly, the appeal succeeds and is allowed. The prosecution is held to be vitiated because of the infraction of the constitutional guarantee of a fair investigation. The Appellant is directed to be set at liberty forthwith unless wanted in any other case.****"***

6.10. The principle that, a Judge must not have an interest or bias in the subject matter of a decision us so sacrosanct that even if one of many Judges has bias it upsets the fairness of the judgement.

In **R. Vs. Commissioner of pawing (1941) 1 QB 467.,** William J. Observed :

> *"I am strongly dispassed to think that* ***a Court is badly constituted of which an intrested person is a part, whatever may be the number of disintrested peraons. We cannot go into a poll of the Bench."***

6.11. In **Re: Justice C.S.Karnan (2017) 7 SCC 1 : 2017 SCC OnLine SC 703** it is ruled as under;

> ***"43(8).....****If an appropriate enquiry is initiated into any one or all of the allegations made by the contemnor (Justice C.S. Karnan), he would figure as a witness to establish the truth of the allegations made by him.* ***Unfortunately the contemnor appears to be oblivious of one of the fundamental principles of law that a complainant/informant cannot be a judge in his own complaint.The contemnor on more than one occasion "passed orders purporting to be in exercise of his judicial functions" commanding various authorities of the states to take legal action against various judges of the Madras High Court on the basis of the allegations made by him from time to time.***
>
> *44(9). Whether all the above-mentioned conduct amounts to either "proved misbehavior" or "incapacity" within the meaning of Article 124(4) read with Article 217(1)(b) of the Constitution of India warranting the impeachment of the contemnor is a matter which requires a very critical examination. If the contemnor is unable to prove the various allegations made against judges of the Madras High Court, what legal consequences would follow from such failure also requires an examination. Probably, the contemnor would be amenable for action in accordance with law for defamation, both civil and criminal apart from any other legal consequences."*

6.12. Section 479 of Cr P.C reads as under;

Sec.479. Case in which Judge or Magistrate is personally interested. : - ***No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.***

6.13. <u>DISQUALIFICATION OF JUDGE IN TRYING CASE TAKES AWAY JURISDICTION</u>:-

i) If the Judge had any interest in the decision of the case he is disqualified from trying it, however small the interest may be. One important subject at all to events is to clear away everything which might engender suspicion and distrust of the tribunal and to promote feelings of confidence in the administration of justice, which is so essential to social order and security.

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ii) <u>DISQUALIFICATION TAKES AWAY JURISDICTION</u> - A Judge who in consequence of a personal disqualification is forbidden by law to try a particular case though he may be authorized generally. **<u>23 Cal 328</u>**

6.14. Hon'ble Supreme Court in **<u>State of Punjab Vs. Davinder Pal Singh Bhullar & Ors (2011) 14 SCC 770.</u>** It is ruled as under;

"Constitution of India, Article 226 - BIAS- allegations made against a Judge of having bias - High Court Judge in order to settle personal score passed illegal order against public servant acted against him - Actual proof of prejudice in such a case may make the case of the party concerned stronger, but such a proof is not required. In fact, what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. However, once such an apprehension exists, the trial/judgment/order etc.

stands vitiated for want of impartiality. <u>Such judgment/order is a nullity and the trial "coram non-judice".</u>

Bias is the second limb of natural justice. Prima facie no one should be a judge in what is to be regarded as "sua causa. Whether or not he is named as a party. The decision-maker should have no interest by way of gain or detriment in the outcome of a proceeding. Interest may

take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with the subject-matter, from a close relationship or from a tenuous one – No one should be Judge of his own case. This principle is required to be followed by all judicial and quasi-judicial authorities as non-observance thereof, is treated as a violation of the principles of natural justice. The failure to adhere to this principle creates an apprehension of bias on the part of Judge."

6.15. Hon'ble Supreme Court in the case of **Pandurang and others vs State (1986) 4 SCC 436** had ruled that;

"If any matter is heard by a court which had no competence to hear the matter then the judgment passed becomes nullity, being a matter of total lack of jurisdiction. ***The right of any party cannot be taken away except by amending the rules of High Court. So long as the rules are in operation it would be arbitrary and discriminatory to deny him his right regardless of whether it is done by a reason of negligence or otherwise. Deliberately it cannot be done.*** *Even if the decision is right on merit, it is by a forum which is lacking in competence. Even a right decision by a wrong forum is no decision. It is non existent in the eyes of law. And hence a nullity.*

It is further observed by this Hon'ble Court that;

"We wish to add that the registry of the High Court was expected to have realized the position and ***ought not to have created such a situation which resulted in waste of Court time, once for hearing the appeal and next time, to consider the effect of the rules. No court can afford this luxury with the mountain of arrears every court carrying these days"***

6.16. # MALICE IN LAW #

6.16.1. In the case of **West Bengal State Electricity Board Vs. Dilip Kumar Ray (AIR 2007 SC 976),** it is ruled as under;

*"**Malice in law**"**A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with the innocent*

mind: he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of mind is concerned, he acts ignorantly, and in that sense innocently". Malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause. *See S. R. Venkataraman v. Union of India, (1979) 2 SCC 491.*

6.16.2. Hon'ble Supreme Court in **Kalabharati Advertising Vs. Hemant Vimalnath Narichania And Ors.(2010) 9 SCC 437** had ruled as under;

A. Legal Malice: The State is under obligation to act fairly without ill will or malice in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. *Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended."* ***It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. Passing an order for an unauthorized purpose constitutes malice in law. "***

6.16.3. In **Kishor M. Gadhave Patil Vs. State 2016 (5) Mh.L.J.75.** it is ruled as under;

LEGAL MALICE :- *Discrimination between two person is Lefgal Malice- The fact that another employee of the respondent was also a co- petitioner in the Civil writ filed in this Court. However , no action is taken against him leaves much to be desired and makes bona fides of the respondents suspect is a factor which brings the respondent virtually within the ambit of legal malice;*

For the reason recorded above, reasonable inference has to be drawn as regards existence of legal mala fides."

7. # CHARGE 4 # BREACH OF OATH TAKEN AS A HON'BLE SUPREME COURT JUDGE BY ACTING PARTIALLY, WITH ILL-WILL AND NOT UPHOLDING THE CONSTITUTION AND LAW.

7.1. In **Indirect Tax Association Vs. R.K.Jain** (Supra),it is ruled by Hon'ble Supreme Court that;

"Judge have their accountability to the society and their accountability must be judged by their conscience and oath of their office, that is to defend and uphold the Constitution and the laws without fear and favor with malice towards none, with charity for all, we strive to do the right."

7.2. EVERY JUDGE WHEN APPOINTED HAS TO TAKE OATH AS UNDER;

The constitution of India **Schedule III Articles 75 (4), 99, 124 (6) 148 (2) 164 (3), 188 and 219** provides that forms of oaths or Affirmation No. VIII is as follows.

" Form of oath or a affirmation to be made by the Judges of a Supreme Court."

I, A.B., having been appointed Chief Justice (or a Judge) of the Supreme Court at (or of) ---------- do that I will bear true faith and allegiance to the Constitution of India as by law established, [that I will uphold the sovereignty and integrity of India] that, ***I will duly and faithfully and to the best of my ability, Knowledge and judgement perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.***

Here Justice D.S.Naidu & Justice P.N.Ravindran acted against Constitution of India and law laid down by Hon'ble Supreme Court and hence they breached the oath taken as a High Court Judge and therefore forfeited their right to continue as a High Court Judge is forfeited. They are liable to be dismissed forthwith.

8. # CHARGE 5 # JUSTICE JUSTICE D. S. NAIDU & JUSTICE P.N.RAVINDRAN ARE BOUND TO RESIGN FROM THE POST OF HIGH COURT JUDGE AS PER CONSTITUTION BENCH JUDGMENT IN K.VEERASWAMI VS.UNION OF INDIA (1991) 3 SCC 655.

`(53) …… ***The judiciary has no power of the purse or the sword. It survives only by public confidence and it is important to the stability of the society that the confidence of the public is not shaken. The Judge whose character is clouded and whose standards of morality and rectitude are in doubt may not have the judicial independence and may not command confidence of the public. He must voluntarily withdraw from the judicial work and administration.***

(54) …….. The emphasis on this point should not appear superfluous. Prof. Jackson says "Misbehavior by a Judge, whether it takes place on the bench or off the bench, undermines public confidence in the administration of justice, and also damages public respect for the law of the land; if nothing is seen to be done about it, the damage goes unrepaired. This a must be so when the judge commits a serious criminal offence and remains in office". (Jackson's Machinery of Justice by J.R. Spencer, 8th Edn. pp. 369-

(55) The proved "misbehaviour" which is the basis for removal of a Judge under clause (4) of Article 124 of the Constitution may also in certain cases involve an offence of criminal misconduct under Section 5(1) of the Act. But that is no ground for withholding criminal prosecution till the Judge is removed by Parliament as suggested by counsel for the appellant. One is the power of Parliament and the other is the jurisdiction of a criminal court. Both are mutually exclusive. Even a government servant who is answerable for his misconduct which may also constitute an offence under the Indian Penal Code or under S. 5 of the Act is liable to be prosecuted in addition to a departmental enquiry. If prosecuted in a criminal court he may be punished by way of imprisonment or fine or with both but in departmental enquiry, the highest penalty that could be imposed on him is dismissal. The competent authority may either allow the prosecution to go on in a court of law or subject him to a departmental enquiry or subject him to both concurrently or consecutively. It is not objectionable to initiate criminal proceedings against

public servant before exhausting the disciplinary proceedings, and a fortiori, the prosecution of a Judge for criminal misconduct before his removal by Parliament for proved misbehaviour is unobjectionable.

".....But we know of no law providing protection for Judges from criminal prosecution. Article 361(2) confers immunity from criminal prosecution only to the President and Governors of States and to no others. Even that immunity has been limited during their term of office. ***The Judges are liable to be dealt with just the same way as any other person in respect of criminal offence. It is only in taking of bribes or with regard to the offence of corruption the sanction for criminal prosecution is required.***

(61) For the reasons which we have endeavored to outline and subject to the directions issued, we hold that for the purpose of clause (c) of S. 6(1 of the Act the President of India is the authority competent to give previous sanction for the prosecution of a Judge of the Supreme court and of the High court.

(79) Before parting with the case, we may say a word more. This case has given us much concern. We gave our fullest consideration to the questions raised. We have examined and re-examined the questions before reaching the conclusion. We consider that the society's demand for honesty in a judge is exacting and absolute. ***The standards of judicial behaviour, both, on and off the bench, are normally extremely high. For a Judge to deviate from such standards of honesty and impartiality is to betray the trust reposed in him. No excuse or no legal relativity can condone such betrayal.*** *From the standpoint of justice the size of the bribe or scope of corruption cannot be the scale for measuring a Judge's dishonour.* ***A single dishonest Judge not only dishonours himself and disgraces his office but jeopardizes the integrity of the entire judicial system.***

(80) A judicial scandal has always been regarded as far more deplorable than a scandal involving either the executive or a member of the legislature. The slightest hint of irregularity or impropriety in the court is a cause for great anxiety and alarm. "A legislator or an administrator

may be found guilty of corruption without apparently endangering the foundation of the State. But a Judge must keep himself absolutely above suspicion" to preserve the impartiality and independence of the judiciary and to have the public confidence thereof.

Let us take a case where there is a positive finding recorded in such a proceeding that the Judge was habitually accepting bribe, and on that ground he is removed from his office. On the argument of Mr Sibal, the matter will have to be closed with his removal and he will escape the criminal liability and even the ill-gotten money would not be confiscated. Let us consider another situation where an abettor is found guilty under S. 165-A of the Indian Penal Code and is convicted. The main culprit, the Judge, shall escape on the argument of the appellant. In a civilized society the law cannot be assumed to be leading to such disturbing results.

9. # CHARGE 6 # DELIBERATE CONTEMPT OF SUPREME COURT GUIDELINES IN HARI NATH (1995) 4 SCC 291 BY NOT ORDERING THE SUSPENSION OF SENTENCE UNDER CONTEMPT. :-

That, whenever any person is convicted under contempt then the Court. Judge passing order of conviction is bound to stay the conviction for giving time to file appeal.

9.1. The Full Bench of Hon'ble Supreme Court in case of **Hari Nath Sharma Vs. Jaipur Devlopment Authority (1995) 4 SCC 251** where it is ruled as under;

"*It was argued by the learned counsel for the appellant that since the order is an appealable one, the least that the Court owed to its own sense of fairness and justice, was to suspend the sentence for a reasonable time to enable the appellant to approach the higher Court. In the aforesaid case, while issuing notice the Supreme Court had directed interim suspension of the order of conviction and sentence. The appellant therein had been directed to be released from custody forthwith.*

5. In the meanwhile, we are of the opinion that since the order of the learned Single Judge is appealable, the better course would be to adopt the approach similar to the course adopted by the Hon'ble Supreme Court in Hari Nath Sharma's case (supra). We, therefore, stay the operation of the order dated 9.3.2005 passed

*by the learned Single Judge. The appellant shall be released from custody forthwith and all consequential administrative orders pursuant to the conviction and sentence shall also remain stayed. Copy of this order be given dasti under the signatures of Court Secretary.***"**

9.2. Division Bench of Hon'ble Bombay High Court in the case of **Anita Hiranandani Vs. Dwarka Hiranandani 2014 SCC OnLine Bom 4882** had held that, the Respondent had the right to approach Hon'ble Supreme Court against the order of conviction passed by the High Court and therefore stayed his own order of conviction and directed the State to not take any action till the Appeal period.

The order reads as under;

"*Contempt Petition is allowed. The Contemnor Respondent No. 1 – Dwarka Revchand Hiranandani is convicted under the provisions of the Contempt of Courts Act and he has to undergo sentence of simple imprisonment for one month.*

Needless to state that the Respondent No. 1 has a right to file an appeal in the Apex Court against the order and, therefore, this order will not be implemented till the appeal period is over. State, however, is directed to take respondent No. 1 in custody forthwith after the reasoned order is made available to him and after the appeal period is over from the date when he received the reasoned order, unless the stay order is granted by the Apex Court."

But Justice D.S. Naidu & Justice P.N. Ravindran due to their admant conduct disregarded the above rule and didn't stayed the abovesaid sentence and therefore they are unfit to hold the post of a Judge of High Court.

10. # CHARGE 7 # : VIOLATION OF MANDATE OF LAW TO PROVIDE FREE COPY OF ORDER IF CONVICTED.

That, the Contempt is a criminal offence and order passed is an order by a Criminal Court (**Sahdeo Alias Sahdeo Singh Versus State (2010) 3 SCC 705**) section **363 (1) of Cr.PC** mandates that when any accused is convicted then he should be given a copy of order free of cost. It reads as under;

363. Copy of judgement to be given to the accused and other persons.

(1) When the accused is sentenced to imprisonment, a copy of the judgment shall, immediately after the

pronouncement of the judgment, be given to him free of cost.

That, the person facing the charge under Contempt is entitled for all protection available to an accused. (**R. S Sherawat Vs. Rajeev Malhotra and Ors. 2018 SCC OnLine SC 1347**.)

The principles of natural justice apply with greater rigour to cases under Contempt. **(R.K. Anand Vs. Delhi High Court (2009) 8 SCC 106).** Abovesaid laws are not followed and fundamental rights of an accused who is an advocate are violated. But it was not followed.

11. CHARGE 8 #:- SECTION 219, 220, 166 of I.P.C:- JUSTICE D.S. NAIDU WAS DISQUALIFIED TO HEAR THE CASE AND WAS BOUND TO RECUSE FROM THE AS HE WAS PERSONALLY ATTACKED BY ADV. C.K. MOHANAN BY PRODUCING ARTICLE PUBLISHED AGAINST J.NAIDU IN THE OUTLOOK MAGZINE.

11.1 That, one of the charge of Contempt as stated in the order dated 1st November 2016 **(Suo Motu Vs Adv. Sri. C.K. Mohanan 2016 SCC OnLine Ker 21105)** reads as under;

> ***30****.....It is also relevant in this context to note that* ***action in contempt was initiated against the respondent by this court by order passed on 24.10.2016 not only because he had raised his voice and shouted at us, when we brought to his notice that his client desires to engage another counsel, but also for the reason that he had levelled allegations against one of us (Naidu, J.) relying on an article written by Prof. Upendra Baxi.*** *This was after this court had passed an order before the court rose for the lunch recess, to the effect that this court should consider whether the power under section 14 of the Contempt of Courts Act cannot be invoked.*
>
> ***31.*** *Relying on that article, the respondent stated that Naidu, J. or this court did not initiate contempt proceedings against the author of the article or the printer or publisher even though the character of the judge had been assailed. He also left the court with a gesture that he wanted to have a glass of water and he came back a few minutes later, while the order passed on 24.10.2016 was being dictated. He even threatened to initiate contempt*

proceedings against Naidu, J. Even when this order was being dictated, there were frequent interruptions by the respondent and he even stated in a derisive manner "Mr. Naidu, you are a gentleman".

Under these circumstances it was not proper for Justice D. S. Naidu to continue on the said Bench. A law in this regard is very well settled by Hon'ble Supreme Court.

11.2. In **Deepak Kumar Prahladka Vs. Chief Justice Prabha Shanker Mishra (2004) 5 SCC 217** it is ruled as under;

"Contempt of Court - Evidence on record to show that neither any notice was issued nor a reasonable opportunity was afforded to appellant before passing of impugned order - Although course adopted by appellant was very shocking and prima facie filing of two contempt petitions and nature of insinuations against judges were contemptuous - However appellant was still entitled to a notice and an opportunity of being heard - Impugned judgment convicting appellant set aside.

.....The second contempt petition could not have been heard and disposed of by the learned Judges since they were respondents in the said petition. The prayer in that case though totally misconceived was to initiate contempt proceedings against the judges who heard and disposed it of. The justice should not only be done but should also appear to have been done."

11.3. Hon'ble Supreme Court in **Sukhdev Singh Sodhi v. Chief Justice S. Teja Singh, 1954 SCR 454** that, **a judge who has been personally attacked should not hear a contempt matter which, to that extent, concerns him personally** :

Relevant para of Supreme Court judgment reads as under :

"We wish however to add that though we have no power to order a transfer in an original petition of this kind we consider it desirable on general principles of justice that ***a judge who has been personally attacked should not as far as possible hear a contempt matter which, to that extent, concerns him personally.*** *It is otherwise when the attack is not directed against him personally. We do not lay down any general rule because there may be cases where that is impossible, as for example in a court*

where there is only one judge or two and both are attacked.

Other cases may also arise where it is more convenient and proper for the Judge to deal with the matter himself, as for example in a contempt in facie curiae. All we can say is that this must be left to the good sense of the judges themselves who, we are confident, will comfort themselves with that dispassionate dignity and decorum which befits their high office and will bear in mind the oft quoted maxim that justice must not only be done but must be seen to be done by all concerned and most particularly by an accused person who should always be given, as far as that is humanly possible, a feeling of confidence that he will receive a fair, just and impartial trial by Judges who have no personal interest or concern in his case."

11.4. In **Re: Mathews Nedumpara 2019 SCC Online SC 824** two Ld. Judges of Hon'ble Supreme Court recused themselves as allegation were against them. It is ruled as under;

"28.** Given the serious nature of the allegations levelled against this Bench, **the Chief Justice of India to constitute an appropriate Bench to hear and decide this contempt case."

11.5. Hon'ble Supreme Court in **State of Punjab Vs. Davinder Pal Singh Bhullar & Ors (2011) 14 SCC 770.** It is ruled as under;

"Constitution of India, Article 226 - BIAS- allegations made against a Judge of having bias - High Court Judge in order to settle personal score passed illegal order against public servant acted against him - Actual proof of prejudice in such a case may make the case of the party concerned stronger, but such a proof is not required. In fact, what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. However, once such an apprehension exists, the trial/judgment/order etc.

stands vitiated for want of impartiality. Such judgment/order is a nullity and the trial "coram non-judice".

Bias is the second limb of natural justice. Prima facie no one should be a judge in what is to be regarded as "sua causa. Whether or not he is named as a party. The decision-maker should have no interest by way of gain or

detriment in the outcome of a proceeding. Interest may take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with the subject-matter, from a close relationship or from a tenuous one – No one should be Judge of his own case. This principle is required to be followed by all judicial and quasi-judicial authorities as non-observance thereof, is treated as a violation of the principles of natural justice. The failure to adhere to this principle creates an apprehension of bias on the part of Judge."

11.6. In **Suresh Ramchandra Palande and Ors. Vs. The Government of Maharashtra 2016 (2) ALL MR 212** where it is ruled as under ;

*"**JUDICIAL BIAS AND DISQUALIFICATION OF A JUDGE TO TRY THE CASE** – Held, It is of the essence of judicial decisions and judicial administration that Judges should be able to act impartially, objectively and without any bias- No one can act in a judicial capacity if his previous conduct gives ground for believing that he cannot act with an open mind or impartially - a person, trying a cause, must not only act fairly but must be able to act above suspicion of unfairness and bias - if a man acts as a judge in his own cause or is himself interested in its outcome then the judgment is vitiated- A judgment which is the result of bias or want of impartiality is a nullity and the trial ' coram non judice'.*

Justice should not only be done but should manifestly be seen to be done. It is on this principle that the proceedings in courts of law are open to the public – a person who tries a cause should be able to deal with the matter placed before him objectively, fairly and impartially. No one can act in a judicial capacity if his previous conduct gives ground for believing that he cannot act with an open mind or impartially. The broad principle evolved by this Court is that a person, trying a cause, must not only act fairly but must be able to act above suspicion of unfairness and bias - Justice can never be seen to be done if a man acts as a judge in his own cause or is himself interested in its outcome."

But Justice D.S. Naidu did not recused from the case and therefore he is

guilty of Section 219, 220 of I.P.C.

Section 219 of IPC reads as under;

> ***"219. Public servant in judicial proceeding corruptly making report, etc., contrary to law.—****Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."*

Section 220 of IPC reads as under;

> ***"220. Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.—****Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."*

11.7. In **Noor Mohamed Mohd. Shah R. Patel Vs. Nadirshah Ismailshah Patel 2003 SCC OnLine Bom 1233** it is ruled as under;

> *"It has to be kept in mind that nothing can be said to be done in good faith which is not done with due care and caution. If these ingredients are indicated by the complaint, the Magistrate is obliged to take the cognizance of the complaint so presented before him unless there are the other grounds for acting otherwise which has to be justified by reasons recorded in writing."*

12. # CHARGE 9 # SECTION 211 R/W 120 (B) OF I.P.C:-

12.1. Full Bench of Hon'ble Supreme Court in **Hari Das Vs. State of West Bangal AIR 1964 SC 1773:(1964) 2 Cri.L.J 737** had rule as under;

> "*Penal Code (45 of 1860), S.211,193,199* - ***Institution of criminal proceedings - False charge of having committed contempt of Court*** *- Held amounted to falsely charging and amounted to institution of criminal*

proceedings which is offence under 211 of IPC. ***If there was no just or lawful ground for commencing this proceeding for contempt in the High Court then the requirements of S. 211 of Penal Code must be taken to be prima facie satisfied.*** *A contempt of court can be punished by imprisonment and fine and that brings an accusation charging a man with contempt of court within the wide words 'criminal proceeding'.*

Constitution of India, Art.134- High Court ordering complaint to be filed against appellants under Ss. 193, 199, 211, Penal Code - Appeal to Supreme Court – Appeal dismissed."_

12.2. Hon'ble Supreme Court in **Raman Lal Vs State 2001 Cri.L.J. 800** it is ruled as under;

"Conspiracy – I.P.C. Sec. 120 (B) – *Apex court made it clear that an inference of conspiracy has to be drawn on the basis of circumstantial evidence only because it becomes difficult to get direct evidence on such issue – The offence can only be proved largely from the inference drawn from acts or illegal ommission committed by them in furtherance of a common design – Once such a conspiracy is proved, act of one conspirator becomes the act of the others – A Co-conspirator who joins subsequently and commits overt acts in furtherance of the conspiracy must also be held liable – Proceeding against accused cannot be quashed."*

13. In **R.R. Parekh Vs. High Court of Gujrat (2016) 14 SCC 1,** case Hon'ble Supreme Court had upheld the order of dismissal of a Judge. It is ruled as under;

A judge passing an order against provisions of law in order to help a party is said to have been actuated by an oblique motive or corrupt practice - breach of the governing principles of law or procedure by a Judge is indicative of judicial officer has been actuated by an oblique motive or corrupt practice - No direct evidence is necessary - A charge of misconduct against a Judge has to be established on a preponderance of probabilities - The Appellant had absolutely no convincing explanation for this

course of conduct - Punishment of compulsory retirement directed.

A wanton breach of the governing principles of law or procedure by a Judge is indicative of judicial officer has been actuated by an oblique motive or corrupt practice. In the absence of a cogent explanation to the contrary, it is for the disciplinary authority to determine whether a pattern has emerged on the basis of which an inference that the judicial officer was actuated by extraneous considerations can be drawn - It is not the correctness of the verdict but the conduct of the officer which is in question- . There is on the one hand a genuine public interest in protecting fearless and honest officers of the district judiciary from motivated criticism and attack. Equally there is a genuine public interest in holding a person who is guilty of wrong doing responsible for his or his actions. Neither aspect of public interest can be ignored. Both are vital to the preservation of the integrity of the administration of justice - A charge of misconduct against a Judge has to be established on a preponderance of probabilities - No reasons appear from the record of the judgment, for We have duly perused the judgments rendered by the Appellant and find merit in the finding of the High Court that the Appellant paid no heed whatsoever to the provisions of Section 135 under which the sentence of imprisonment shall not be less than three years, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court. Most significant is the fact that the Appellant imposed a sentence in the case of each accused in such a manner that after the order was passed no accused would remain in jail any longer. Two of the accused were handed down sentences of five months and three months in such a manner that after taking account of the set-off of the period during which they had remained as under-trial prisoners, they would be released from jail. The Appellant had absolutely no convincing explanation for this course of conduct.

14. In **Authorized Officer, State Bank of Travancore and Ors. Vs. Mathew K.C. 2018 (3) SCC 85** it is ruled as under;

"JUDICIAL ADVENTURISM BY HIGH COURT – PASSING ORDER BY IGNORING LAW SETTLED BY COURT.

It is duty of the court to apply the correct law even if not raised by the party. If any order against settled law is to be passed then it can be done only by a reasoned order. Containing a discussion after noticing he relevant law settled.

16. It is the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex-parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order.

18. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. and Anr. MANU/SC/0639/1997 : 1997 (6) SCC 450, observing:

32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

15. Hon'ble Supreme Court in **Medical Council of India Vs G.C.R.G. Memorial Trust & Others (2018) 12 SCC 564** has ruled as under:

The judicial propriety requires judicial discipline. Judge cannot think in terms of "what pleases the Prince has the force of law". Frankly speaking, the law does not allow so, for law has to be observed by

requisite respect for law.

A Judge should abandon his passion. He must constantly remind himself that he has a singular master "duty to truth" and such truth is to be arrived at within the legal parameters. No heroism, no rhetorics.

A Judge even when he is free, is still not wholly free; he is not to innovate at pleasure; he is not a knighterrant roaming at will in pursuit of his own ideal of beauty or of goodness; he is to draw inspiration from consecrated principles

10. In this context, we may note the eloquent statement of Benjamin Cardozo who said:

The judge is not a knight errant, roaming at will in pursuit of his own ideal of beauty and goodness.

11. In this regard, the profound statement of Felix Frankfurter1 is apposite to reproduce:

For the highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law of which we are all guardians-those impersonal convictions that make a society a civilized community, and not the victims of personal rule.

The learned Judge has further stated:

What becomes decisive to a Justice's functioning on the Court in the large area within which his individuality moves is his general attitude toward law, the habits of the mind that he has formed or is capable of unforming, his capacity for detachment, his temperament or training for putting his passion behind his judgment instead of in front of it. The attitudes and qualities which I am groping to characterize are ingredients of what compendiously might be called dominating humility.

13. In this context, we may refer with profit the authority in Om ***Prakash Chautala v. Kanwar Bhan MANU/SC/0075/2014 : (2014) 5 SCC 417*** *wherein it has been stated:*

19. It needs no special emphasis to state that a Judge is not to be guided by any kind of notion. The decision making process expects a Judge or an adjudicator to apply restraint, ostracise perceptual subjectivity, make one's emotions subservient to one's reasoning and think dispassionately. He is expected to be guided by the

established norms of judicial process and decorum.

And again:

20. A Judge should abandon his passion. He must constantly remind himself that he has a singular master "duty to truth" and such truth is to be arrived at within the legal parameters. No heroism, no rhetorics.

14. In ***Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. and Anr. MANU/SC/0639/1997 : (1997) 6 SCC 450****, the threeJudge Bench observed:*

32. When a position in law is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.

15. The aforestated thoughts are not only meaningfully pregnant but also expressively penetrating. They clearly expound the role of a Judge, especially the effort of understanding and attitude of judging. ***A Judge is expected to abandon his personal notion or impression gathered from subjective experience. The process of adjudication lays emphasis on the wise scrutiny of materials sans emotions. A studied analysis of facts and evidence is a categorical imperative. Deviation from them is likely to increase the individual gravitational pull which has the potentiality to take justice to her coffin.***

16. # CHARGE 10 # JUSTICE D.S.NAIDU DON'T KNOW AS TO HOW TO PASS THE ORDER UNDER CONTEMPT AND SECTION 345 OF CR.P.C. :

16.1. That, in **Suo Motu Vs. Adv. C.K. Mohanan 2016 SCC OnLine Ker 21105** the Bench of Justice D.S. Naidu & Justice P.N.Ravindran had on 24.10.2016 passed the following order.

> *"4. Having regard to the contumacious conduct of Sri C.K. Mohanan, learned counsel in court today which was being repeated even when this order was being dictated, as* ***also his conduct in relying on the article written by Sri Upendra Baxi,*** *which has nothing to do with this case or the events that transpired in this court,* ***we deem it appropriate to initiate proceedings against him under section 14 of the Contempt of Courts Act, 1971 read with section 345 of the Code of Criminal Procedure, 1973 and other enabling provisions in that regard.*** *We also deem it appropriate to place on record the fact that Sri C.K. Mohanan, learned counsel for the petitioner did not, at any point of time before this order was dictated or while it was being dictated, express regret or tender apology. Sri C.K. Mohanan, learned counsel for the petitioner has in our opinion scandalised and lowered the authority of this court and has also interfered with the due course of a judicial proceeding.* ***We accordingly find him guilty of having committed criminal contempt of this court and call upon him to file his defence, if any, in answer to the said charge on or before 27.10.2016."***

16.2. That, there is no provision to framing of charge under section 345 of Cr.PC. In fact section 345 of Cr.PC is a procedure and the charge should be under section 228 of IPC.

Hon'ble Justice K.G.Balkrishnan in **K.Santhkumaran Vs. Principle Sub Judge, Palakkad (1994) 2 KLJ 431** had ruled as under;

> *" **7.** While taking proceedings in accordance with Section 345 Cr. P.C. the court shall scrupulously follow the procedure. Here the respondent asked the petitioner as to whether he committed offence punishable under Section 345 Cr. P.C. The very question put to the petitioner was incorrect as the offence, if at all committed by the petitioner is one under Section 228 of the Penal Code, 1860. The petitioner was not given reasonable opportunity of being heard. In the impugned order, the facts constituting the offence punishable under Section 228*

I.P.C. are not mentioned. The main ingredient of the offence was whether the petitioner had intentionally interrupted the proceedings of the court. This aspect of the offence was not put to the petitioner and he was not asked to explain the same. It is also to be noticed that without affording a proper opportunity the petitioner was straightaway convicted and he was asked to pay the fine. A copy of the order also was not furnished to the petitioner.

9. *The respondent has violated the procedure prescribed under Section 345 Cr. P.C. When a particular mode is prescribed by the statute for the exercise of power, the authority shall exercise the power in accordance with law prescribed under that statute. If it is otherwise done the order is vitiated by procedural impropriety. The impugned order passed by the respondent suffer from several infirmities. The ingredients of the offence were not put to the petitioner. He was not given reasonable opportunity of being heard. The offence was not committed in the view or presence of the Court, hence the Court lacked jurisdiction to invoke Section 345 Cr. P.C. The nature of interruption of proceeding is not mentioned in the order. The last but not the least infirmity is that copy of the order was not given to the petitioner as soon as he was convicted by the Court. This Court is disturbed by the case and by the procedure or lack of procedure by which the Judge reached his conclusion. The Judge could have dealt with the matter by perhaps a reprimand or by a verbal rap over the knuckles instead of resorting to conviction and sentence without even properly earing to note and observe the relevant procedure. As the matter pertains to the administration of justice. I quash the order under Article 227 of the Constitution. The fine, if any, paid by the petitioner shall be returned to the petitioner within two weeks of the date of receipt of a copy of this judgment."*

16.3. In **Trishul Develpoers Vs. L&T Housing Finance Ltd. 2019 SCC OnLine Kar 684** it is ruled as under;

"Defective Notice - a valid notice, as per statute, is a pre-requisite for maintaining proceedings thereon. A defective notice is not tenable. It is mandatory to

observe strict compliance with prescribed procedure. – The Court cannot derive the jurisdiction apart from the statute – if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. Proceedings illegal. *In* ***Chimanlal Vs. Mishrilal,*** *reported in* ***(1985) 1 SCC 14****, it was pointed out that Hon'ble Supreme Court has held that Enforcement of the provisions of Act, should be in strict conformity with the provisions of the Act.*

In the case of ***Kanwar Singh Saini Vs. High Court of Delhi*** *reported in* ***2012 4 SCC 307,*** *the Apex Court has held that there can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes order/decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the root of the cause. Such an issue can be raised at any belated stage of the proceedings including in appeal or execution.* ***Acquiescence of a party should equally not be permitted to defeat the legislative animation. The court cannot derive jurisdiction apart from the statute.*** *Where there is a defect which goes to the root of the matter, then such a defect can never be presumed to have been condoned, but such condonation should be by express consent. The well settled principles that if a statute provides for a thing to be done in a particular, manner, then it has to be done in that manner and in no other manner, applies forcefully in this matter."*

16.4. In **Satishchandra Ratanlal Shah Vs. State (2019) 9 SCC 148** it is ruled as under;

9. *Before we analyse this case, it is to be noted that the criminal application preferred by the Accused before the High Court was against the order of the Trial Court at the stage of framing of charges, wherein it is the duty of the court to apply its judicial mind to the material placed before it and to come to a clear conclusion that a prima facie case has been made out against the Accused.* ***An order for framing of charges is of serious concern to the Accused as it affects his liberty substantially. Courts must therefore be cautious that their***

decision at this stage causes no irreparable harm to the Accused.

16.5. Secondly, there cannot be simultaneous proceedings under section 345 of Cr.PC and under section 14 of the Contempt of Court's Act. Both are independent & exclusive jurisdiction. Because both section are almost identical.

16.6. The procedure under section 345 of Cr.PC reads as under;

> ***"345. PROCEDURE IN CERTAIN CASES OF CONTEMPT:-***
>
> ***(1)*** *When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860), is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and may, at any time before the rising of the Court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.*
>
> ***(2)*** *In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.*
>
> ***(3)*** *If the offence is under section 228 of the Indian Penal Code (45 of 1860), the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult."*

16.7. Hon'ble Supreme Court in **Bar Council Of India Vs. High Court Of Kerala (2004) 6 SCC 311** it is ruled as under;

> ***"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.***

Principle of natural justice is required to be observed by a court or Tribunal before a decision is rendered involving civil consequences. It may only in certain situation be read into Article 14 of the Constitution of India when an order is made in violation of the rules of natural justice. Principle of natural justice, however, cannot be stretched too far. Its application may be subject to the provisions of a statute or statutory rule."

16.8. But this procedure was not followed at all Strange part is that Adv. C.K. Mohanan was only convicted under section 14 of the Contempt of Court's Act but no order is passed under section 345 of Cr.P.C. This shows that Justice D.S. Naidu and Justice P.N. Ravindran don't have the basic knowledge of criminal jurisprudence. They have violated the fundamental rights of Adv. C.K. Mohanan by such wrong procedure and wrong charges and therefore state is bound to pay compensation to Adv. C.K. Mohanan, in view of law laid down by Hon'ble 5 Judge Bench of **Privy Council** in the matter between **Ramesh Maharaj Vs. The Attorney General (1978) 2 WLR 902** had ruled that;

*"According their Lordships in agreement with Phillips J.A. would answer question (2): "**Yes; the failure of Maharaj J. to inform the appellant of the specific nature of the contempt of Court with which he was charged did contravene a constitutional right of the appellant** in respect of which he was entitled to protection under s.1(a)."*

***The order of Maharaj J. committing the appellant to prison was made by him in the exercise of the judicial powers of the State; the arrest and detention of the appellant pursuant to the judge's order was effected by the executive arm of the State. So if his detention amounted to a contravention of his rights under S.1(a), it was a contravention by the State against which he was entitled to protection**.*

*…**This is not vicarious liability; it is a liability of the State itself. It is not a liability in tort at all; it is a liability in the public law of the State, not of the judge himself, which has been newly created by S.6(1) and (2) of the Constitution.***

*.. It is only **in the case of imprisonment or corporal punishment already undergone before an appeal can be heard that the consequences of the judgment or order cannot be put right on appeal to an appellate court. It is true that instead of, or even as well as, pursuing the***

ordinary course of appealing directly to an appellate court, a party to legal proceeding who alleges that a fundamental rule of natural justice has been infringed in the course of the determination of his case, could in theory seek collateral relief in an application to the High Court under.

For these reasons the appeal must be allowed and ***the case remitted to the high court with a direction to assess the amount of monetary compensation to which the appellant is entitled .The respondent must pay the costs of this appeal and of the proceeding in both Courts below."***

16.9. In **Walmik s/o Deorao Bobde Vs. State 2001 ALL MR (Cri.) 1731,** it is ruled that;

In our opinion a reckless arrest of a citizen and detention even under a warrant of arrest by a competent Court without first satisfying itself of such necessity and fullfilment of the requirement of law is actionable as it violates not only his fundamental rights but such action deserves to be condemned being taken in utter disregard to human rights of an individual citizen.

Compensation granted

"11. We have ascertained the status of the petitioner so as to work out his entitlement for compensation. We are informed that the petitioner works as Production Manager in a reputed firm M/s. Haldiram Bhujiwala, and draws salary of more than Rs.7000/- p.m. He has, wife, two marriageable daughters and a son in his family. After giving our anxious thought to the matter we award a sum of Rs.10,000/- to the petitioner as compensation. The State is directed to pay the amount of Rs.10,000/- to the petitioner within a period of four weeks, or deposit the same in this Court. We are also granting cost to the petitioner quantified to Rs.5000/-. It will be open for the State to recover the amount so awarded from the monetary benefits/pension, the delinquent clerk/his family is entitled to receive or will be receiving on his death. Rule made absolute in the aforesaid terms. Certified copy expedited.

12. Additional Registrar, to circulate the copy of this order to all the District & Sessions Judges, for being circulated to Judicial Officers working within their jurisdiction."

17. # CHARGE 11 # FRIVOLOUS CHARGE OF CONTEMPT ABOUT PUBLICATION OF ARTICLE IN OUTLOOK AGAINST JUSTICE D.S. NAIDU:-

17.1. That, Adv. C.K. Mohanan though irrelevantly relied on a article published against Justice Naidu. But as per law that, cannot be ground for Contempt unless it is shown that, the said article was not published or that the contents of said article are not true or correct.

17.2. Constitution Bench of Hon'ble Supreme Court in **Subramanyam Swami Vs. Arun Shaourie AIR 2014 SC 3020** had ruled as under;

> ***"15.*** *A two Judge Bench of this Court in* ***Indirect Tax Practitioner Vs. R.K. Jain (2010) 8 SCC 281*** *had an occasion to consider Section 13 of the 1971 Act, as substituted by Act 6 of 2006. In para 39 (page 311 of the report), the Court said:*
>
> > *".....The substituted Section 13 represents an important legislative recognition of one of the fundamentals of our value system i.e. truth. The amended section enables the court to permit justification by truth as a valid defence in any contempt proceeding if it is satisfied that such defence is in public interest and the request for invoking the defence is bona fide. In our view, if a speech or article, editorial, etc. contains something which appears to be contemptuous and this Court or the High Court is called upon to initiate proceedings under the Act and Articles 129 and 215 of the Constitution, the truth should ordinarily be allowed as a defence unless the Court finds that it is only a camouflage to escape the consequences of deliberate or malicious attempt to scandalise the court or is an interference with the administration of justice.* ***Since, the petitioner has not even suggested that what has been mentioned in the editorial is incorrect or that the respondent has presented a distorted version of the facts, there is no warrant for discarding the respondent's assertion that whatever he has written is based on true facts and the sole object of writing the editorial was to enable***

the authorities concerned to take corrective/remedial measures."

12. *In* ***Wills (Nationwide News Pty. Ltd. v. Wills; [(1992) 177 CLR 1*** *the High Court of Australia suggested that truth could be a defence if the comment was also for the public benefit. It said, "…The revelation of truth – at all events when its revelation is for the public benefit – and the making of a fair criticism based on fact do not amount to a contempt of court though the truth revealed or the criticism made is such as to deprive the court or judge of public confidence…".*

Hence the said charge is a frivolous charge.

18. CONVICTION OF ADV. C. K. MOHANAN WITH UNDUE HASTE WITHOUT SERVICE OF SHOW CAUSE NOTICE IS HIGHLY ILLEGAL.

18.1. Hon'ble High Court in **S.Rajanikanth Vs. Tmt.C.Thirumagal 2011 SCC OnLine Mad 793** it is ruled as under;

11. *The next contention of the learned counsel for the petitioner is more vital. According to the said contention, no reasonable opportunity was given to the petitioner to show cause against the proposed punishment and the denial of such reasonable opportunity not only offends the principles of natural justice but also the mandatory requirement embodied in sub section (1) of Section 345 Cr.P.C. The learned counsel for the petitioner has pointed out the fact that the show cause notice was served on the petitioner on 07.02.2008 at 10.30 a.m; that in the said show cause notice, two days time had been granted to show cause as to why he should not be punished and that before the expiry of two days, the respondent took up the matter on 08.02.2008 itself and passed the impugned order in a hurried manner convicting the petitioner for an offence under Section 228 IPC and imposing the punishment indicated supra.*

24. *In this case, as pointed out supra,* ***there was a haste on the part of the second respondent to conclude the proceedings even before the expiry of the time granted in the show-cause notice to offer explanation as to why the petitioner should not be***

punished for the offence under Section 228 IPC and the respondent seems to have flouted not only the audi alteram partem principle of natural justice, but also the statutory requirement embodying the said principle in Section 345(1) of Cr.P.C insofar as the respondent chose to pass an order in the absence of the petitioner, that too, even before the expiry of the time granted in the show-cause notice. Under such circumstances, this Court is not in a position to accord its approval to the order of the respondent convicting the petitioner under Section 345 Cr.P.C. It shall not be out of place to mention here that the respondent, as judicial officer, could have averted the unpleasant situation had she acted judiciously without any bias or personal animosity in the discharge of her duty as the presiding officer of the Court. *First of all, she ought not to have insisted upon the presence of the petitioner when the copy of the bail order and surety papers were produced for verification by Ms. S.Sengodi, who was also a counsel on record for the accused persons in the concerned case. This Court is also constrained to state that the* ***second respondent has unnecessarily made the advocate S.Sengodi and the sureties to wait for the whole day from 10.30 a.m to 04.30 p.m only with an intend to satisfy her ego to see that the petitioner appeared before her before any order on the surety papers, either accepting or rejecting, could be passed. The said conduct of the judicial officer could have led to a scuffle. But since no proper trial in the summary manner provided under Section 345 Cr.P.C has taken place, it could not be said that the allegations made against the petitioner were proved.***

25. *Morevoer, as pointed out supra, the respondent seems to have preferred a police complaint with improved version, apart from the proceedings initiated under Section 345(1) Cr.P.C, as a preemptive measure because a representation was made to the Registrar General of the High Court and to the Hon'ble Chief Justice, Madras High Court regarding the conduct of the respondent.* ***Had the respondent taken little care to exhibit the conduct***

expected of a judicial officer while disposing of cases as laid down by the Supreme Court in Chetak Constructions Limited Vs. Om Prakash and Others, she would not have behaved in such a manner leading to the unfortunate consequences. *In any event the impugned order of the respondent as VII Metropolitan Magistrate, George Town, Chennai cannot be sustained and the same is liable to be set aside in exercise of the inherent powers of the Court* ***as the petitioner has proved bias, and abuse of process of Court. It has also been proved that the impugned order was passed in violation of the natural law principle of audi alteram partem, which is also incorporated in the procedure contemplated in Section 345(1) Cr.P.C. This Court is of the considered view that allowing the conviction to stay will result in miscarriage of justice and the same shall be a sufficient reason for exercising the inherent powers of the High Court under Section 482 to set aside the impugned order.***

26. *For all the reasons stated above, the criminal original petition is allowed and the impugned order made in Crl.M.P.No.209 of 2008 dated 08.02.2008 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai is quashed.*

In contempt cases the Court is bound to follow proper procedure.

18.2. Hon'ble Court in **Ebrahim Mammojec Parekh Vs. Emperor ILR 4 Rang 257 (AIR 1926 Rangoon 188)** where it is ruled as under;

"This is principle laid down in Davies case [1906] 1 King Bench 32 where it was said that " the summary remedy is not to be resorted to if the ordinary methods of prosecution can satisfactorily accomplish the desired result, namely, to put an efficient and timely check upon such malpractice" That principle is part of the common law of England which has been held by the Privy Council in Surendra Nath Banerjee's case (1984) 01 Cal 109 (132) to be applicable in the jurisdiction of the high Courts in India for Contempt, and it is clearly binding on us."

But in the present case the Lawyer C.L.Mohanan was convicted by

completing the trial almost day to day basis and concluding with 5 days and without giving any opportunity to file reply.

The undue haste itself is sufficient to draw presumption of malafides against the said Judge.

18.3. Hon'ble Supreme Court in **Shanti Devi Vs. State (2008) 14 SCC 220** it is ruled as under;

> ***" Constitution of India – Art. 215- Power to punish for contempt – Abuse of, by High Court – High Court , in the absence of the alleged contemnor, on the very next day of filling of contempt petition directing execution of order as to eviction of said contemnor from tenanted premises and also issuing non-bailable warrant of arrest against her- Said orders passed without even verifying whether the notice of the contempt proceedings had been served personally on the said contemnor and that despite such services she had failed to act in terms of the notice- Haste with which the orders were passed in contempt petition had the effect of ensuring that the landlord could get the possession of the premises in question before the tenant i.e. the alleged contemnor could approach the Supreme Court – Considering the facts, held, there was gross abuse of due process of law while passing the impugned orders- Contempt proceedings liable to be quashed."***

.

18.4. Hon'ble Justice Dr. B.S.Chauhan in the case of **Prof. Ramesh Chandra Vs. State MANU/UP/0708/2007** ruled as under ;

> ***Anything done in undue haste can also be termed as arbitrary and cannot be condoned in law for the reasons that in such a fact situation mala fide can be presumed****. Vide Dr. S.P. Kapoor v. State of Himachal Pradesh (AIR 1981 SC 281) ; Madhya Pradesh Hasta ShilpaVikas Nigam Ltd. v. Devendra Kumar Jain and Ors. [(1995) 1 SCC 638] and BahadursinhLakhubhaiGohil v. Jagdishbhai M. Kamalia and Ors (AIR 2004 SC 1159).*

18.5. Hon'ble Supreme Court in the case of **Noida Entrepreneurs Association Vs. NOIDA (2011) 6 SCC 508** had ruled as under;

> ***"Undue haste –In absence of any urgency –***

Inference of malafide can be drawn against the said public servant. Thereafter it is a matter of investigation to find out whether there was any ulterior motive – Fraud, Forgery, Malafides."

18.6. Three Judge Bench of This Hon'ble Court in **Union of India Vs. K.K Dhawan (1993) 2 SCC 56** had read as under;

***"28.** Certainly, therefore, **the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge**. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer.*

19. OPPORTUNITY TO BE DEFENDED BY LAWYER WAS NOT GIVEN BY J. NAIDU TO ADVOCATE C. K. MOHANAN.

19.1. That, the Justice D.S. Naidu & Justice P.N.Ravindran during said Criminal Contempt had not allowed the applicant to engage any lawyer nor allowed to produce defence evidence to prove the falsity of the charges in notice issued under section 345 of Cr.P.C. which is mandatory as per our Constitution of India and ruled by Hon'ble Supreme Court in the case of **Suk Das Vs. Union Territory of Arunachal Pradesh (1986) 2 SCC 401**. It is ruled as under;

*" In Khatri &Ors. v. State of Bihar &Ors., [1981] 2 S.C.R. 408, **we ruled that the Magistrate or the Sessions Judge before whom an accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State**. We deplored that in that case where the accused were blinded prisoners the Judicial Magistrate failed to discharge obligation and contented themselves by merely observing that no legal representation had been asked for by the blinded prisoners and hence none was provided. **We***

accordingly directed "the Magistrates and Sessions Judges in the country to inform every accused who appear before them and who is not represented by a lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the State" unless he is not willing to take advantage of the free legal services provided by the State. We also gave a general direction to every State in the country *"..... **to make provision for grant of free legal service to an accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or incommunicado situations,"** the only qualification being that the offence charged against an accused is such that, on conviction, it would result in a sentence of imprisonment and is of such a nature that the circumstances of the case and that the needs of social justice require that he should be given free legal representations. It is quite possible that since the trial was held before the learned Additional Deputy Commissioner prior to the declaration of the law by this Court in Khatri &Ors. v. State of Bihar(supra), the learned Additional Deputy Commissioner did not inform the appellant that if he was not in a position to engage a lawyer on account of lack of material resources he was entitled to free legal assistance at State cost nor asked him whether he would like to have free legal aid. **But it is surprising that despite this declaration of the law in Khatri &Ors. v. State of Bihar &Ors. (supra) on 19th December 1980 when the decision was rendered in that case, the High Court persisted in taking the view that since the appellant did not make an application for free legal assistance, no unconstitutionality was involved in not providing him legal representation at State cost.***

It is obvious that in the present case the learned Additional Deputy Commissioner did not inform the appellant that he was entitled to free legal assistance nor did he inquire from the appellant whether he wanted a lawyer to be provided to them at State cost. The result was that the appellant remained unrepresented by a lawyer and the trial ultimately resulted in his conviction. This was

clearly a violation of the fundamental right of the appellant under Article 21 and the trial must accordingly be held to be vitiated on account of a fatal constitutional infirmity, and the conviction and sentence recorded against the appellant must be set aside. ”

19.2. Needles to mention here that, Hon'ble Supreme Court in the case of **Ranjan Dwivedi Vs Union of India (1983) 3 SCC 307** had ruled that 'even if the accused is an Advocate on Record of Supreme Court the Court is under an obligation to provide a legal help to him at the state cost. The state is bound to bear charges of Counsel if he is unable to pay the Lawyer.

19.3. In **Mohammed Ajmal Mohammed Amir Kasab Vs. State of Maharashtra (2012) 9 SCC 1**, the Supreme Court directed that it is the duty and obligation of the Magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, it should be provided to him from legal aid at the expense of the State. The Supreme Court further directed that the failure of any magistrate to discharge this duty would amount to dereliction in duty and would made the concerned magistrate liable to departmental proceedings.[**Moh. Ajmal Kasab's** Case referred in **Chandrakant S. Sharama MANU/ KA/ 3063/2018] [Annexure - C]**

19.4. In **Privy Council Appeal No. 7 of 1976 [3-Judge Bench]** in the case of **Ramesh Maharaj Vs. the Attorney General**, it was the case where the appellant who was a practicing member of the bar was punished under contempt without giving/framing specific charge against him and without allowing him to consult his lawyer.

It is observed as under;

"Advocate – The appellant was advocate – he was punished under Contempt without opportunity to consult lawyer. It is very unfortunate conduct on the part of subordinate Judge."

Their Lordship think it unfortunate that in this case the learned Judge, in his discretion, refused the appellant's request for an opportunity of consulting Dr. Ramsahoye, a senior member of the Bar who no doubt would have given the appellant excellent advice and also perhaps have persuaded the learned Judge from following into error.

Hon'ble 5-Judge Bench of Privy Council in Appeal No. 21 of

1977 in the matter between Ramesh Maharaj Vs. The Attorney General had ruled that:

*"According their Lordships in agreement with Phillips J.A. would answer question (2): "**Yes; the failure of Maharaj J. to inform the appellant of the specific nature of the contempt of Court with which he was charged did contravene a constitutional right of the appellant** in respect of which he was entitled to protection under s.1(a)."*

20. That, recently Hon'ble Supreme Court in **Shrirang Waghmare Vs. State of Maharashtra 2018 SCC Online SC 1237** where it is ruled that, if any Judge passes an order against the law to help an advocate then such Judge should be dismissed from his job.

It is ruled as under;

"10. In our view the word 'gratification' does not only mean monetary gratification. Gratification can be of various types. It can be gratification of money, gratification of power, gratification of lust etc., etc. In this case the officer decided the cases because of his proximate relationship with a lady lawyer and not because the law required him to do so. This is also gratification of a different kind."

11. *The Judicial Officer concerned did not live upto the expectations of integrity, behavior and probity expected of him. His conduct is as such that no leniency can be shown and he cannot be visited with a lesser punishment.*

12. *Hence, we find no merit in the appeal, which is accordingly, dismissed.*

9. *There can be no manner of doubt that a judge must decide the case only on the basis of the facts on record and the law applicable to the case. If a judge decides a case for any extraneous reasons then he is not performing his duty in accordance with law.*

8. Judges must remember that they are not merely employees but hold high public office. In R. C. Chandel v. High Court of Madhya Pradesh [(2012) 8 SCC 58], this Court held that the standard of conduct expected of a Judge is much higher than that of an ordinary person. The following observations of this Court are relevant:

"37. Judicial service is not an ordinary government service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He must be honest to the core with high moral values. When a litigant enters the courtroom, he must feel secure that Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration. The standard of conduct expected of a Judge is much higher than an ordinary man. This is no excuse that since the standards in the society have fallen, the Judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge like Caesar's wife, must be above suspicion. The credibility of the judicial system is dependent upon the Judges who man it. For a democracy to thrive and rule of law to survive, judicial system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartially and intellectual honesty."

21. In **Smt. Justice Nirmal Yadav Vs. C.B.I. 2011 (4) RCR (Criminal) 809)**it is ruled as under;

"*Hon'ble Supreme Court observed:*

Be you ever so high, the law is above you." Merely because the petitioner has enjoyed one of the highest constitutional offices(Judge of a High Court), she cannot claim any special right or privilege as an accused than prescribed under law. Rule of law has to prevail and must prevail equally and uniformly, irrespective of the status of an individual.

The petitioner Justice Mrs. Nirmal Yadav, the then Judge of Punjab and Haryana High Court found to have taken bribe to decide a case pending before her- CBI charge sheeted - It is also part of investigation by CBI that this amount of Rs.15.00 lacs was received by Ms. Yadav as a consideration for deciding RSA No.550 of 2007 pertaining

to plot no.601, Sector 16, Panchkula for which Sanjiv Bansal had acquired interest. It is stated that during investigation, it is also revealed that Sanjiv Bansal paid the fare of air tickets of Mrs. Yadav and Mrs. Yadav used matrix mobile phone card provided to her by Shri Ravinder Singh on her foreign visit. To establish the close proximity between Mrs. Yadav, Ravinder Singh, Sanjiv Bansal and Rajiv Gupta, CBI has given details of phone calls amongst these accused persons during the period when money changed hands and the incidence of delivery of money at the residence of Ms. Nirmaljit Kaur and even during the period of initial investigation - the CBI concluded that the offence punishable under Section 12 of the PC Act is established against Ravinder Singh, Sanjiv Bansal and Rajiv Gupta whereas offence under Section 11 of the PC Act is established against Mrs.Justice Nirmal Yadav whereas offence punishable under Section 120-B of the IPC read with Sections 193, 192, 196, 199 and 200 IPC is also established against Shri Sanjiv Bansal, Rajiv Gupta and Mrs. Justice Nirmal yadav

*It has been observed by Hon'ble Supreme Court "**Be you ever so high, the law is above you." Merely because the petitioner has enjoyed one of the highest constitutional offices(Judge of a High Court), she cannot claim any special right or privilege as an accused than prescribed under law. Rule of law has to prevail and must prevail equally and uniformly, irrespective of the status of an individual.** Taking a panoptic view of all the factual and legal issues, I find no valid ground for judicial intervention in exercise of inherent jurisdiction vested with this Court. Consequently, this petition is dismissed.*

In-House procedure 1999 , for enquiry against High Court and Supreme Court Judges - Since the matter pertains to allegations against a sitting High Court Judge, the then Hon'ble Chief Justice of India, constituted a three members committee comprising of Hon'ble Mr.Justice H.L. Gokhale, the then Chief Justice of Allahabad High Court, presently Judge of Hon'ble Supreme Court, Justice K.S. Radhakrishnan, the then Chief Justice of Gujarat High Court, presently, Judge of Hon'ble Supreme Court and

Justice Madan B.Lokur, the then Judge of Delhi High Court, presently Chief Justice Gauhati High Court in terms of In-House procedure adopted by Hon'ble Supreme Court on 7.5.1997. The order dated 25.8.2008 constituting the Committee also contains the terms of reference of the Committee. The Committee was asked to enquire into the allegations against Justice Mrs. Nirmal Yadav, Judge of Punjab and Haryana High Court revealed, during the course of investigation in the case registered vide FIR No.250 of 2008 dated 16.8.2008 at Police Station, Sector 11, Chandigarh and later transferred to CBI. The Committee during the course of its enquiry examined the witnesses and recorded the statements of as many as 19 witnesses, including Mrs.Justice Nirmal Yadav (petitioner), Ms. Justice Nirmaljit Kaur, Sanjiv Bansal, the other accused named in the FIR and various other witnesses. The Committee also examined various documents, including data of phone calls exchanged between Mrs. Justice Nirmal yadav and Mr.Ravinder Singh and his wife Mohinder Kaur, Mr.Sanjiv Bansal and Mr.Ravinder Singh, Mr.Rajiv Gupta and Mr. Sanjiv Bansal. On the basis of evidence and material before it, the Committee of Hon'ble Judges has drawn an inference that the money delivered at the residence of Hon'ble Ms.Justice Nirmaljit Kasectionur was in fact meant for Ms.Justice Nirmal Yadav."

22. In **Shameet Mukherjee Vs. C.B.I. 2003 SCC OnLine Del 821** it is ruled as under;

"Cr. P.C. – Section 439 – Accused was a Judge of High Court – Arrested under section 120 – B, IPC r/w sec. 7,8,11,12,13 (1) of prevention of corruption Act.- Charges of misuse of power for passing favourable order – Petitioner/accused is having relationship with another accused – Petitioner used to enjoy his hospitality in terms of wine and women – 12 days police remand granted but nothing incriminating was found – Petitioner's wife is ill – Held petitioner entitled to be released on bail."

23. In **Umesh Chandra Vs State of Uttar Pradesh & Ors. 2006 (5) AWC 4519 ALL** it is ruled as under;

> *"If Judge is passing illegal order either due to negligence or extraneous consideration giving undue advantage to the party then that Judge is liable for action in spite of the fact that an order can be corrected in appellate/revisional jurisdiction - The acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the Judicial Officer, in such cases imposition of penalty of dismissal from service is well justified*
>
> ***The order was passed giving undue advantage to the main accused - grave negligence is also a misconduct and warrant initiation of disciplinary proceedings*** *- in spite of the fact that an order can be corrected in appellate/revisional jurisdiction but if the order smacks of any corrupt motive or reflects on the integrity of the judicial officer, enquiry can be held .*
>
> ***JUDICIAL OFFICERS*** *- has to be examined in the light of a different standard that of other administrative officers. There is much requirement of credibility of the conduct and integrity of judicial officers - the acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, in such cases imposition of penalty of dismissal from service is well justified - Judges perform a "function that is utterly divine" and officers of the subordinate judiciary have the responsibility of building up of the case appropriately to answer the cause of justice. "The personality, knowledge, judicial restrain, capacity to maintain dignity" are the additional aspects which go into making the Courts functioning successfully - the judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock of all the doors fail, people approach the judiciary as a last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth because of the power he wields. A Judge is being*

judged with more strictness than others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside which will lead to a catastrophe in the justice delivery system resulting in the failure of public confidence in the system. We must remember woodpeckers inside pose larger threat than the storm outside

The Inquiry Judge has held that even if the petitioner was competent to grant bail, he passed the order giving undue advantage of discharge to the main accused and did not keep in mind the gravity of the charge. This finding requires to be considered in view of the settled proposition of law that grave negligence is also a misconduct and warrant initiation of disciplinary proceedings .

The petitioner, an officer of the Judicial Services of this State, has challenged the order of the High Court on the administrative side dated 11.02.2005 (Annex.11) whereby the petitioner has been deprived of three increments by withholding the same with cumulative effect.

The petitioner, while working as Additional Chief Metropolitan Magistrate, Kanpur, granted bail on 29.06.1993 to an accused named Atul Mehrotra in Crime Case No. 3240 of 1992 under Section 420, 467, 468, I.P.C. Not only this, an application was moved by the said accused under Section 239, Cr.P.C. for discharge which was also allowed within 10 days vide order dated 06.08.1993. The said order of discharge was however reversed in a revision filed by the State According to the prosecution case, the accused was liable to be punished for imprisonment with life on such charges being proved, and as such, the officer concerned committed a gross error of jurisdiction by extending the benefit of bail to the accused on the same day when he surrendered before the Court. Further, this was not a case where the accused ought to have been discharged and the order passed by the officer was, therefore, an act of undue haste.

The then Chief Manager, Punjab National Bank, Birhana Road Branch, Kanpur Nagar made a complaint on the administrative side on 11.11.1995 to the then Hon'ble Chief Justice of this Court. The matter was entrusted to

the Vigilance Department to enquire and report. After almost four and half years, the vigilance inquiry report was submitted on 14.03.2002 and on the basis of the same the petitioner was suspended on 30th April, 2002 and it was resolved to initiate disciplinary proceedings against the petitioner. A charge sheet was issued to the petitioner on 6th September, 2002 to which he submitted a reply on 22.10.2002. The enquiry was entrusted to Hon'ble Justice Pradeep Kant, who conducted the enquiry and submitted a detailed report dated 06.02.2002 (Annex-8). A show cause notice was issued to the petitioner along with a copy of the enquiry report to which the petitioner submitted his reply on 19.05.2004 (Annex.10). The enquiry report was accepted by the Administrative Committee and the Full Court ultimately resolved to reinstate the petitioner but imposed the punishment of withholding of three annual grade increments with cumulative effect which order is under challenge in the present writ petition.

B) JUDICIAL OFFICERS *- has to be examined in the light of a different standard that of other administrative officers. There is much requirement of credibility of the conduct and integrity of judicial officers - the acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, in such cases imposition of penalty of dismissal from service is well justified - Judges perform a "function that is utterly divine" and officers of the subordinate judiciary have the responsibility of building up of the case appropriately to answer the cause of justice. "The personality, knowledge, judicial restrain, capacity to maintain dignity" are the additional aspects which go into making the Courts functioning successfully - the judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock of all the doors fail, people approach the judiciary as a last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth because of the power he wields. A Judge is being judged with more strictness than others. Integrity is the*

hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside which will lead to a catastrophe in the justice delivery system resulting in the failure of public confidence in the system. We must remember woodpeckers inside pose larger threat than the storm outside.

In ***Government of Tamil Nadu Vs. K.N. Ramamurthy, AIR 1997 SC 3571,*** *the Hon'ble Supreme Court held that exercise of judicial or quasi judicial power negligently having adverse affect on the party or the State certainly amounts to misconduct.*

In M.H. Devendrappa Vs. The Karnataka State Small Industries Development Corporation, AIR 1998 SC 1064, the Hon'ble Supreme Court ruled that any action of an employee which is detrimental to the prestige of the institution or employment, would amount to misconduct.

In ***High Court of Judicature at Bombay Vs. Udaysingh & Ors., A.I.R. 1997 SC 2286*** *the Hon'ble Apex Court while dealing with a case of judicial officer held as under:-*

"Since the respondent is a judicial officer and the maintenance of discipline in the judicial service is a paramount matter and since the acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, we think that imposition of penalty of dismissal from service is well justified."

This Court in ***Ram Chandra Shukla Vs. State of U.P. & Ors., (2002) 1 ALR 138*** *held that the case of judicial officers has to be examined in the light of a different standard that of other administrative officers. There is much requirement of credibility of the conduct and integrity of judicial officers.*

In High Court of Judicature at Bombay V. Shirish Kumar Rangrao Patil & Anr., AIR 1997 SC 2631, the Supreme Court observed as under:-

"The lymph nodes (cancerous cells) of corruption constantly keep creeping into the vital veins of the

judiciary and the need to stem it out by judicial surgery lies on the judiciary itself by its self-imposed or corrective measures or disciplinary action under the doctrine of control enshrined in Articles 235, 124 (6) of the Constitution. It would, therefore, be necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and self-introspection.

When such a constitutional function was exercised by the administrative side of the High Court any judicial review thereon should have been made not only with great care and circumspection, but confining strictly to the parameters set by this Court in the aforesaid decisions.----------"

In Government of Andhra Pradesh Vs. P. Posetty, (2000) 2 SCC 220, the Hon'ble Supreme Court held that sense of propriety and acting in derogation to the prestige of the institution and placing his official position under any kind of embarrassment may amount to misconduct as the same may ultimately lead that the delinquent had behaved in a manner which is unbecoming of an employee/Government servant.

In ***All India Judges' Association Vs. Union of India & Ors., AIR 1992 SC 165,*** *the Hon'ble Supreme Court observed that Judges perform a "function that is utterly divine" and officers of the subordinate judiciary have the responsibility of building up of the case appropriately to answer the cause of justice. "The personality, knowledge, judicial restrain, capacity to maintain dignity" are the additional aspects which go into making the Courts functioning successfully.*

In ***Tarak Singh & Anr. Vs. Jyoti Basu & Ors., (2005) 1 SCC 201****, the Hon'ble Supreme Court observed as under:-*

"Today, the judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock of all the doors fail, people approach the judiciary as a last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth because of the power he wields. A Judge is being judged with more strictness than others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care

to see that the temple of justice does not crack from inside which will lead to a catastrophe in the justice delivery system resulting in the failure of public confidence in the system. We must remember woodpeckers inside pose larger threat than the storm outside."

24. In **Jagat Jagdishchandra Patel Vs. State of Gujarat and Ors. 2016 SCC OnLine GUJ 4517** it is ruled as under;

"Two Judges caught in sting opration – demanding bribe to give favourable verdict – F.I.R. registered – Two accused Judges arrested – Police did not file charge-sheet within time – Accused Judges got bail – complainant filed writ for transferring inverstigation.

Held, the police did not collected evidence, phone details – CDRS – considering apparent lapses on the part of police, High Court transferred investigation through Anti-Corruption Bureau.

A Constitution Bench of this Court in Subramanian Swamy v. Director, Central Bureau of Investigation & Anr. (2014) 8 SCC 682, reiterated that corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the Act 1988.

Not only this has a demoralising bearing on those who are ethical, honest, upright and enterprising, it is visibly antithetical to the quintessential spirit of the fundamental duty of every citizen to strive towards excellence in all spheres of individual and collective activity to raise the nation to higher levels of endeavour and achievement.

It encourages defiance of the rule of law and the propensities for easy materialistic harvests, whereby the society's soul stands defiled, devalued and denigrated.

Corruption is a vice of insatiable avarice for self-aggrandizement by the unscrupulous, taking unfair advantage of their power and authority and those in public office also, in breach of the institutional norms,

mostly backed by minatory loyalists. Both the corrupt and the corrupter are indictable and answerable to the society and the country as a whole. This is more particularly in re the peoples' representatives in public life committed by the oath of the office to dedicate oneself to the unqualified welfare of the laity, by faithfully and conscientiously discharging their duties attached thereto in accordance with the Constitution, free from fear or favour or affection or ill-will. A self-serving conduct in defiance of such solemn undertaking in infringement of the community's confidence reposed in them is therefore a betrayal of the promise of allegiance to the Constitution and a condemnable sacrilege. Not only such a character is an anathema to the preambular promise of justice, liberty, equality, fraternal dignity, unity and integrity of the country, which expectantly ought to animate the life and spirit of every citizen of this country, but also is an unpardonable onslaught on the constitutional religion that forms the bedrock of our democratic polity.

Both the Presiding Officers and two staff members were suspended by the Gujarat High Court and a first information report being I-C.R. No. 1 of 2015 came to be registered

The accused-judicial officers preferred Special Criminal Application, seeking a writ of mandamus, which ultimately came to be rejected by this Court on the ground that it was a large scale scam. The Court further observed in its prima facie conclusion that the officers have tarnished the image of the judiciary and the facts of the case are gross and disturbing.

Both the said accused were arrested and produced before the learned District and Sessions Judge. The regular bail application preferred by them came to be rejected and they were sent to the judicial custody. It is alleged that except the evidence furnished by the petitioner, no fresh evidence came to be collected by the respondent No. 2-Investigating Officer. The slipshod manner of investigation of the complaint led the petitioner to approach the High Court.

It is the grievance of the petitioner that due to improper

investigation by an incompetent Police Officer, there are many more accused who are roaming freely in the society and no attempts have been made to arrest the seven advocates who were a part of this corruption racket. It is also their say that in a zeal to protect the erring officer, the remand of both the accused persons has not been sought for. The reason of unaccounted wealth received towards the illegal gratification has not been pressed into service for seeking remand. The deliberate lapse on the part of the respondent No. 2 has jeopardised the audio and video proof which have been tendered. The hard disk which is a preliminary evidence and the CD-a secondary evidence, have been ignored. The charge sheet ought to have been filed within a period of sixty days from the date of the arrest of the accused, which since was not done, it resulted into their release as they both have been given default bail. According to the petitioner, it was the duty of the respondent as well as the Registrar (Vigilance) to check the entire hard disk to find out other and further corrupt practices by the accused persons. Therefore, it is urged that the investigation be carried out by a person having impeccable integrity.

Dealing firstly with the first issue of remand, it is not in dispute that the remand of the accused who both are the judicial officers and allegedly involved in corrupt practice has not been sought for.

From the beginning it is the case of the complainant that the conduct, which has been alleged in the complaint has brought disrepute to the investigation. It is also his say that huge amount of illegal gratification had been demanded by both the judicial officers in the pending matters and, therefore, to presume that there was no material to seek remand, is found unpalatable. It is an uncontroverted fact that the Vigilance Officer (VO-II), who has filed his affidavit-in-reply, has retired during the pendency of the investigation. While he continued to act as Investigating Officer also, he could have conducted the investigation more effectively and with scientific precision. To be complacent and/or to presume anything while handling serious investigation cannot be the answer to the

requirements of law. It though may not be said to be an attempt to save the accused, it surely is an act, which would raise the eye-brows, particularly when the investigation was at a very nascent stage against the judicial officers. Recourse of the society against all kinds of injustice and violation of law when is in the judiciary, all the more care would be essential when judicial officers themselves are alleged of demand of bribe for discharging their duties under the law. Not that remand in every matter is a must to be sought. But, the stand taken by the Investigating Officer to justify his stand leaves much to be desired.

At the time of hearing of this petition, when a specific query was raised as to why the charge sheet was not filed within the time frame, non-receipt of report from the Forensic Science Laboratory was shown to be one of the strongest grounds

Undoubtedly, in every criminal matter where the investigation is to be completed and the charge sheet is to be laid either within 60 days or 90 days, the report of the Forensic Science Laboratory does not necessarily form the part of the papers of the charge sheet. The Criminal Manual also provides for submission of the Forensic Science Laboratory report if not submitted with the charge sheet, at a belated stage.

It is not a sound reason put forth on the part of the Investigating Officer that the pendency of the Forensic Science Laboratory report had caused delay in filing the charge sheet

Such time limit to place the charge sheet could not have gone unnoticed and that ought not to have furnished a ground for default bail when otherwise these officers were refused bail by the competent Court.

Even when the CD did not reveal giving of illegal gratification, but only demand, how could all other angles of this serious issues be left to the guesswork. To say that after the Special Officer (Vigilance) recorded the statement of the complainant and collected some material, nothing

remained to be collected, is the version of the Investigating Officer wholly unpalatable. After a thorough investigation, he would have a right to say so and the Court if is not satisfied or the complainant finds it unacceptable, he can request for further investigation under section 173(8) of the Code of Criminal Procedure. But, how could an Investigating Officer presume from the tenor of the complaint or the CD sent by the complainant about non-availability of the evidence.

To give only one example, it is unfathomable as to why the Investigating Officer failed to call CDRs in this matter.

In every ordinary criminal matter also, collecting of CDRs is found to be a very useful tool to prove whereabouts of parties and also to link and resolve many unexplained links. CDRs are held to be the effective tool by a Division Bench of this Court in one of the appeals, by holding thus:

"It would be apt to refer to certain vital details CDR, which known as Call detail record as also Call Data record, available on the internet [courtesy Wikipedia]. The CDR contains data fields that describe a specific instance of telecommunication transaction minus the content of that transaction. CDR contains attributes, such as [a] calling party; [b] called party; [c] date and time; [e] call duration; [f] billing phone number that is charged for the call; [g] identification of the telephone exchange; [h] a unique sequence number identifying the record; [i] additional digits on the called number, used to route the call; [j] result of the call ie., whether the same was connected or not; [k] the route by which call left the exchange; [l] call type [ie., voice, SMS, etc.].

Call data records also serve a variety of functions. For telephone service providers, they are critical to the production of revenue. For law enforcement, CDRs provide a wealth of information that can help to identify suspects, in that they can reveal details as to an individual's relationships with associates, communication and behavior patterns and even location data that can establish the whereabouts of an individual during the entirety of the call. For companies with PBX telephone

systems, CDRs provide a means of tracking long distance access, can monitor telephone usage by department; including listing of incoming and outgoing calls.

In a simpler language, it can be said that the technology can be best put to use in the form of CDRs which contains data fields describing various details, which also includes not only the phone number of the subscriber originating the call and the phone number receiving such call etc., but, the details with regard to the individual's relationships with associates, the behavior patterns and the whereabouts of an individual during the entirety of the call.

The whole purpose of CDR is not only to establish the number of phone calls which may be a very strong circumstance to establish their intimacy or behavioral conduct. Beyond that, such potential evidence also can throw light on the location of the mobile phone and in turn many a times, the position and whereabouts of the person using them with the aid of mobile phone tracking and phone positioning, location of mobile phone and its user is feasible. As the mobile phone ordinarily communicates wirelessly with the closest base station. In other words, ordinarily, signal is made available to a mobile phone from the nearest Mobile tower. In the event of any congestion or excessive rush on such mobile tower, there is an inbuilt mechanism of automatic shifting over to the next tower and if access is also not feasible there, to the third available tower. This being largely a scientific evidence it may have a material bearing on the issue, and therefore, if such evidence is established scientifically before the Court concerned, missing link can be provided which more often than not get missed for want of availability of credible eye-witnesses. We have noticed that in most of the matters these days, scientific and technical evidence in the form of Call Data Record is evident. However, its better and further use for the purpose of revealing and establishing the truth is restricted by not examining any witness nor bringing on record the situation of the mobile towers. Such kind of evidence, more particularly in case of circumstantial evidence will be extremely useful and may

not allow the truth to escape, as the entire thrust of every criminal trial is to reach to the truth."

25. With the nature of direct allegations of demand of illegal gratification by the judicial officers for disposition of justice, they would facilitate further investigation and also may help establishing vital links. No single reason is given for not collecting the CDRs during the course of investigation of crime in question.

This Court has exercised the power to transfer investigation from the State Police to the CBI in cases where such transfer is considered necessary to discover the truth and to meet the ends of justice or because of the complexity of the issues arising for examination or where the case involves national or international ramifications or where people holding high positions of power and influence or political clout are involved.

The Apex Court in the said decision further observed that the purpose of investigation is to reach to the truth in every investigation. For reaching to the truth and to meet with the ends of justice, the Court can exercise its powers to transfer the investigation from the State Police to the Central Bureau of Investigation. Such powers are to be exercised sparingly and with utmost circumspection.

In Sanjiv Kumar v. State of Haryana and Others (2005) 5 SCC 517, where this Court has lauded the CBI as an independent agency that is not only capable of but actually shows results:

CBI as a Central investigating agency enjoys independence and confidence of the people. It can fix its priorities and programme the progress of investigation suitably so as to see that any inevitable delay does not prejudice the investigation of the present case. They can think of acting fast for the purpose of collecting such vital evidence, oral and documentary, which runs the risk of being obliterated by lapse of time. The rest can afford to wait for a while. We hope that the investigation would be entrusted by the Director, CBI to an officer of unquestioned independence and then monitored so as to reach a

successful conclusion; the truth is discovered and the guilty dragged into the net of law. Little people of this country, have high hopes from CBI, the prime investigating agency which works and gives results. We hope and trust the sentinels in CBI would justify the confidence of the people and this Court reposed in them.

Mere glance at these two documents also prima facie reveal hollowness of the investigation in criminal matter and this Court is further vindicated by these materials that the matter requires consideration.

It is certainly a case where the investigation requires to be conducted by a specialised agency which is well equipped with manpower and other expertise.

Some of the aspects where the said officer Ms. Rupal Solanki, Assistant Director, Anti-Corruption Bureau, needs to closely look at and investigate are:

"(i) The collection of CDRs of the accused and all other persons concerned with the crime in question.

(ii) Non-recordance of any statements of advocates and litigants by the then Investigating Officer except those which had been recorded by the Special Officer (Vigilance) at the time of preliminary investigation.

(iii) Investigation concerning various allegations of demand of illegal gratification by both the judicial officers and the details which have been specified in the CD, as also reflected in the imputation of charges for the departmental proceedings.

(iv) The issue of voice spectography in connection with the collection of the voice sample in accordance with law.

(v) The examination of hard disk/CPU by the Forensic Science Laboratory, which is in possession of the petitioner.

(vi) Investigation against all other persons who are allegedly involved in abetting this alleged crime of unpardonable nature.

(vii) All other facets of investigation provided under the law, including disproportionate collection of wealth which she finds necessary to reach to the truth in the matter."

OTHER OFFENCES

25. #CHARGE 12 # CONTEMPT OF LAW LAID DOWN BY FULL BENCH OF HON'BLE SUPREME COURT IN DWARIKESH SUGAR INDUSTRIES LTD. V. PREM HEAVY ENGINEERING WORKS (P) LTD. AND ANR. (1997) 6 SCC 450.

25.1. That, Justice D.S. Naidu on 29th September, 2019 gave a lecture to some junior advocated which is published in 'Bar & Bench' it is reads as under;

"DEPENDING ON CASE LAWS WILL KILL CREATIVITY: JUSTICE D.S. NAIDU ON WHY ADVOCACY SHOULD INVOLVE THINKING OUT OF THE BOX"

*Justice **DS Naidu** of the Bombay High Court recently had some interesting perspectives to offer on the art of advocacy.*

Speaking at a lecture in Mumbai on the theme, "Dilemma of Special Leave Petition (SLP) dismissed; question of law kept open", Justice Naidu began his speech by recounting his experience while sitting as a judge of the Kerala High Court.

"In Kerala, advocates are quite studious. A lawyer having five years of practice would know thousands of case laws. ***Whenever I had an opportunity to address Bar Associations, I always told young advocates, don't ever depend on case law. It will kill your creativity. If that is the law that guided us, there would not have been landmark cases. So, I would tell them, as Steve Jobs put it, think out of the box."***

He went on to add,

"Always remember, law is never bothered about correctness but it is bothered about certainty... ***Advocacy is about telling stories to judges. Whoever tells an interesting one, carries the day."***

As he spoke of his experiences teaching at judicial academies, he was also prompted to recount how he used to encourage legal creativity during his lectures.

"I give lectures at judicial academies. Usually, judges don't answer the questions. ***So, I give chocolates (as a reward) for absurd answers and not the correct or safe ones.*** *Absurdity is original and real growth starts there.* ***Our profession allows legal fiction. There is no objectivity in law."***

The abovesaid misguided lecture by Justice D.S. Naidu shows his mental level and his absurd approach to law. Said speech itself is an offence under Contempt of Court. Hon'ble Supreme Court had already warned such Judicial Adventurism.

25.2. Full Bench of Hon'ble Supreme Court had in the case of **Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. and Anr. (1997) 6 SCC 450** had rule as under;

> ***"JUDICIAL ADVENTURISM - When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate Courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position - It should not be permitted to Subordinate courts including High Courts to not to apply the settled principles and pass whimsical orders granting wrongful and unwarranted relief to one of the parties to act in such a manner - The judgment and order of the High Court is set aside - The appellant would be entitled to costs which are quantified at Rs. 20,000.00.***
>
> ***It is unfortunate that the High Court did not consider it necessary to refer to various judicial pronouncements of this Court in which the principles which have to be followed while examining an application for grant of interim relief have been clearly laid down. The observation of the High Court that reference to judicial decisions will not be of much importance was clearly a method***

adopted by it in avoiding to follow and apply the law as laid down by this Court."

The said law is again reiterated by Hon'ble Supreme Court in **State Bank of Travancore and Ors. Vs. Mathew K.C. (2018) 3 SCC 85** Hence D.S. Naidu is guilty of Contempt of Supreme Court and also of Bombay High Court.

25.3. SIDE EFFECT OF MISGUIDENCE BY JUSTICE D.S. NAIDU:-

Needless to mention here that, one Advocate being misguided by Justice D.S. Naidu went to the Magistrate Court and had asked Magistrate to hear him for his client who is accused even before process is issued under Section 204 of Cr.PC The said Advocate relied on principles of natural justice and "**Audi Alteram Partem"** meaning thereby that, no one should be condemned unheard. The Magistrate reprimand said Advocate and about to take action under Contempt & Section 228 of IPC but due to apology by some senior he was able to save himself.

Surely the said advocate was under a wrong impression that the person appointed as a High Court Judge is competent person and will tell something good & legal. But his belief is sadly broken.

It is unfortunate that, such incompetent persons are holding the post of a High Court Judge.

26. That, on 26th July, 2019 Justice D.S. Naidu while sitting at Bombay High Court in Order to help one accused and his Advocate in a case of a property worth 500 Crores had Committed Serious Criminal offences and threatened the Advocate for Complainant with Contempt action.

A Complaint is filed before Hon'ble President of India being case No. **PRSEC/E/2019/14861**

25.1 The said complaint by Shri. Mahadev Koli reads as under:

" CASE NO BEFORE HON'BLE PRESIDENT OF INDIA: PRSEC/E/2019/14392

To,

1. ***Hon'ble President of India***
   Rashtrapati Bhavan, Delhi, 110004
2. ***Hon'ble Chief Justice of India***
   Supreme Court of India,
   Mandi House, New Delhi, Delhi 110201

Applicant : Mahadev Vithal Koli,

Koliwada, Marve Road,
Sunder Galli, Malavani Church,

Malad (west), Mumbai – 400095

1. ***To direct prosecution under section 218, 219, 504, 192, 193, 211, 511 ,r/w 120 (B) & 34 of IPC. as done in K. Rama Reddy Vs. State (1998) 3 ALD 305 against accused Judge D.S. Naidu, Advocate S.U. Kamdar, MDP & Partner and the staff of High Court registry for conspiracy of forum shopping and an attempt to get an order of quashing of the proceeding before Magistrate from a Court of J. D.S.Naidu who have no assignment in fact the assignment is with Division Bench of Justice Ranjit More as per Bombay High Court rules & law laid down in Farooq Abdul Gani Surve Vs. State of Maharashtra 2012 All MR (Cri) 131 and followed in Ratan Tata 2019 SCC OnLine Bom 1324.***

2. ***Direction to committee constituted under "In-House-Procedure" to enquire the following charges against Justice D.S.Naidu;***

   #CHARGE 1 # *Section 218, 219, 511 r/w 120(B) and 34 of Indian penal code.*
   Hearing a case which is not assigned to him with ulterior motive to grant undeserving relief to the accused in a serious case of fraud on Court for grabbing a property worth Rs.500 Crores. In a similar case "Judge & advocates" were prosecuted by Hon'ble High Court in ***K.Rama Reddy Vs. State (1998) 3 ALD 305.*** *under section 120-B, 193, 466, 468 and 471 of IPC.*
   #CHARGE 2 # *Contempt of Supreme Court in* ***Pandurang Vs. State (1986) 4 SCC 436****. The Judge cannot decide jurisdiction against the rules framed by the High Court. He cannot hear the matter out of roaster.*
   #CHARGE 3 # *I.P.C. – 504, 500, - Using defamatory words against advocate for ulterior purposes. Judge can be prosecuted without sanction as it is not the part of the official duty of a Judge.* ***[Bidhi Singh Vs. M.S.Mandyal 1993 Cri.L.J 499****,* ***B. S.***

Sambhu Vs. T. S. Krishnaswamy AIR 1983 SC 64]

#CHARGE 4 # SECTION 14 OF CONTEMPT OF COURT :- *For degrading and insulting treatment to advocate.****[Harish Chandra Mishra Vs. Hon'ble Mr. Justice Ali Ahmad 1986 (34) BLJR 63****, High Court of Karnataka Vs. Jai Chaitanya dasa 2015 (3) AKR 627****, Muhammad Sahfi, Advocate Vs. Chaudhary Qadir Bakhsh, AIR 1949 Lah 270****, Sh. H. Syama Sundara Rao Vs. Union of India (UOI) , 2007 Cri. L. J. 2626****]*

#CHARGE 5 # *wilful Contempt of directions given by Full Bench of Supreme Court in* ***(1963) 2 SCR 22*** *by not allowing the advocate to argue his case and continuous interruption in sarcastic manner for ulterior purposes.*

#CHARGE 6 # FRAUD ON POWER – *Undue haste to pass order in favor of accused in 'state case' without making state as a party. Proves malafides – CBI investigation necessary.* ***[Noida Entrepreneurs Association Vs. Noida (2011) 6 SCC 508]***

The 'State Case' was been heard by Justice D. Naidu without state being made party and without calling the Public Prosecutor to file his say. The 'Registrar of the Court' who is main 'Complainant' was also not made the party. Such undue haste is sufficient to draw an inference of malafide intention and C.B.I. be directed to investigate the entire conspiracy as per law laid down in ***Noida Entrepreneurs Association Vs. Noida (2011) 6 SCC 508*** *and* ***Prof. Ramesh Chandra Vs State MANU/UP/0708/2007****.*

#CHARGE 7 # BREACH OF OATH TAKEN AS A HIGH COURT JUDGE:- *by behaving in an ill-motivated manner and giving undue favor to accused for extraneous consideration. Judge Naidu breached the oath taken as a High Court Judge and therefore forfeited his right to continue as a Judge.*

#CHARGE 8 # FRAUD ON POWER*:- Deliberate ignorance of material on record to help the accused. Judge is guilty of fraud on power.* ***[Vide: Vijay Shekhar Vs. Union of India 2004 (3) Crimes 33 (Full Bench)]***

 # CHARGE 9 # Framing of incorrect record of the High Court –The advocate for accused filed appeal before Judge D.S.Naidu with undue haste even not withdrawing their Writ Petition filed for same relief. When this fact was brought to the notice of Court the Judge D.S. Naidu granted time to accused and adjourned the matter, but did not mentioned the reason for adjournment in the order dated 15.07.2019.

 # CHARGE 10 # Judge D.S.Naidu is liable to be dismissed forthwith as per law laid down in R.R. Parekh Vs. High Court of Gujrat (2016) 14 SCC 1 & K. Veeraswami Vs. Union of India (UOI) 1991 (3) SCC 655 *as it is ex-facie proved that he acted in wanton breach of the procedures of law , Bombay High Court Rules and Hon'ble Supreme Court directions to grant undeserving relief to an accused in a serious case of around Rs.500 Crores.*

#CHARGE 11 # Legal Malice – *Malice in law & Malice in Fact – Discrimination and unequal treatment between two advocates by granting time to advocate for accused and not granting time to advocate for de-facto complainant. Judge D.S.Naidu is guilty of Malice in Law & Malice in Fact.* ***[Vide: Kishor M. Gadhave Patil Vs. State 2016 (5) Mh.L.J.75, Kalabharati Advertising Vs. Hemant Vimalnath Narichania And Ors. (2010) 9 SCC 437, West Bengal State Electricity Board Vs. Dilip Kumar Ray AIR 2007 SC 976]***

#CHARGE 12 # *Violation of Article 14 of the Constitution of India by giving unequal treatment and discrimination to serve their ulterior purposes. Judge guilty of offences under section 511, 218, 219 of Indian penal code.* ***[Vide: Nanha S/o Nabhan Kha v. State of U.P. 1993 CRI. L. J. 938]***

#CHARGE 13 # *Threatening and pressurizing the advocate about action under Contempt without any lawful basis and therefore guilty of offence under section 511 r/w. 220 & 211 of IPC* ***[Vide: Hari Das Vs. State AIR 1964 SC 1773, Afzalur Rahman Vs. Emperor AIR 1943 FC 18, Sita Ram Chandu Lall Vs.***

Malkit Singh MANU/PH/0113/1955*]*

#CHARGE 14 # CONTEMPT OF ITS OWN COURT:

Threatening the advocate with ulterior motive that the advocate will flinch from his services to client. ***[Mrs. Damayanti G. Chandiraman V. S. Vaney* AIR 1966 Bom 19, Sh. H. Syama Sundara Rao Vs. Union of India (UOI) , 2007 Cri. L. J. 2626****].*

3. *Taking action under Contempt of Court's Act,1971 as per law laid down in* ***Re: C.S.Karnan (2017) 7 SCC 1*** *against Justice D.S. Naidu for his wilful disregard and defiance of various law settled by Hon'ble Supreme Court.*
4. *Blatant irregularities and illegal procedures followed by Justice Dama Sheshadri Naidu of the Bombay High Court resulting in violation of my fundamental right to fair procedure in seeking Justice.*
5. *Direction to Chief Justice of Bombay High Court as per "In-House-Procedure" to not to assign any work to Justice D.S.Naidu as his grave misconduct and serious criminal offences against administration of justice are ex-facie proved.*
6. *Direction to Justice D.S. Naidu to resign in view of law laid down by Constitution Bench in* ***K. Veeraswami Vs. Union of India (UOI) 1991 (3) SCC 655*** *as he has proved tobe counter-productive and non-conducive to the administration of justice.*
7. *Constituting committee as per "In-House-Procedure in view of law & Ratio laid down in* ***Union of India Vs. K. K. Dhawan (1993) 2 SCC 56.***
8. *Granting sanction to prosecute Justice D.S.Naidu under section 218, 219, 160, 504, 506, 511 r/w 120 (B) of IPC and for any other offences disclosed from the facts mentioned in the present complaint and also sanction for claiming compensation of Rs. 100 Crores from Justice D.S. Naidu .*

Ref : *Hearing on 24th July, 2019 in Application for condonation of delay being Criminal Application No. 980 of 2019 in Cri. Appeal No (S) 836 of 2019****.***

Witnesses : 1. Adv. Vijay Kurle,
2. Mrs. Dipali N. Ojha,
3. Shri. Surendra V. Mishra,

4. Shri. Vasudev Patil ,
5. Adv. Mansi Jain,
6. Adv. Shivam Mehra,
7. Adv. Shivindu Saha,
8. Adv Abhishek Mishra,
9. Madhura Kathe,
10. Adv. Ganesh Shelake'

Hon'ble Sir,

1. *That, today an application for condonation of delay, being Criminal* ***Application No. 980 of 2019 in Cri. Appeal No. (S) 836 of*** *2019 was posted for "****Circulation"*** *before Justice. D.S. Naidu* ***(Court Room No.25 -A).***
I am Respondent No.1 in the said Appeal.The matter was at Sr. No. 6. Attached is the copy of daily board as downloaded from the web site of Bombay High Court ***(Annexure –"A")***

2. *The appeal was filed under section 341 of Cr.P.C. by accused against the order passed by District Judge City Civil & Sessions Court, Greater Mumbai, where the accused were found guilty of practicing fraud upon the Court to grab the property worth Rs. 500 Crores.*

3. *When matter came up for hearing, my Counsel Adv. Nilesh C. Ojha pointed out to the Court that, he is having preliminary objection in the matter. The objection which my Counsel wanted to raise was that;*

i) *The prayer of the Appellant in his Appeal is* ***quashing of the proceeding before Metropolitan Magistrate****. Therefore the matter should go before Division Bench as per law laid down by Division Bench of Bombay High Court in* ***Farooq Abdul Gani Surve Vs. State of Maharashtra 2012 All MR (Cri) 131*** *and more particularly followed in* ***Ratan Tata's case in W.P.No.1238 of 2019****.*

It is ruled that the label of the Petition is not decisive in criminal matters, but it is the 'prayer and substantive material therein which must be looked into.

In Ratan Tata's case the order dated ***27th March, 2019*** *reads as under ;*

> ***2.*** *Mr. Ponda, the learned Counsel for respondent No.1 after* ***pointing out the prayers made in this Petition, has submitted that quashing of the complaints shall go before the Division Bench*** *(The Hon'ble Shri. Justice More and the Hon'ble Smt. Justice Dangre) as per the roster dated 8th March, 2019. He has further submitted that this matter should go before the above Division Bench with effect from 11th March, 2019 and not before the Single Bench.*

3. Mr.Singhvi, the learned Senior Advocate for the petitioners has relied on Chapter XVII Rule 18 (4) of the Bombay High Court Appellate Side Rules, 1960. He has submitted that ***quashing of the complaints or F.I.R. is possible only under section 482 of the Code of Criminal Procedure (for short "Cr.P.C.")*** *and under Article 227 of the Constitution of India and, therefore, it should be placed only before the Single Bench. He has further submitted that in the present Petition, the relief sought is not only simplicitor under section 482 of the Cr.P.C., but also under Article 227 of the Constitution of India. Thus the powers are overlapping and not hearing this matter will amount to misreading of the roster.*

4. In view of these submissions so also Chapter XVII Rule 18 (4) of the Bombay High Court Appellate Side Rules, 1960 and the assignments mentioned in the roster, Registrar (Judicial-I) is requested to submit his written note in respect of assignments of the matters pertaining to quashing of F.I.R., C.R., chargesheet and complainants on or before 18th April, 2019. The judgment of the Division Bench of this Court at Nagpur Bench (The Hon'ble Shri. Justice B.P.Dharmadhikari & the Hon'ble Shri. Justice A.P.Bhangale) in the case of Abdul Faruk Abdul Rahim Vs. The State of Maharashtra & Anr., reported in 2012 ALL MR (Cri.) 131 is to be taken into account.

5. As per earlier order dated 18th March, 2019, the trial Court was directed not to proceed with the matter till 25th March, 2018. Now it is informed that the trial Court has fixed the matter on 12th July, 2019. Therefore, this matter to be placed before the appropriate Bench on 18th April, 2019. Thereafter, the matter will be preferably heard before 12th July, 2019; if not, then liberty is granted to the petitioners to seek necessary orders.

Based on said order the matter was heard and decided by Division Bench ***(Coram:-Justice Ranjit More & Justice Bharati Dangre)*** *on 22.7.2019.*

In ***Sudakshina Ghosh Vs. Arunagshu 2008 SCC OnLine Cal 34*** *it is ruled as under;*

> ***"28.*** *Be that as it may, this Court has no hesitation to hold that the impugned order was passed on an application filed by the opposite party under section 340 read with section 195 of the Criminal Procedure Code.*
>
> ***31.*** *Though it is true that all applications under Article 227 of the Constitution of India passed by any Judge in any civil suit and/or appeal, irrespective of its valuation is entertainable by a single Judge of this Court having jurisdiction, but the jurisdiction of the single Judge to entertain such an application which arises out of a proceeding under section 340 and section 195 of the Criminal Procedure Code, is ousted by the special provision contained in Rule 10 of Chapter II of the Appellate Side Rules.*
>
> ***32. The preliminary objection regarding entertainability of this revisional application by this Bench sitting singly, is thus sustained.***
>
> ***33.*** *In such view of the matter, let the records relating to this revisional application be placed before the Hon'ble Chief Justice for passing an order of assignment of this matter to any Division Bench of this Hon'ble Court for consideration of this application in its civil revisional jurisdiction."*

ii) *The case is a 'State case' and state is not made a party and public prosecutor is not asked to reply, thereafter Court cannot hear the case without there being any urgency apparent on the face of the of the record.*

iii) *The impugned order in Appeal dated 14-12-2018 under Section 340 of Cr.P.C. is already executed and on the basis of the said order complaint is filed by the Registrar of the City Civil Court before Metropolitan Magistrate and already process is issued by Ld. Metropolitan Magistrate under Section 204 of Cr. P.C. The accused Appellant appeared before Metro Politian Magistrate and got bail, and therefore the Appellant has remedy to either challenge that order of issue of process under Section. 397 of Cr.P.C or under Section. 482 of Cr.P.C. Alternatively, the appellant can file application under Section 239 of Cr.P.C. for discharge. But the stage of filling Appeal under*

Section. 341 of Cr.P.C. is gone Moreover, In Criminal Appeal under section 341 of Cr.P.C. the appellate Court has the power to only direct withdrawal of complaint, the prayer of quashing of complaint is not permissible under section 341 of Cr.P.C for which remedy is under section 482 of Cr.P.C.

[Vide: Nabam Epo Vs State 2017 SCC OnLine Gau 953]

K.Rama Reddy Vs.State 1998 (3) ALD 305 *it is ruled as under*

Under Section 340 of the Code there is no such embargo for making a complaint. The present appeals arc preferred under Section 341 of the Code, whereunder an appeal can be preferred only against the action taken under Section 340 of the Code and making a complaint. That does not involve taking cognizance of the offences.

iv) *That the procedure for challenge of Criminal proceedings is made clear by various judgments as under;*

A) *If order directing complaint under Section 340 is passed then it can be challenged under Section 482 of Cr.PC* ***[Surendra Gupta Vs. Bhagwan Devi AIR 1996 SC 509]***

B) *And if as per that order complaint is filed then the remedy is under Section 341* ***[Surendra Gupta Vs. Bhagwan Devi AIR 1996 SC 509]***

C) *The* ***contents of the complaint*** *should be* ***treated as order*** *under challenge and limitation starts from the date of signing of the contempt.* ***[Raja J. Rameshwa Rao Vs. CIT AIR 1963 ALL 352]***

D) *If the complaint is filed and cognizance is taken by the Magistrate by issuing summons then the stage of the challenging order under Sec.340 is gone but the petition for discharge under Section 239 of Cr.P.C. is to be filed. The provisions of sections 238,239,240,241,242,243 are applicable.****[State of Goa Vs. Jose Maria (2018) 11 SCC 659]***

E) *The order of issue process under Section 204 of Cr.P.C can also be challenged either under Section 397 of Cr. PC or under Section 482 of Cr.PC But not under Section 341 of Cr.PC [****Nabam Expo Vs State MANU/GH/0702/2017****,* ***Subhash Zanjiri Vs. Shamsher Khan 2014 ALL MR (Cri) 541, Mahesh Tiwari Vs. State 2016 SCC OnLine ALL 2624]***

F) ***The*** *appeal under section 341 should be heard by a Civil Judge who hears the*

challenge against the orders of the District Judge i.e. it should go before Civil Appellate Judge as per Constitution Bench judgment of Hon'ble Supreme Court in ***Kuladeep Singh Vs. State AIR 1956 SC 391*** *it is ruled as under;*

"14. *Other views are also possible but we do not intend to explore them. In our opinion, the matter is to be viewed thus. The first question to be asked is whether any decrees, orders or sentences of the original Court (1) [1930) 32 Cr. L.J. 1012. (2) A.I.R. I 1951 Mad. 1060, 1061, are appealable at all. If they are not, and the Court is a Civil Court, then,, under section 195(3), the appeal against the order making or refusing.to make a complaint will be to the principal Court of ordinary original civil jurisdiction. If, however, appeals from its various decrees and orders lie to different Courts, then we have to see to which of them they "ordinarily" lie and select the one of lowest grade from among them.***"***

Therefore, my Counsel wanted to submit that the appeal is not maintainable and in any case the accused Judge D.S.Naidu had no jurisdiction to hear the appeal.

4. *That, the appellants/accused are represented by series of lawyers and more particularly by Ld. Sr. Counsel Mr. S. U. Kamdar. The same advocate on record "MDP & Partner" are appearing for the Appellant before City Civil Court, Magistrate Court, High Court etc. The Ld. Sr. Counsel Mr. S. U. Kamdar is also appearing for Appellants before this Hon'ble High Court in Civil Suit No. 929 of 2013 filed by Appellants and also before this Court in Present Criminal Appeal.*

5. *That, specific intimation is given by advocate for respondent No. 1 in notice dated 17.12.2018 which is relied by Appellants at Pg. no. 487 in his* ***(Exhibit "X") to the Criminal Appeal (S) NO. 836 OF 2019. The relevant para 15 is at pg. No. 502.*** *and That the copy of Civil Application No. 4396 of 2019 in Writ Petition No. 4131 of 2019 was served on 11/02/2019. Then there is no satisfactory explanation in the application that why the first time 7 months and then time of around 5 months was taken to file Present Criminal Appeal under section 341 of the Cr. P. C.*

6. *That, as a part of the conspiracy the accused tried to take chance in Civil Writ before Hon'ble Justice S.K. Shinde by taking circulation on 4th June 2019.*

7. *That, on that day the Counsel for Appellant prayed for stay of the order but Justice S.K. Shinde clearly pointed out that since the impugned order already is executed and 'process is issued' against appellants therefore, the proper forum is to challenge the order of 'Issue Process' and a 'No order' was passed. A copy of the dated 4th June, 2019 is herein under annexed and marked as* ***Exhibit "R3".***

8. *But the Appellants in their condonation of delay application have conveniently and deliberately put a distorted version in Para. 3 of their affidavit 14th June, 2019 by dishonest concealment of what happened*

in the Court on 4th June 2019.

Para 3 of the Criminal Application No. 980 of 2019 reads as under:

> *"On 8th January, 2019 Appellants had filed Civil Appeal from Order being Civil Appeal (ST) No. 649 of 2019 challenging the Impugned Order before this Hon'ble Court. Appellant No.1, however, withdrew the same on 22nd January, 2019. On 19th January, 2019 the Appellants filed Civil Writ Petition No. 4131 of 2019 challenging the said Impugned Order. Appellant No.1 also filed Civil Application bearing No. 965 of 2019 in the said Writ Petition at Hon'ble Bombay High Court seeking interim reliefs, with an intention to expedite this Writ Petition No. 4131 of 2019. Appellants herein crave leave to refer and to rely upon and produce papers and proceedings related to Appeal from Order (ST.) No. 649 of 2019 and Civil Writ Petition No.4131 of 2019 and all interlocutory applications, as and when required. On 23rd January, 2019 Writ Petition No. 4131 of 2019 was mentioned by the Appellants herein/therein referred to as the Petitioners for urgent hearing, thus the same was adjourned to 15th April, 2019. On 15th April, 2019 this Writ Petition was not on board, thus the same was again mentioned and was supposed to come on board on 4th June, 2019 but the same was not on daily board, thus the Appellants herein have again mentioned this matter on 3rd June, 2019 and sought circulation on urgent basis, thus Civil Application in Writ Petition was on Production board on 4th June, 2019 before his Hon'ble Justice Mr. S.K. Shinde but no Order was passed because the Registrar (Sessions) of City Civil Court at Bombay had already filed Criminal Complaint against Appellant Nos. 2 to 5 and late Vinod Sharma, this Criminal Complaint is bearing No. SS/SW/0800003/2019 ("**Criminal Complaint**") and process was issued in the said Criminal Complaint on 6th February, 2019. "*

This itself was a ground to dismiss the application with cost. That, again also the Appellants are trying to adopt bench hopping and forum shopping techniques by avoiding the jurisdiction under section 397, 482 of Cr.P.C and were in hurry to get the hearing before Judge D.S.Naidu for the reason which could only be extraneous.

9. THE PRELIMINARY OBJECTION BY MY COUNSEL WERE NOT HEARD BY JUDGE D.S.NAIDU:- *That, it is trite law that such preliminary objections should be decided first. Hon'ble Supreme Court in* ***Union of India (UOI) Vs.Ranbir Singh Rathaur and Ors (2006) 11 SCC 696****. The preliminary objection has to be decided first. All Judges are following this practice.*

It is ruled as under;

> *"Preliminary Objections About Maintainability Of Petitions Raised To Be decided First."*

10. *In* ***Sudakshina Ghosh Versus Arunangshu Chakraborty (Uday) 2008 SCC OnLine Cal 34*** *it is reads as under;*

> ***" HEARING OF APPEAL UNDER SECTION 341 OF CR.PC:-***
>
> ***20.*** *Keeping in mind the aforesaid decision of the Hon'ble Supreme Court, this Court has no hesitation to hold that* ***the Rules which have been framed by this High Court regarding distribution of its business, should be followed strictly and the administrative decision of the Hon'ble Chief Justice regarding distribution of its business cannot override the said Rules.***
>
> ***19.*** *As a matter of fact, the Hon'ble Supreme Court in its decision in the case of N.S. Thread Co. Ltd. v. James Chadwick & Bros., reported in AIR 1953 SC 357, held as follows:*
>
> *"The power that is conferred on the High Court by section 108, Government of India Act, 1915, still subsists, and it has not been affected in any manner whatever either by the Government of India Act, 1935 or by the Constitution of India. On the other hand it has been kept alive and reaffirmed with great vigour by these statutes. The High Courts still enjoy the same unfettered power as they enjoyed under section 108, Government of India Act, 1915 of making rules and providing whether an appeal has to be heard by one Judge or more Judges or by Division Courts consisting of two or more Judges of the High Court. Further, the reference in clause (15) to section 108 should be read as a reference to the corresponding provisions of the 1935 Act and the Constitution"*

11. *But Justice D.S. Naidu refused to entertain the said objection and said that;*

> ***"I will first hear the Appeal on merit then will consider the preliminary objection about legal jurisdiction."***
>
> *He even refused to take the written reply of the Respondent No. 1 on record. This itself is Contempt of his own Court and also Contempt of Hon'ble Supreme Court judgment and guidelines.*

12. *Hon'ble Supreme Court in the case of* ***Pandurang and others vs State (1986) 4 SCC 436*** *had ruled that if any matter is heard by a court which had no competence to hear the matter then the judgment passed becomes nullity, being a matter of total lack of jurisdiction. The right of any party cannot be taken away except by amending the rules of High Court. So long as the rules are in operation it would be arbitrary and discriminatory to deny him his right regardless of whether it is done by a reason of negligence or otherwise. Deliberately*

it cannot be done. Even if the decision is right on merit, it is by a forum which is lacking in competence. Even a right decision by a wrong forum is no decision. It is non existent in the eyes of law. And hence a nullity.

It is further observed by the Hon'ble Supreme Court that,

> *"We wish to add that the registry of the High Court was expected to have realized the position and* ***ought not to have created such a situation which resulted in waste of Court time, once for hearing the appeal and next time, to consider the effect of the rules. No court can afford this luxury with the mountain of arrears every court carrying these days"***

13. *So it is clear that, the process of law is being grossly abused by the Justice D.S Naidu under impression that the Court is his personal & private property. He acted in utter disregard and definance of law laid by Hon'ble Supreme Court and therefore he has to be removed from from the post of a Judge.*

14. *In* ***R.R. Parekh Vs. High Court of Gujrat (2016) 14 SCC 1,*** *Hon'ble Supreme Court had upheld the order of dismissal of a Judge. It is ruled as under;*

> ***"A Judge passing an order against provisions of law in order to help a party is said to have been actuated by an oblique motive or corrupt practice - breach of the governing principles of law or procedure by a Judge is indicative of judicial officer has been actuated by an oblique motive or corrupt practice - No direct evidence is necessary - A charge of misconduct against a Judge has to be established on a preponderance of probabilities - The Appellant had absolutely no convincing explanation for this course of conduct - Punishment of compulsory retirement directed.***
>
> *A wanton breach of the governing principles of law or procedure by a Judge is indicative of judicial officer has been actuated by an oblique motive or corrupt practice. In the absence of a cogent explanation to the contrary, it is for the disciplinary authority to determine whether a pattern has emerged on the basis of which an inference that the judicial officer was actuated by extraneous considerations can be drawn - It is not the correctness of the verdict but the conduct of the officer which is in question- . There is on the one hand a genuine public interest in protecting fearless and honest officers of the district judiciary from motivated criticism and attack. Equally there is a genuine public interest in holding a person who is guilty of wrong doing responsible for his or his actions.*

Neither aspect of public interest can be ignored. Both are vital to the preservation of the integrity of the administration of justice - A charge of misconduct against a Judge has to be established on a preponderance of probabilities - No reasons appear from the record of the judgment, for We have duly perused the judgments rendered by the Appellant and find merit in the finding of the High Court that the Appellant paid no heed whatsoever to the provisions of Section 135 under which the sentence of imprisonment shall not be less than three years, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court. Most significant is the fact that the Appellant imposed a sentence in the case of each accused in such a manner that after the order was passed no accused would remain in jail any longer. Two of the accused were handed down sentences of five months and three months in such a manner that after taking account of the set-off of the period during which they had remained as under-trial prisoners, they would be released from jail. The Appellant had absolutely no convincing explanation for this course of conduct."

15. *Full Bench of Hon'ble Supreme in the case of* ***Union of India Vs. K. K. Dhawan (1993) 2 SCC 56 (Full Bench)*** *had ruled that, if any Judge passes any order to favor or disfavor anyone, then he is not acting as a Judge and he should be prosecuted and removed from the post of a Judge by ordering proper enquiry, it is ruled as under;*

"If any Judge acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. And he can be proceeded for passing unlawful order apart from the fact that the order is appealable. Action for violation of Conduct Rules is must for proper administration.

*"**28.** Certainly, therefore, the officer who exercises judicial or quasi - judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under*

the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii)if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party-

(vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."

"17. In this context reference may be made to the following observations of Lopes, L.J. in Pearce v. Foster.

"If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service of the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant.

16. *Hon'ble Supreme Court in* ***Smt. Prabha Sharma Vs. Sunil Goyal and Ors.(2017) 11 SCC 77*** *where it is ruled as under;*

"Article 141 of the Constitution of India - disciplinary proceedings against Additional District Judge for not following the Judgments of the High Court and Supreme Court - judicial officers are bound to follow the Judgments of the High Court and also the binding nature of the Judgments of this Court in terms of Article 141 of the Constitution of India. We make it clear that the High Court is at liberty to proceed with the disciplinary proceedings and arrive at an independent decision.

BRIEF HISTORY (From: (MANU/RH/1195/2011)

High Court initiated disciplinary proceedings against Appellant who is working as Additional District Judge, Jaipur City for not following the Judgments of the High Court and Supreme Court. Appellant filed SLP before Supreme Court - Supreme Court dismissed the petition.

Held, the judgment, has mainly stated the legal position, making it clear that the judicial officers are bound to follow the Judgments of the High Court and also the binding nature of the Judgments of this Court in terms of Article 141 of the Constitution of India. We do not find any observation in the impugned judgment which reflects on the integrity of the Appellant. Therefore, it is not necessary to expunge any of the observations in the impugned Judgment and to finalisethe same expeditiously.

Based on this Judgment, disciplinary proceedings have been initiated against the Appellant by the High Court. We make it clear that the High Court is at liberty to proceed with the disciplinary proceedings and arrive at an independent decision and to finalise the same expeditiously."

17. *That, thereafter the matter was argued by Shri. S. U. Kamdar, Sr. Counsel for Appellant, for around 90 minutes. Thereafter Adv. Nilesh Ojha, Counsel for myself i.e. Respondent No. 1, tried to tender the* ***Reply Affidavit*** *of Respondent No. 1. But the Judge refused to accept it. My Counsel pointed out that today the matter was for circulation only and the* ***Reply Affidavit*** *for taking objection to the condonation of delay application of Appellant has to be taken on record. But Ld. Judge said he will not take the same on record. Hence my Counsel requested for a date, for filing reply in the registry. But Ld. Judge refused to grant time.*

In fact state was not made a party and public prosecutor was not present in the matters. But Judge Naidu was in a hurry to allow the application of the accused.

18. *The proceedings were already initiated before Magistrate as per section 343 of Code of Criminal Procedure and therefore as per procedure explained by Supreme Court in* ***State Vs. Jose Maria (2018) 11 SCC 659*** *it has to be proceeded like a police report and 'State Case' for which the state is the necessary party. Before Magistrate Court Public Prosecutor is already representing the case. The same advocate* ***"MDP & Partners"*** *are representing the accused before Magistrate Court and got the bail. But the advocate* ***"MDP & Partners"*** *for Appellant accused deliberately did not made the state as a party before Hon'ble High Court nor Justice Naidu was willing to follow the procedure but with undue haste Judge D.S. Naidu was willing to grant relief to the accused in such a serious case. The*

conduct of J. D.S.Naidu to grant relief to accused without making state as a party and not waiting for Public Prosecutor to argue the matter. Ex-facie proves the malafides of Justice Naidu.

Hon'ble Supreme Court in the case of ***Noida Entrepreneurs Association Vs. Noida (2011) 6 SCC 508*** *had ruled as under;*

> ***"Undue haste in any act in absence of any urgency*** *– Inference of malafide can be drawn against the said public servant. Thereafter it is a matter of investigation to find out whether there was any ulterior motive – CBI investigation ordered.."*

Hon'ble Justice Dr. B.S.Chauhan in the case of ***Prof. Ramesh Chandra Vs State MANU/UP/0708/2007*** *ruled as under;*

> ***"Anything done in undue haste can also be termed as arbitrary and cannot be condoned in law for the reasons that in such a fact situation mala fide can be presumed****. Vide Dr. S.P. Kapoor v. State of Himachal Pradesh (AIR 1981 SC 281) ; Madhya Pradesh Hasta ShilpaVikas Nigam Ltd. v. Devendra Kumar Jain and Ors. [(1995) 1 SCC 638] and BahadursinhLakhubhaiGohil v. Jagdishbhai M. Kamalia and Ors (AIR 2004 SC 1159).*
>
> ***Abuse of Power - the expression 'abuse' to mean misuse, i.e. using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means.***
>
> ***Abuse of Power has to be considered in the context and setting in which it has been used and cannot mean the use of a power which may appear to be simply unreasonable or inappropriate. It implies a wilful abuse for an intentional wrong.***

19. *Then Justice. D. S. Naidu sarcastically asked one question to my client as to how the proceeding under section 340 of Criminal Procedure Code is maintainable against the person who are not named in the complaint, to which my counsel answered that the issue is decided by Division Bench of Bombay High Court in the case of* ***Godrej and Boyce Manufacturing Co. Pvt. Ltd. and Ors. Vs. The Union of India and Ors.1992 CriLJ 3752*** *where in Para 95 it is ruled that;*

> ***"95. Counsel for Godrej repeatedly stressed the contention that while initiating action under S. 340, the Court has necessarily to identify the accused. That submission may not have any statutory backing having regard to our earlier findings and the fact that we are***

directing only the filing of a complaint. A complaint, as explained earlier could be even against persons who could not be identified at that particular stage."

20. *More over this fact was clearly mentioned in the complaint filed by the Registrar of City Civil Court in Para 9* ***(Page No. 458*** *of the Appeal filed by accused. The para 9 is at Page No.477 & 478 of the petition****)***

> *"**9.**That the accused directors of M/s. Khandelwal Engineering Company Limited created bogus Consent Terms and used the same has genuine one and based on that forged documents they have filed false and misleading affidavit in order to mislead the Court and hence guilty of offence against administration of Justice and it is expedient and in the interest of justice that they should be tried and punish as per the relevant provision of Indian Penal Code.*
>
> *Since the defendant in the aforesaid suit is M/s. Khandelwal Engineering Company Limited and written statement is filed on behalf of the said company therefore the Hon'ble Sessions Court has directed prosecution against all the directors of the said company.*
>
> *Since the Written Statement were filed on behalf of the company therefore all Directors of company are made accused. That the bogus, forged & Fabricated Consent Terms dated 25.06.2002 were created by accused Sanjay Patel, now Managing Director of M/s Khandelwal Engineering Co. Ltd. The Same accused is prosecuted by police by registering (N.C.) Complaint No. 1869 of 2010 for offences punishable Under Section 504, 506, 427 of Indian Penal Code for his attempt to encroach the property of Applicant and this fact came on record in the evidence given by A.P.I. Sachin Patil attached to Bangur Nagar Police Station. He appears to be main conspirator of playing fraud upon the Court. The said Consent Terms of the said Sanjay Patel, is annexed in the Annexure 'C' i.e. Notice of Motion No.3476/17 as Exhibit 'K'."*

21. *By way of the abovesaid reply accused Judge D.S.Naidu was speechless as his strategy to grant relief to accused with undue haste was not likely to be executed. Therefore while my Counsel attempted to read out the case law further then Judge D.S. Naidu interrupted him and asked not to read it.*

Then the Judge said in a sarcastic manner – ***"I understand your standard, don't argue"****. This is highly objectionable.*

That the judge is not allowed to insult the advocate by making personal comments in open court.

22. *In* ***Bidhi Singh Vs. M.S.Mandyal 1993 Cri.L.J 499*** *it is ruled as under;*

> ***"Criminal P.C. (2 of 1974), S.197 - - Prosecution of Judges - Complaint under Section 504 I.P.C. - Use of words "non-sense" by Presiding Officer - Sanction to prosecute, not necessary – This is not the part of his official duty.***
>
> ***A Presiding Judge is expected to maintain decorum in the proceedings before him. He is expected also to act with restraint- One would expect him to be sober, unruffled and temperate in language even when faced with a situation where those appearing before him may tend to lose their composure. In this scheme of things any vituperative outburst on the part of the Presiding Officer, howsoever grave the provocation to him, cannot be countenanced as an action sustainable as one performed by him "while acting or purporting to act in the discharge of his official duty."***

23. *In* ***B. S. Sambhu Vs. T. S. Krishnaswamy AIR 1983 SC 64*** *it is ruled as under;*

> ***"Cri. P.C. Sec 197 – Judge using defamatory words against an advocate is not protected – Sanction to prosecution such Judge not necessary – A Judge was prosecuted u/s 499 of I P C for USING WORDS "ROWDY", "A BIG GAMBLER" and "A MISCHIVIOUS ELEMENT" against complainant- Trial Court held that sanction for prosecution of judge is not necessary – Held – Such unparliamentarily word can never be connected with discharge of official duty on the part of Judge – No sanction is necessary to prosecute him even if the remarks are written while performing duty as a Judge.***
>
> *It was contended before us as was done before the High Court that the D.O. letter sent by the appellant to the District Judge was in discharge of his duties because the District Judge had called for the remarks and hence whatsoever had been written by the appellant was done while acting or purporting to act in discharge of his official duty and as such the ingredients of Section 197 Cr. P.C. were satisfied. It is not possible to accept this contention for in our view there is no reasonable nexus between the act complained of and the discharge of duty by the appellant. Calling the respondent as 'Rowdy', 'a big gambler' and 'a mischievous element' cannot even remotely be said to be connected with the discharge of official duty which was to offer his remarks regarding the allegations made in the transfer*

petition. In Matajog Dubey vs H.C. Bharil 1957 (2) SCR 925 this Court has laid down the test in these terms:

There must be a reasonable connection between the, act and the discharge of official duty; the act must bear such "relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.

Applying this test to the facts of the present case it is impossible to come to the conclusion that the act complained of has any connection with the discharge of official duty by the appellant.

For the reasons indicated above we are satisfied that the High Court was right in coming to the conclusion that Section 197 was not attracted. There is, therefore, no substance in the appeal and the same is dismissed."

***24.** In **Harish Chandra Mishra Vs. Hon'ble Mr. Justice Ali Ahmad 1986 (34) BLJR 63** it is ruled as under;*

*"**JUDGE IS GUILTY OF CONTEMPT, IF JUDGE INSULTS THE ADVOCATE** - A Judge has every right to control the proceedings of the court in a dignified manner and in a case of misbehavior or misconduct on the part of a lawyer proceedings in the nature of contempt can be started against the lawyer concerned. But, at the same time a **Judge cannot make personal remarks and use harsh words in open Court which may touch the dignity of a lawyer and bring him to disrepute in the eyes of his colleagues and litigants.**Lawyers are also officers of the court and deserve the same respect and dignity which a Judge expects from the members of the Bar. In my opinion, this application cannot be brushed aside and has been rightly contended by the learned Counsel for the petitioners that the matter can be resolved only after issuance of notice to the opposite party.*

It was essential to preserve the discipline, while administering justice, was realized centuries ago when Anglo Saxon Laws developed the concept of contempt of court and for punishment therefor. The acts which tend to obstruct the course of justice really threaten the very administration of justice. By several pronouncements such acts which tend to obstruct or interfere with the course of justice were identified and were grouped into 'civil contempt' and 'criminal contempt'. However, for a long time they were never defined leaving it to the courts to give their

verdict whether under particular set of circumstances any such offence has been committed or not.

But assuming the provision of Section 15 of the Contempt of Courts Act are mandatory, we are not inclined to throw out the petition on this technical ground because the issue involved is of tremendous importance. There is nothing to prevent us from treating it as an action of our own motion and we accordingly order that the petition be treated as one on our own motion.

The remedy is not lost even if the offending Judge was a judge of the High Court. The matter can be heard by a specially constituted Bench of the High Court.

Merely on basis of the aforesaid views it cannot be held that after coining in force of the Act a Judge of the Supreme Court or High Court is also answerable to a charge of having committed contempt of the Supreme Court or the High Court for having conducted the proceeding of the Court in a manner which is objectionable to the members of the Bar.

There cannot be two opinions that Judges of the Supreme Court and High Courts are expected to conduct the proceedings of the Court in dignified, objective and courteous manners and without fear of contradiction it can be said that by and large the proceedings of the higher courts have been in accordance with well settled norms. On rare occasions complaints have been made about some outrageous or undignified behavior. It has always been impressed that the dignity and majesty of court can be maintained only when the members of the Bar and Judges maintain their self-imposed restriction while advancing the cause of the clients and rejecting submissions of the counsel who appear for such cause. It is admitted on all counts that a counsel appearing before a court is entitled to press and pursue the cause of his client to the best of his ability while maintaining the dignity of the court. The Judge has also a reciprocal duty to perform and should not be discourteous to the counsel and has to maintain his respect in the eyes of clients and general public. This is, in my view, very important because the system through which justice is being administered cannot be effectively administered unless the two limbs of the court act in a harmonious manner. Oswald on Contempt of Court, 3rd Edition at

page 54 remarked "an over subservient bar would have been one of the greatest misfortune that could happen to the administration of Justice."

Greatest of respect for my learned Brethren it is not possible for me to agree with the proposition that the Judges of the High Courts and the Supreme Court are immune from a contempt of courts proceeding nor do I agree that an application filed without the consent in writing of the Advocate General is not maintainable.

The Bench and the bar are the two vital limbs of our judicial system and nothing should be done on either side in haste to impair the age old cordial relationship between these two limbs. It is no mean achievement of this system that inspite of stains and stresses the Bench and the bar have maintained the ideal and harmonious relationship.

This is rather an unfortunate case, in which a Judge and a member of the Bar after a wordy duel in the midst of a case came to a clash, resulting in filing of this application, N.P. Singh, J. has rightly observed that such things have happened in Court rooms in the past as well but they were happily buried in the spirit of forget and forgive. We judges, and the members of the Bar are the two limbs of the Court and all of us (who constitute this Full Bench) and the opposite party were members of the Bar previously."

***25**. In **Sh. H. Syama Sundara Rao Vs. Union of India (UOI) , 2007 Cri. L. J. 2626**, it is ruled that:*

*"**Contempt of Courts** - comment upon an advocate which has reference to the conduct of his cases may amount to contempt of court - any attempt to prevent him from putting forward its defense and pleas as may be deemed by it to be relevant for the purposes of adjudicating the case in hand and filing case against Advocate amounts to Contempt. Contempt of court may be said to be constituted by any conduct that tends to prejudice parties litigant or their witnesses during the litigation or to bring the authority and administration of law into disrespect or disregard, or to interfere with."*

***26.** In **Muhammad Sahfi, Advocate Vs. Chaudhary Qadir Bakhsh, Magistrate 1st Class AIR 1949 Lah 270** it is ruled as under ;*

"A] Judge intimidating Lawyer is guilty of Contempt.HeShould have tendered apology to the advocate.Since the

respondent Judge tendered apology before High Court. Court is taking lenient view and fine of Rs. 50 imposed upon the Judge and in default imprisonment of 1 month ordered.

5. *The whole episode cannot be divided into eight or ten different incidents in order to deter, mine whether each sentence uttered by the respondent did or did not constitute contempt of Court.* ***For instance, when a lawyer is asked in the ordinary course by a presiding officer of a Court "where have you come from?" or "what is your standing?", no objection can be taken to these words. In the present case, these words were used in a contemptuous manner towards Mr. Muhammad Shafi, and the object of the whole episode was to intimidate the lawyer who had dared to secure an injunction in order to help his client Said-ur-Rahman against Najmul Hassan. The fact that the lawyer was meant to be intimidated so that he may not carry on further proceedings in the Court of the Sub-Judge against Najmul Hassan, is fairly evident from the following words uttered by the respondent:***

"You are instrumental in procuring this foolish order and as such you have committed a crime for which you could be sent behind the bars."

6. It passes one's comprehension how the act of the counsel in procuring a temporary injunction could be regarded as a crime. *I am very doubtful whether the Sub-Judge could not pass such an order, but assuming that he could not do so, it is no crime for a counsel to ask for a temporary injunction. It is for the Judge to determine whether he is entitled in law to issue a temporary injunction or not in a particular matter. The respondent did not finish there. He plainly told Mr. Muhammad Shafii that he wanted to teach him a lesson so that he would be careful in future. The object of this remark was to intimidate Mr. Muhammad Shafi from carrying on the proceedings on behalf of his client in the Court of the Sub-Judge.* ***As I have already said, the whole episode has to be regarded as one incident and cannot be***

split up into its component parts so that each remark may be explained away.

8*…..If the abuse of the witnesses who appear in a Court of law is to be regarded as contempt of Court on the ground that it would intimidate other witnesses and thus impede the course of justice,* ***it must be held that the intimidation of a lawyer, who is representing one of the parties, is also contempt of Court as it would seriously interfere with the administration of justice.***

9. *It is of the greatest importance that the prestige and dignity of the Courts of law should be preserved at all costs. There cannot be anything of greater consequence than to keep the streams of justice clear and pure, so that litigants may have the utmost confidence that they would be treated in a considerate manner by Courts of law. No Judge or Magistrate has any business to lose his temper in a Court of law, to get up from his chair and to make contemptuous re-marks about other Judges or counsel appearing on either side. If parties to a litigation feel that they are likely to be subjected to insulting behaviour at the hands of the presiding officers of the Courts it would shake all confidence in the administration of justice and would thus pollute the stream of justice.*

13. *On the one hand, the conduct of the respondent was highly objectionable. He made insulting remarks about a brother Judge in a very contemptuous manner. He insulted an advocate without rhyme or reason, and did not tender him any apology or redress till the date of the hearing. On the other hand, the respondent mitigated his offence to a certain extent by tendering an unconditional apology in this Court and by admitting the correctness of the affidavits of Mr. Muhammad Shafi and Malik Shaukat Ali, advocates. In these circumstances, I am inclined to take a lenient view of the matter and not to impose a heavy sentence. I would, therefore, find Chaudhari Qadir Bakhsh guilty of contempt of the Court of Mian Muhammad Salim, Sub-Judge, and order him to pay a fine of Rs. 50. In default of payment of fine, he will suffer simple imprisonment for a period of*

one month.

27. *In* ***Mrs. Damayanti G. Chandiraman V. S. Vaney AIR 1966 Bom 19*** *it is ruled as under;*

> ***"Contempt of Courts Act (32 of 1952), S.1 - CONTEMPT OF COURT -Threatening to prosecute plaintiff's Advocate in course of argument before Judge- The threat was intended to operate upon the mind of the Advocate so that he should flinch from performing his duties towards his client amounts to contempt of Court - Not words but conduct is essence of matter- Disrespect or disregard to an advocate in certain circumstances so as to deter him from discharging his duties would amount to contempt of Court. Conduct which is intended or calculated to bring pressure upon a party and his advocate, not to pursue the matter according to his choice, amounts to interference with the administration of justice even though such threat is not direct, in the sense that the contemner specifically asserted that he would take such action- In Nandlal Bhalla v. Kishori Lal, 48 Cri LJ 757 (Lah) the Inspector of Police issued threats and used insulting language towards an advocate. It was held that the Advocate was threatened in the performance of his duties, and although there was no contempt of the Court directly, there was contempt inasmuch as an officer of the Court such as an advocate appearing for the party- In (1824) 1 Hog 134 an insult was given to a counsel while he was attending in the Master's office, which was situated within the precincts of the Court. It was held that "Advocates who appear for the parties being officers of Court, any abuse or insult or aspersions cast on them, which would interfere with the course of administration of justice, must necessarily be held to amount in contempt of Court."***
>
> *Contempt of Court may be said to be constituted by any conduct that lends to bring the authority and administration of law into disrespect of disregard, or to interfere with or prejudice parties litigant or their witnesses during the litigation If the context showed that the action contemplated was the action of the contemner himself, it is sufficient.*
>
> *In order to amount to a threat, the language used need not necessarily be aimed at causing bodily injury or hurt. If it is calculated to injure the reputation so as to restrain the freedom of action of that person, it is sufficient. The essence of the matter is the course of conduct adopted by the*

contemner and not that the words amounted to a threat. It is enough if the conduct on the whole has tendency to interfere with the course of administration of justice or to subvert the court of justice. The nexus between the threat and the demand for doing something or refraining from doing something need not be express or need not lie expressly staled. It is enough it from the context the link between the two is apparent. The subsequent conduct of the contemner in so far as it relates to the carrying out of the threat would, also be relevant."

28. High Court of Karnataka Vs. Jai Chaitanya dasa 2015 (3) AKR 627 *it is ruled as under;*

" Respect is not to the person of the Judge but to his office. The duty of courtesy to the Court does not imply that he should not maintain his self-respect and independence as his client's advocate. Respect for the Court does not mean that the counsel should be servile. It is his duty, while respecting the dignity of Court, to stand firm in advocacy of the cause of his client and in maintaining the independence of the Bar. It is obviously in the interests of justice that an advocate should be secured in the enjoyment of considerable independence in performing his duties.

Held, The bad behaviour of one Judge has a rippling effect on the reputation of the judiciary as a whole. When the edifice of judiciary is built heavily on public confidence and respect, the damage by an obstinate Judge would rip apart the entire judicial structure built in the Constitution."

It is questionably true that courtesy breeds courtesy and just as charity has to begin at home, courtesy must begin with the judge. A discourteous judge is like an ill-tuned instrument in the setting of a court room.

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.

His status as an officer of justice does not mean that he is subordinate to the Judge. It only means that he is an integral part of the machinery for the administration of justice.

199. Advocates share with Judges the function that all controversies shall be settled in accordance with the law. They are partners in the common enterprise of the

administration of justice. The difference in their roles is one of division of labour only; otherwise they are two branches of the same profession and neither is superior or inferior to other. This fact is now recognized in India by the autonomy given to the Bar by The Advocate Act, 1961. Judges cannot do without the help of advocates if justice is to be administered in accordance with law, and its administration is to command popular confidence. It is the function of an advocate not merely to speak for the client, whom he represents, but also to act as officer of justice and friend of the Court. ***The first duty which advocates and Judges owe to each other is mutual co-operation, that is a fundamental necessity.*** *Without it there can be no orderly administration of justice. Nothing is more calculated to promote the smooth and satisfactory administration of justice than complete confidence and sympathy between Bench and the Bar. If the Advocate has lost confidence of the Bench he will soon lose that of his clients. A rebuke from the Bench may be fatal to his chances of securing a high standing at the Bar. Similarly if the Judge has lost confidence of the Bar he will soon lose confidence of the public.*

200. There is the danger of a Judge placing over emphasis on the dignity of the Court in a manner which would be in conflict with the equally valuable principle of independence of the Bar in the advocacy of causes. An advocate in the conduct of his case is entitled to considerable latitude and the Courts should not be unduly sensitive about their dignity. Advocates like Judges are after all human beings and in the heat of argument occasional loss of temper is but natural. However, the advocate must not do anything which lowers public confidence in the administration of justice.

29.*In* ***R. Viswanathan and Others Vs Rukn-ul-Mulk Syed Abdul Wajid (1963) 3 SCR 22*** *full Bench has observed as under;*

"ARGUMENTS BY ADVOCATE OBSTRUCTED BY JUDGE AND NOT ALLOWED TO BE RAISED IS ILLEGAL – It is Opposed to natural Justice:-
If the Judge unreasonably obstructs

the flow of an argument or does not allow it to be of an argument or does not allow it to be raised, it may be said that there has been no fair hearing. No litigant should leave the Court feeling reasonably that his case was not heard or considered its merit.

It is the essence of a judgment of a Court that it must be obtained after due observance of the judicial process, i.e., the Court rendering the judgment must observe the minimum requirements of natural justice- It must be composed of impartial persons, acting fairly, without bias, and in good faith; it must give reasonable notice to the parties to the dispute and afford each party adequate opportunity of presenting his case.

A judgment will not be conclusive, however, if the proceeding in which it was obtained is opposed to natural justice. The words of the statute make it clear that to exclude a judgment under Cl. (d) from the rule of conclusiveness the procedure must be opposed to natural justice. A judgment which is the result of bias or want of impartiality on the part of a Judge will be regarded as a nullity and the trial coram non judice."

30. *Then my Counsel pointed out from the Page No. 483 of the Appeal that, the Appellant were made aware about the remedy of Criminal Appeal vide Legal notice dated 17.12.2018 but they deliberately filed Civil Appeal and kept on killing time for around 8 months because they did not want to take chance before a wrong forum and under such circumstances, delay cannot be condoned as per the law laid down by Hon'ble Supreme Court in* ***Neeraj Jhanji Vs. Commissioner Of Customs & Central Excise (2015) 12 SCC 69*** *where it is ruled as under;*

*"**2.** The Petitioner then filed statutory appeal before Allahabad High Court and applied for condonation of delay by seeking the benefit Under Section 14 of the Limitation Act.The Allahabad High Court dismissed the application for condonation of delay and also dismissed the appeal as time barred It said:*

"21. ***In the present case also as in the case of Ketan v. Parekh (supra), the Appellant was assisted and had the***

services of the counsel's, who are expert in the central excise and customs cases. They first filed a writ petition, and then without converting it into appeal obtained an interim order. They kept on getting the matter adjourned and thereafter in spite of specific objection taken, citing the relevant case law, which is well known, took time to study the matter. *Thereafter, they took more than one year and three months, to study the matter to withdraw the appeal. They took a chance, which apparently looking to the facts in Ketan v. Parekh's case and this case appears to be the practice of the counsels appearing in such matters at Delhi High Court and succeeded in getting interim orders. The Supreme Court has strongly deprecated such practice of forum shopping. In this case also there is no pleading that the writ petition and thereafter appeal was filed in Delhi High Court, under bona fide belief that it had jurisdiction to hear the appeal and that the Appellant was pursuing the remedies in wrong court with due diligence. The Appellant, thereafter, caused a further delay of 20 days in filing this appeal, which he has not explained.*

22. For the aforesaid reasons, we are of the opinion that the Appellant is not entitled to the benefit of Section 14 of the Limitation Act. This appeal is barred by limitation by 697 days, which has not been sufficiently explained by the Appellant."

3. *The very filing of writ petition by the Petitioner in Delhi High Court against the order-in-original passed by the Commissioner of Customs, Kanpur indicates that the Petitioner took chance in approaching the High Court at Delhi which had no territorial jurisdiction in the matter. We are satisfied that filing of the writ petition or for that appeal before Delhi High Court was not at all bona fide. We are in agreement with the observations made by the Allahabad High Court in the impugned order. The Allahabad High Court has rightly dismissed the Petitioner's application of condonation of delay and consequently the appeal as time-barred."*

31. *As soon as my counsel furnished the above mentioned case law the Ld. Judge got furious and said that, my counsel could not take such ground since my counsel had not filed reply yet. To which my*

counsel pointed out that even after ignoring my reply, the material on record issufficient to draw such inference in view of law laid down by Hon'ble Supreme Court and as per Section 114 of the Evidence Act. On this, the Ld. Judge got more furious and retorted to my Counsel by posing following question;

> ***'Do you know about section14 of the Contempt of Courts Act?'***

To which my Counsel replied 'Yes, Section 14 refers to the contempt committed on the face of the Court – Facie Curie'
Further, then Ld. Judge said;

> ***'Counsel do you want me to invoke that section against you?'***

To which my Counsel said that, if the Court wants to conduct the proceedings in such a manner and for legal submission want to thereon for contempt then he shall discharge himself from the case and my Advocate said that he will not appear before the said Judge. Then Judge D.S.Naidu got happy adjourned the case for appointing another Counsel. In fact earlier he was not ready to grant one day time to file reply. But the order was not uploaded.

32. *Hence it is clear that the accused Judge D.S.Naidu was interested in getting the Adv. Nilesh Ojha recused from the case and that's why threats were given. This is an offence under section 511,504,211,220,511 etc. of IPC*

33. *Full Bench of Hon'ble Supreme Court in the case of* ***Hari Das & Another Vs State of West Bangal & othersAIR 1964 SUPREME COURT 1773*** *had ruled as under;*

> *"Penal Code (45 of 1860), S.211,193,199 - Institution of criminal proceedings - False charge of having committed contempt of Court - Held amounted to falsely charging and amounted to institution of criminal proceedings which is offence under 211 of IPC. If there was no just or lawful ground for commencing this proceeding for contempt in the High Court then the requirements of S. 211 of Penal Code must be taken to be prima facie satisfied. A contempt of court can be punished by imprisonment and fine and that brings an accusation charging a man with contempt of court within the wide words 'criminal proceeding'.*
>
> *Constitution of India, Art.134- High Court ordering complaint to be filed against appellants under Ss. 193, 199, 211, Penal Code - Appeal to Supreme Court – Appeal dismissed."*

34. *In* ***Sita Ram Chandu Lall Vs. Malkit Singh MANU/PH/0113/1955,*** *it is ruled as under;*

> *"Section 220 of IPC- Anything done by public servant to pressurize a person to come to terms with whom the public servant is*

interested is an offences under section 220 of IPC - It is correct that the actual words of the section "corruptly or maliciously" have not been used, but, on a consideration of all the facts of the case, the learned trial Magistrate did express his view that the action of Malkiat Singh Respondent in going to the mandi, ***arresting Sita Ram there and taking him hand-cuffed through the bazar was simply to put pressure upon him to come to terms with one Bhagwati Prasad. It has also been found that the offence for which Sita Ram was arrested was a bailable one.***

The bail, though offered, was not accepted. The learned Sessions Judge concurred with these findings. Bhagwati Prashad was complainant in the case in which Sita Ram was arrested and Malkiat Singh was a tenant of Bhagwati Par-shad. The unlawful commitment to confinement was willful, without any excuse and with a view to put pressure on Sita Ram to come to terms with Bhagwati Parshad, in whom Malkiat Singh was interested. In the circumstances, Malkiat Singh can safely be said to have acted "maliciously". The contention is consequently rejected.

Malkiat Singh was deputed to investigate. On 14-5-53 he arrested Sita Ram and Bhagwan Dass, the two accused mentioned in the report. The offence was bail able and ball was actually offered. It was not accepted. Sita Ram and Bhagwan Das were hand-cuffed and paraded in that condition to the police-station through the "mandi. There, they were not released on bail for about an hour.

To maintain law and order is the principal function of a police Officer. It is simply reprehensible if he himself takes the role of a lawbreaker and acts in flagrant disregard of his duties as a public servant. Malkiat Singh Respondent did no less. He was actuated by youthful spirit and false notions of his newly gained authority. The high-handed manner in which he acted, leaves no doubt that he did not deserve to be given the benefit of Section 562 (1), Code of Criminal Procedure and the discretion was improperly exercised.

Similar law is laid down in the case of ***Afzalur Rahman Vs. Emperor AIR 1943 FC 18****, where it is rules as under;*

"Apart from the legality of the arrest, the keeping in confinement even by a person who had legal authority to do so would be an offence under section 220, Penal Code, if in the exercise of that authority a person kept another in confinement knowing that in so doing he was acting contrary to law.

Achhey Lal was nevertheless placed under arrest and under the instructions of the Excise Sub-Inspector, he was tied up with ropes by some excise peons. The officers had to proceed to another village Sakhua, to make a raid there and it appears that during the interval Achhey Lal was given to understand that if he paid Rs. 50 or Rs. 60, he would be let off. Achhey Lal's brother Phagu, who had been sent for, met the party at Sakhua and after some bargaining, a sum of Rs. 25 was paid. On this payment being made, the ropes were untied but Achhey Lal was not allowed to go away. He was informed that he must accompany the party to the police thana at P to get something written. It is said that they did go to P and Achhey Lal signed some paper which he thought was a bail bond; but as no such paper is forthcoming and as the appellants deny that any such signature was taken, it is not possible to say what paper, if any, the complainant signed. When, after reaching P, Achhey Lal asked for permission to go away, the police officers informed him that it was thereafter a matter between him and the Excise Sub-Inspector and the Excise Sub-Inspector told him that some further payment should be made to himself, as the Rs. 25 already paid had been appropriated by the police officers. After some higgling, a further sum of Rs. 12 was paid to the Excise Sub-Inspector and the complainant was allowed to go away. Admittedly, proceedings under the Excise Act were taken only against Jeswa Amat and not against Achhey Lal, and even Jeswa Amat was ultimately acquitted.

The main argument on their behalf however was that in respect of excise offences, the police officers were under no official duty to send up an arrested man for trial, when the arrest had been made by the Excise Sub-Inspector and that therefore the alleged receipt of gratification by them cannot be said to have been as a motive or reward for doing or forbearing to do any official act or for

showing favour in the exercise of official functions.

When the police officers became aware of the intention of the excise officer to act unlawfully, it was their duty as police officers to prevent it and to bring the excise officer to justice.

The fact that the Excise Sub-Inspector was also present on the spot did not take away the official character of the connexion of the police officers with the incident. It is unnecessary to decide specifically whose duty it was in such circumstances, whether of the excise officer or of the police officers or of both, to send up an offender for trial. We are not prepared to lay undue stress upon the words of the charge and hold that unless it could be said that it was the duty of the police officers in such a case to send up an offender for trial, the charge Under Section 161 must fail as against them. The expression "send up" was after all a non-technical expression and when the three officers were acting in concert and the charge was framed as a common charge against all the three, it seems to us sufficient, in order to sustain the charge, if it is established that all the three were at the time acting in their official capacity, that they jointly bargained for and received the illegal gratification and that as a result of such payment, all further action against Achhey Lal was dropped.

When the three officers were acting together, the mere fact that the direction to tie up Achhey Lal with a rope was given only by the Excise Sub-Inspector and that the actual tying up was done by the excise peons cannot materially affect the legal position, above stated. There could be little doubt that except with the concurrence of the police officers, the excise officer would not have released Achhey Lal from custody.

Learned Judge rightly observes that Achhey Lal was so little suspected that he was not even searched. The assumption on which this line of argument has been urged, namely, that the arrest was lawful, accordingly fails. In the Bombay case above referred to, the learned Judges have pointed out that on the terms of the provision which they had to interpret, it was sufficient that the accused had "credible

information" to entitle him to make the arrest. We may add that, apart from the legality of the arrest, the keeping of. Achhey Lal in confinement even by a person who had legal authority to do so would be an offence Under Section 220, Penal Code, if in the exercise of that authority a person kept another in confinement knowing that in so doing he was acting contrary to law. Between the time when the excise officer arrested Achhey Lal at village C and the time he released him, he had no further information about his innocence beyond what was stated by him at the time of the arrest itself to the effect that he (Achhey Lal) had nothing to do with the ganja found in Jeswa Amat's house. He nevertheless seeks to justify the detention on the ground that, as he had no time to think over the matter at C itself, in view of the preoccupation of his mind with the further raid to be made in village S, he could not immediately decide whether Achhey Lal's statement as to his innocence was to be accepted or not. This is no doubt a possibility and the explanation might have been accepted, if the story of the illegal gratification had not complicated the situation. When, however, it was found that the release was obtained by payment of illegal gratification, the Court was entitled to infer that the explanation put forward by the Excise Sub-Inspector was not true, that he must have known from the beginning that there was no justification in law or fact for arresting or for detaining Achhey Lal and that he must have done so only with a view to make a pecuniary profit out of the transaction."

35. *Division Bench of Hon'ble High Court in the case of* ***Prag Das, Advocate Vs. P.G. Agarawal and Others 1974 SCC OnLine All 182*** *had ruled as under;*

4*.....Everybody is entitled to his own way of thinking but that is hardly relevant for making out a case of contempt. The lawyer applicant concerned, Sri Prag Das, appears to be senior lawyer as he was the President of the Collectorate Bar Association of Bulandshahr. The learned Munsif is, no doubt, a new entrant to the service. He may be wanting in maturity and may have created an impression of taking decisions without deeper considerations. It certainly did not become a lawyer of the standing of the present*

applicant to make remarks against the learned Munsif which were not concerned with the incident narrated in paragraphs 16 to 18.

Here Judge D.S.Naidu tried to use contempt without any reason but as an tool for extortion to meet his ulterior purpose.

36. *In* ***Vinay Chandra Mishra's*** *Case (Supra), Full Bench of Hon'ble Supreme Court had ruled that, Section 14 of the Contempt is not aimed at protecting the Judge personally but protecting the administration of justice. Similar law is laid down by Hon'ble High Court* ***Phaniraj Kashyap Vs. S.R. Ramkrishna,2011 (3) Kar L.J. 572****.*

37. # VIOLATION OF PRINCIPLES OF 'AUDI- ALTERIM- PARTEM' NATURAL JUSTICE #:- *This is a clear violation of principles of natural justice and it is also against the law laid down by Hon'ble Supreme Court in the case of* ***Himanshu Singh Sabharwal -Vs- State 2008 ALL SCR 1252,*** *where it has been held that;*

> ***"12....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 he 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.***
>
> ***13....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****. "*

38. *Full Bench Hon'ble Supreme Court in the case of* ***National Human Rights Commission Vs State MANU /2009 /SC /071 3*** *ruled as under* ***;***

> ***"If the court acts contrary to the role it is expected to play, it will be destruction of the fundamental edifice on which the justice delivery system stands. People for whose benefit the courts exist shall start doubting the efficacy of the system. "Justice must be rooted in confidence; and confidence is destroyed when right-***

minded people go away thinking: `The Judge was biased.

The perception may be wrong about the Judge's bias, but the Judge concerned must be careful to see that no such impression gains ground. Judges like Caesar's wife should be above suspicion.

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 in 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.

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 over hasty stage-managed, tailored and partisan trial.

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.

It was significantly said that law, to be just and fair has to be seen devoid of flaw. It has to keep the promise to justice and it cannot stay petrified and sit nonchalantly. The law should not be seen to sit by limply, while those who defy it go free and those who seek its protection lose hope (see Jennison v.

Baker). Increasingly, people are believing as observed by Salmon quoted by Diogenes Laertius in Lives of the Philosophers, "Laws are like spiders' webs: if some light or powerless thing falls into them, it is caught, but a bigger one can break through and get away." Jonathan Swift, in his "Essay on the Faculties of the Mind" said in similar lines: "Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through.

Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice. The operative principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial: the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences.

"Too great a price ... for truth".

Restraints on the processes for determining the truth are multifaceted. They have emerged in numerous different ways, at different times and affect different areas of the conduct of legal proceedings. By the traditional common law method of induction there has emerged in our jurisprudence the principle of a fair trial. Oliver Wendell Holmes described the process:

It is the merit of the common law that it decides the case first and determines the principles afterwards.... It is only after a series of determination on the same subject-matter, that it becomes necessary to `reconcile the cases', as it is called, that is, by a true induction to state the principle which has until then been obscurely felt. And this statement is often modified more than once by new decisions before the abstracted general rule takes its final shape. A well-settled legal doctrine embodies the work of many minds, and has been tested in form as well as substance by trained critics whose practical interest is to resist it at every step.

The principle of fair trial now informs and energises many areas of the law. It is reflected in numerous rules and practices. It is a constant, ongoing development process continually adapted to new changing circumstances, and exigencies of the situation--peculiar at times and related to the nature of crime, persons involved--directly or operating behind, social impact and societal needs and even so many powerful balancing factors which may come in the way of administration of criminal justice system.

This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affects the whole community as a community and is harmful to society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as persona non grata. The courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice--often referred to as the duty to vindicate and uphold the "majesty of the law". Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. The courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators.

The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted."

39. #CHARGE # INTIMIDATION OF A LAWYER, WHO IS REPRESENTING ONE OF THE PARTIES, IS ALSO CONTEMPT OF COURT AS IT WOULD SERIOUSLY INTERFERE WITH THE ADMINISTRATION OF JUSTICE.

40. *In* ***Sh.H. Syama Sundara Rao Vs. Union of India (UOI) 2007 Cri. L. J. 2626****, it is ruled that;*

*"**Contempt of Courts** - comment upon an advocate which has reference to the conduct of his cases may amount to contempt of court - any attempt to prevent him from putting forward its defense and pleas as may be deemed by it to be relevant for the purposes of adjudicating the case in hand and filing case against Advocate amounts to Contempt. Contempt of court may be said to be constituted by any conduct that tends to prejudice parties litigant or their witnesses during the litigation or to bring the authority and administration of law into disrespect or disregard, or to interfere with.*

All publications which offend against the dignity of the Court, or are calculated to prejudice the course of justice, will constitute contempts. Offences of this nature are of three kinds, namely, those which (1) scandalise the Court, or (2) abuse the parties concerned in causes there, or (3) prejudices mankind against persons before the cause is heard. Under the first head fall libels on the integrity of the Court, its Judges, officers or proceedings; under the second and

third heads anything which tends to excite prejudice against the parties, or their litigation, while it is pending.

We award the contemner punishment of simple imprisonment for a period of three days and impose a fine of Rs. 1,000/- on him. This order shall take effect immediately. The contemner, who is present in the court, shall be taken into custody immediately and he shall be sent to the Tihar Jail to undergo the sentence.

In each such instance, the tendency is to poison the fountain of justice, sully the stream of judicial administration, by creating distrust, and pressurizing the advocates as officers of the court from discharging their professional duties as enjoined upon them towards their clients for protecting their rights and liberties.

The action taken in this case against the respondent(Advocate) by way of a proceeding against him have only one tendency, namely, the tendency to coerce the respondent and force him to withdraw his suit or otherwise not press it. If that be the clear and unmistakable tendency of the proceedings taken against the respondent then there can be no doubt that in law the appellants have been guilty of contempt of Court.

Comment upon an advocate which has reference to the conduct of his cases may amount to contempt of court on exactly the same principle, that while criticism of a Judge and even of a Judges judgment in Court is permissible, criticism is not permissible if it is made of such a character that it tends to interfere with the due course of justice. The Question is not whether the action in fact interfered, but whether it had a tendency to interfere with the due course of justice.

The Courts are under an obligation not only to protect the dignity of the Court and uphold its majesty, but also to extend the umbrella of protection to all

the limbs of administration of justice and advocates, while discharging their professional duties, also play a pivotal role in the administration and dispensation of justice. It is thus the duty of the courts to protect the advocate from being cowed down into submission and under pressure of threat of menace from any quarter and thus abandon their clients by withdrawing pleas taken on their behalf or by withdrawing from the brief itself, which may prove fatal not only to the legal proceeding in question but also permit an impression to gain ground that adoption of such tactics are permissible or even acceptable. Failure to deal with such conduct and nip it in the bud shall result in the justice system itself taking a severe knocking, which tendency must be put down as it amounts to direct interference with the administration of justice and is, Therefore, a contempt of a serious nature.

The real end of a judicial proceeding, civil or criminal, is to ascertain the true facts and dispense justice. Various persons have their respective contributions to make in the proper fulfilment of that task. They are necessarily the Judges or the Magistrates, the parties to the proceedings, or their agents or pleaders or advocates, the witnesses and the ministerial or menial staff of the Court. All these persons can well be described as the limbs of the judicial proceedings.

The law of contempt covers the whole field of litigation itself. The real end of a judicial proceeding, civil or criminal, is to ascertain the true facts and dispense justice. Various persons have their respective contributions to make in the proper fulfilment of that task. They are necessarily the Judges or the Magistrates, the parties to the proceedings, or their agents or pleaders or advocates, the witnesses and the ministerial or menial staff of the Court. All these persons can well be described as the limbs of the judicial proceedings.

For proper administration of justice, it is essential that all these persons are, in the performance of their respective duties, ensured such fullness of freedom as is fair and legitimate. Anything that tends to curtail or impair the freedom of the limbs of the judicial proceeding must of necessity result in hampering the due administration of law and in interfering with the course of justice. It must Therefore be held to constitute contempt of Court.

The real end of a judicial proceeding, civil or criminal, is to ascertain the true facts and dispense justice. Various persons have their respective contributions to make in the proper fulfilment of that task. They are necessarily the Judges or the Magistrates, the parties to the proceedings, or their agents or pleaders or advocates, the witnesses and the ministerial or menial staff of the Court. All these persons can well be described as the limbs of the judicial proceedings.

It is the right of every litigant to take before the court every legitimate plea available to him in his defense. If the pleas are found to be patently false, contrary to law, an attempt to mislead the court, irrelevant, immaterial, scandalous or extraneous, the courts are not powerless. The courts have sufficient power not only to reject such false pleadings, but also to have such irrelevant, immaterial, scandalous or extraneous pleas struck out from the record either on an application being made to the court or even on its own. However, any attempt made by a party to pressurize the opposite party or its advocate to withdraw a plea taken in the course of proceedings pending in court, amounts to direct interference with the administration of justice. Such an attempt, in our opinion, also takes in its fold, issuance of notices and filing of applications, etc., containing scurrilous, disparaging and derogatory remarks against the opposite party and its advocate. In preventing the respondent from putting forward its defense and

pleas as may be deemed by it to be relevant for the purposes of adjudicating the case in hand, it cannot be a defense to state that any party, even if he is a party in person, enjoys a privilege to pressurize the opposite party, much less his/her advocate. In our opinion, such an act amounts to creating impediments in the free flow of administration of justice. Any such attempt has to be treated as an attempt to interfere with and obstruct the administration of justice. In this context, we may refer to the following judgments:

In order to amount to a threat, the language used need not necessarily be aimed at causing bodily injury or hurt. If it is calculated to injure the reputation so as to restrain the freedom of action of that person, it is sufficient. The essence of the matter is the course of conduct adopted by the contemner and not that the words amounted to a threat. It is enough if the conduct on the whole has a tendency to interfere with the course of administration of justice or to subvert the court of justice. The nexus between the threat and the demand for doing something or refraining from doing something need not be express or need not be expressly stated. It is enough if from the context the link between the two is apparent. The subsequent conduct of the contemner in so far as it relates to the carrying out of the threat would, also be relevant....

In each such instance, the tendency is to poison the fountain of justice, sully the stream of judicial administration, by creating distrust, and pressurizing the advocates as officers of the court from discharging their professional duties as enjoined upon them towards their clients for protecting their rights and liberties.

20. The Courts are under an obligation not only to protect the dignity of the Court and uphold its majesty, but also to extend the umbrella of protection to all the limbs of administration of justice

and advocates, while discharging their professional duties, also play a pivotal role in the administration and dispensation of justice. It is thus the duty of the courts to protect the advocate from being cowed down into submission and under pressure of threat of menace from any quarter and thus abandon their clients by withdrawing pleas taken on their behalf or by withdrawing from the brief itself, which may prove fatal not only to the legal proceeding in question but also permit an impression to gain ground that adoption of such tactics are permissible or even acceptable. Failure to deal with such conduct and nip it in the bud shall result in the justice system itself taking a severe knocking, which tendency must be put down as it amounts to direct interference with the administration of justice and is, Therefore, a contempt of a serious nature.

Para 10: ...There are many ways of obstructing the Court and any conduct by which the course justice is perverted, either by a party or a stranger, is a contempt; thus the use of threats, by letter or otherwise, to a party while his suit is pending; or abusing a party in letters to persons likely to be witnesses in the cause, have been held to be contempts.

(Oswald's Contempt of Court, 3rd Edn. p.87).the Question is not whether the action in fact interfered, but whether it had a tendency to interfere with the due course of justice. The action taken in this case against the respondent by way of a proceeding against him can, in our opinion, have only one tendency, namely, the tendency to coerce the respondent and force him to withdraw his suit or otherwise not press it. If that be the clear and unmistakable tendency of the proceedings taken against the respondent then there can be no doubt that in law the appellants have been guilty of contempt of Court."

41. *In a similar case the Judge and advocates were prosecuted.*

Hon'ble High Court in ***K.Rama Reddy Vs.State 1998 (3) ALD 305*** *it is ruled as under ;*

> ***"15. The Modus Operandi is - the Advocate files a bail application falsely mentioning that the offence alleged against the accused is one under Section 307 I.P.C. After it was made over to any of the Additional District Courts, the figures '307' are altered to 302 in the bail application/s wherever the figures '307' occur.***
> ***The concerned Advocates, Clerks of the Addl. District Courts, Additional Public Prosecutors joined hands in this racket and the role of the two Addl. District Judges cannot be ruled out in this murky affair.***
> ***What is apparent from this report dated 30-10-1996 is that certain devious methods were being adopted in the Sessions Court at Karimnagar by certain advocates with the connivance of the staff of the I and II Additional Sessions Courts and the Additional Public Prosecutors attached to those courts, and that the two Additional Sessions Judges at the relevant time were also parties aware of those devious methods employed mostly in matters relating to bails - These devious methods polluted the streams of justice and necessitated urgent correctives and action in the interests of administration of justice."***

42. However Justice D.S. Naidu is trying to create an atmosphere of prejudice against Advocate Nilesh Ojha and his 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.

43. *Hon'ble Supreme Court in the case of* ***Niranjan Patnaik Vs. Sashibhusan Kar & Anr.(1986) 2 SCC 569,*** *had ruled as under;*

> ***"19. We may now refer to certain earlier decisions where the right of courts to make free and fearless comments and observations on the one hand and the corresponding need for maintaining sobriety, moderation and restraint regarding the character, conduct integrity, credibility etc. of parties, witnesses and others are concerned.***
> ***20****. In The State of Uttar Pradesh v. Mohammad Naim [1964] 2 SCR 363 it was held as follows :*
> *"If there is one principle of cardinal importance in the administration of justice, it is this : the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to*

perform their functions 'freely and fearlessly and without undue interference by any body, even by this Court. At the same time it is equally necessary that ***in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fairplay and restraint.*** *It is not infrequent that sweeping generalizations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.* ***It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."***

21. *Vide also in R.K. Lakshmanan v. A.K. Srinivasan and Anr [1976] 1 SCR 204 wherein this ratio has been referred to.*

22. *In Panchanan Banerji v. Upendra Nath Bhattacharji AIR 1927 All 193 Sulaiman, J. held as follows :*

"The High Court, as the supreme court of revision, must be deemed to have power to see that Courts below do not unjustly and without any lawful excuse take away the character of a party or of a witness or of a counsel before it."

23. *It is, therefore, settled law that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before courts of law unless it is really necessary for the decision of the case, as an integral part thereof to animadvert on that conduct. We hold that the adverse remarks made against the appellant were neither justified nor called for.*

24. Having regard to the limited controversy in the appeal to the High Court and the hearsay nature of evidence of the appellant it was not at all necessary for the Appellate Judge to have animadverted on the conduct of the

appellant for the purpose of allowing the appeal of the first respondent. Even assuming that a serious evaluation of the evidence of the appellant was really called for in the appeal the remarks of the learned Appellate Judge should be in conformity with the settled practice of courts to observe sobriety, moderation and reserve. We need only remind that the higher the forum and the greater the powers, the greater the need for restraint and the more mellowed the reproach should be.

25. *As we find merit in the contentions of the appellant, for the aforesaid reasons, we allow the appeal and direct the derogatory remarks made against the appellant set out earlier to stand expunged from the judgment under appeal."*

44. *Hon'ble Supreme Court in the case of* ***Amar Pal Singh Vs. State of U.P. (2012) 6 SCC 491,*** *it is ruled as under;*

"19. From the aforesaid enunciation of law it is quite clear that for more than four decades this Court has been laying emphasis on the sacrosanct duty of a Judge of a superior Court how to employ the language in judgment so that a message to the officer concerned is conveyed. It has been clearly spelt out that there has to be a process of reasoning while unsettling the judgment and such reasoning are to be reasonably stated with clarity and result orientation. ***A distinction has been lucidly stated between a message and a rebuke. A Judge is required to maintain decorum and sanctity which are inherent in judicial discipline and restraint. A judge functioning at any level has dignity in the eyes of public and credibility of the entire system is dependent on use of dignified language and sustained restraint, moderation and sobriety.*** *It is not to be forgotten that independence of judiciary has an insegregable and inseparable link with its credibility.* ***Unwarranted comments on the judicial officer creates a dent in the said credibility and consequently leads to some kind of erosion and affects the conception of rule of law. The sanctity of decision making process should not be confused with sitting on a pulpit and delivering sermons which defy decorum because it is obligatory on the part of the superior Courts to take recourse to***

correctional measures. *A reformative method can be taken recourse to on the administrative side. It is condign to state it should be paramount in the mind of a Judge of superior Court that a Judicial officer projects the face of the judicial system and the independence of judiciary at the ground reality level and* ***derogatory remarks against a judicial officer would cause immense harm to him individually (as the expunction of the remarks later on may not completely resuscitate his reputation) but also affects the credibility of the institution and corrodes the sacrosanctity of its zealously cherished philosophy. A judge of a superior Court however strongly he may feel about the unmerited and fallacious order passed by an officer, but is required to maintain sobriety, calmness, dispassionate reasoning and poised restraint. The concept of loco parentis has to take a foremost place in the mind to keep at bay any uncalled for any unwarranted remarks.***

20. Every judge has to remind himself about the aforesaid principles and religiously adhere to them. In this regard it would not be out of place to sit in the time machine and dwell upon the sagacious saying of an eminent author who has said that ***there is a distinction between a man who has command over 'Shastras' and the other who knows it and puts into practice. He who practises them can alone be called a 'vidvan'.*** *Though it was told in a different context yet the said principle can be taken recourse to, for one may know or be aware of that use of intemperate language should be avoided in judgments but while penning the same the control over the language is forgotten and acquired knowledge is not applied to the arena of practice. Or to put it differently the knowledge stands still and not verbalised into action. Therefore, a committed comprehensive endeavour has to be made to put the concept to practice so that it is concretised and fructified and the litigations of the present nature are avoided.*

21. Coming to the case at hand in our considered opinion the observations, the comment and the eventual direction were wholly unwarranted and uncalled for. The learned Chief Judicial Magistrate had felt that

the due to delay and other ancillary factors there was no justification to exercise the power under Section 156 (3) of the Code. The learned Single Judge, as is manifest, had a different perception of the whole scenario. Perceptions of fact and application of law may be erroneous but that never warrants such kind of observations and directions. Regard being had to the aforesaid we unhesitatingly expunge the remarks and the direction which have been reproduced in paragraph three of our judgment. If the said remarks have been entered into the annual confidential roll of the judicial officer the same shall stand expunged. That apart a copy of the order be sent by the Registrar of this Court to the Registrar General of the High Court of Allahabad to be placed on the personal file of the concerned judicial officer."

45. *In* ***Trident Steel Engineering Company Vs. Vollourac 2018 SCC OnLine Bom 4060*** *Bombay had passed very harsh strictures against Justice Kathawala for using power under section 482 of Cr.P.C which was not assigned to him as per roasted. It is observed as under;*

"80. In assuming jurisdiction which was not vesting in it,the Court has usurped it. In law, that means taking possession of a power illegally or by force. That cannot be justifieand uphold by applying the principles of legal engineering".

" 45. ... The learned Single Judge unmindful of the broad distinction noted above also lost sight of the fact that the assignment of judicial work by the Hon'ble Acting Chief Justice to him and in terms of the current Roaster does not enable him to simultaneously function as a Criminal Appellate Court nor does it vest him with any powers under section 482 of the Criminal Procedure Code, 1973 read with or otherwise independent of the Criminal Procedure Code but in terms of Article 226 of the Constitution of India. The learned Single Judge, with utmost respect to him, was not aware of the scheme of the Criminal Procedure Code, 1973 and that once a crime is registered, it should be investigated by a competent police functionary. "

48. All concerned ought to be aware that the journey in criminal law is not simple by any means. There is a presumption of innocence and not of guilt. In the instant case, the prosecution has been launched by the State/police. All such stages during the course of criminal proceedings are vital and crucial insofar as the rights of the person

proceeded against are concerned. At every stage, such a court has to be vigilant and has to bear in mind that the presumption of innocence is a human right. That cannot be displaced casually and lightly. By the impugned orders, there is every likelihood of this presumption getting displaced and it is possible that people in-charge of prosecution may argue that given the observations and remarks of the learned Single Judge of the High Court, such persons should not be discharged from the criminal case. It is not necessary that those who are named as accused should be visited with adverse legal consequences based on the observations and remarks in such orders. They need not actually suffer and undergo these consequences. That there is a possibility of their rights being jeopardised is enough and that is why one frequently notices the High Courts and the Hon'ble Supreme Court clarifying even in interlocutory orders that the observations and remarks therein should not be taken as conclusive findings or a binding opinion and the courts below or those in-charge of conducting the prosecution should not be influenced by them. It is amply clarified that the court has not expressed any opinion on the rival pleas and which would be taken as binding on the trial courts or the police machinery.

72. Thus, when the jurisdiction is usurped by a court in passing an order during the course of deciding an injunction application that such order is appealable if it would have been passed with jurisdiction, an appeal against the order cannot be defeated on the ground that the order was made without jurisdiction.

73. ……. The learned Single Judge in this case was seized of an application for interim relief/injunction made in a IP(L) Commercial Suit. He was, therefore, seized of a commercial dispute. He was aware that in a commercial dispute as was brought before him, there was a request made to grant interim reliefs or interlocutory injunction or the prayer for appointment of court receiver. He was, therefore, obliged to consider that request within the four corners of the law. The four corners of the law included the Code of Civil Procedure and Order XXXIX and XL Rules 1 and 2 thereof. The other applicable provision was section 94 of the Code of Civil Procedure, 1908. Therefore, the request to grant reliefs as claimed by the plaintiff could have been considered on the touchstone of these provisions and the legal principles interpreting the powers in relation thereto.

The learned Single Judge, unmindful of the

consequences of such recommendations/ opinions/ observations has gone ahead and termed their acts as punishable offences. In view of these sweeping directions and observations, there is enough material to conclude that the learned Single Judge took over the powers of a competent criminal court in making such orders.

75. The learned Judge could not have called upon the police officials to remain present before him nor could he summon all the parties to the suit personally as if they were accused before a criminal court, we do not intend to confer any benefit to those who are involved in criminal acts. If there is an element of criminality in their acts, then, that has to be taken care of by recourse to criminal law.
Since all the reports of the investigations carried out till date are on the file of the civil suits in this court, we direct that they shall be forthwith transferred to the file of the competent criminal court. It is for the competent criminal court to then decide as to whether a prima facie case has been made out against the persons named therein and can a charge be framed against them. Once these reports are placed before the competent criminal court, it is its duty and function in accordance with the Criminal Procedure Code, 1973 to take an appropriate decision. That decision will be taken strictly in accordance with law. While taking that decision, the criminal court shall not be influenced by any opinion or expression of any opinion in the orders under challenge.

46. Section 52 of Indian Penal Code *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."***

47. *Hon'ble Bombay High Court in case of* ***Noor Mohamed Patel Vs. Nadirshah Ismailshah Patel 2003 SCC OnLine Bom 1233*** *it is read as under;*

> ***"It has to be kept in mind that nothing can be said to be done in good faith which is not done with due care and caution. If these ingredients are indicated by the complaint, the Magistrate is obliged to take the cognizance of the complaint so presented before him unless there are the other grounds for acting otherwise which has to be justified by reasons recorded in riting."***

48. *In the case of* ***Raman Lal Vs. State 2001 Cri.L.J. 800.*** *it is ruled as under;*

" A] Cri. P.C. Sec. 197 – Sanction for prosecution of High Court Judge – Accused are Additional High Court Judge, Suprintendant of Police Sanjeev Bhatt and others – The accused hatched conspiracy to falsely implicate a shop owner in a case under N.D.P.S. Act and when shop owner submitted to their demands he was discharged – Complaint u.s. 120-B, 195, 196, 342, 347, 357, 368, 388, 458, 482, I.P.c. and Sec. 17, 58 (1), (2) of NDPS Act – Held – there is no connection between official duty and offence – No sanction is required for prosecution – Registration of F.I.R. and investigation legal and proper.

B] Cri. P.C. Sec. 156 – Investigation against accused Addl. High Court Judge – Whether prior consultation with Chief Justice is necessary prior filling of F.I.R. against a High Court Judge as has been laid down by Supreme Court in K. Veerswami's case (1991) (3) SCC 655) – Held – In K. Veerswami's case Supreme Court observed that the Judges are liable to be dealt with just the same as any other person in respect of criminal offence and only in offence regarding corruption the sanction for criminal prosecution is required – the directions issued by Hon'ble Supreme Court are not applicable in instant case.

C] The applicant – Ram Lal Addl. High Court Judge hatched criminal conspiracy – The Bar Association submitted a representation to Hon'ble Chief Justice of India on 11-09-1997 requesting to not to confirm Raman Lal as Judge of the High Court – Later on he was transferred to Principal Judge of city Civil and Sessions Court at Ahmedabad – S.P. (C.I.D.) Jaipur sent a questionnaire through the registrar, Gujrat High Court to accused Addl. High Court Judge – Chief Justice granted permission to I.O. to interrogate – Later on I.O. sent letter to applicant to remain present before Chief Judicial Magistrate at the time of filing the charge-sheet – Applicant filed petition before High Court challenging it – Petition of applicant was rejected by High Court and Supreme Court in limine – No relief is required to be granted to petitioner

in view of the facts of the case.

D] Conspiracy – I.P.C. Sec. 120 (B) – Apex court made it clear that ***an inference of conspiracy has to be drawn on the basis of circumstantial evidence only because it becomes difficult to get direct evidence on such issue – The offence can only be proved largely from the inference drawn from acts or illegal ommission committed by them in furtherance of a common design – Once such a conspiracy is proved, act of one conspirator becomes the act of the others – A Co-conspirator who joins subsequently and commits overt acts in furtherance of the conspiracy must also be held liable – Proceeding against High Court Judge accused cannot be quashed.***

E] Jurisdiction – Continuing offence – Held – Where complainants allegations are of stinking magnitude and the authority which ought to have redressed it have closed its eyes and not even trid to find out the real offender and the clues for illegal arrest and harassment are not enquired then he can not be let at the mercy of such law enforcing agencies who adopted an entirely indifferent attitude – Legal maxim Necessiatas sub lege Non continetureQuia Qua Quad Alias Non EstLictumNecessitasfacitLictum, Means necessity is not restrained by laws – Since what otherwise is not lawful necessity makes it lawful – Proceeding proper cannot be quashed."

49. *In* ***Smt. Justice Nirmal Yadav Vs. C.B.I. 2011 (4) RCR (Criminal) 809****it is ruled as under;*

"Hon'ble Supreme Court observed:

Be you ever so high, the law is above you." Merely because the petitioner has enjoyed one of the highest constitutional offices(Judge of a High Court), she cannot claim any special right or privilege as an accused than prescribed under law. Rule of law has to prevail and must prevail equally and uniformly, irrespective of the status of an individual.

The petitioner Justice Mrs. Nirmal Yadav, the then Judge of Punjab and Haryana High Court found to have taken bribe to decide a case pending before her- CBI charge sheeted -

It is also part of investigation by CBI that this amount of Rs.15.00 lacs was received by Ms. Yadav as a consideration for deciding RSA No.550 of 2007 pertaining to plot no.601, Sector 16, Panchkula for which Sanjiv Bansal had acquired interest. It is stated that during investigation, it is also revealed that Sanjiv Bansal paid the fare of air tickets of Mrs. Yadav and Mrs. Yadav used matrix mobile phone card provided to her by Shri Ravinder Singh on her foreign visit. To establish the close proximity between Mrs. Yadav, Ravinder Singh, Sanjiv Bansal and Rajiv Gupta, CBI has given details of phone calls amongst these accused persons during the period when money changed hands and the incidence of delivery of money at the residence of Ms. Nirmaljit Kaur and even during the period of initial investigation - the CBI concluded that the offence punishable under Section 12 of the PC Act is established against Ravinder Singh, Sanjiv Bansal and Rajiv Gupta whereas offence under Section 11 of the PC Act is established against Mrs.Justice Nirmal Yadav whereas offence punishable under Section 120-B of the IPC read with Sections 193, 192 , 196 , 199 and 200 IPC is also established against Shri Sanjiv Bansal, Rajiv Gupta and Mrs. Justice Nirmal yadav

It has been observed by Hon'ble Supreme Court "Be you ever so high, the law is above you." Merely because the petitioner has enjoyed one of the highest constitutional offices(Judge of a High Court), she cannot claim any special right or privilege as an accused than prescribed under law. Rule of law has to prevail and must prevail equally and uniformly, irrespective of the status of an individual. Taking a panoptic view of all the factual and legal issues, I find no valid ground for judicial intervention in exercise of inherent jurisdiction vested with this Court. Consequently, this petition is dismissed.

B) In-House procedure 1999 , for enquiry against High Court and Supreme Court Judges - Since the matter pertains to allegations against a sitting High Court Judge, the then Hon'ble Chief Justice of India, constituted a three members committee comprising of Hon'ble Mr.Justice H.L. Gokhale, the then Chief Justice of Allahabad High Court, presently Judge of Hon'ble Supreme

Court, Justice K.S. Radhakrishnan, the then Chief Justice of Gujarat High Court, presently, Judge of Hon'ble Supreme Court and Justice Madan B.Lokur, the then Judge of Delhi High Court, presently Chief Justice Gauhati High Court in terms of In-House procedure adopted by Hon'ble Supreme Court on 7.5.1997. The order dated 25.8.2008 constituting the Committee also contains the terms of reference of the Committee. The Committee was asked to enquire into the allegations against Justice Mrs. Nirmal Yadav, Judge of Punjab and Haryana High Court revealed, during the course of investigation in the case registered vide FIR No.250 of 2008 dated 16.8.2008 at Police Station, Sector 11, Chandigarh and later transferred to CBI. The Committee during the course of its enquiry examined the witnesses and recorded the statements of as many as 19 witnesses, including Mrs.Justice Nirmal Yadav (petitioner), Ms. Justice Nirmaljit Kaur, Sanjiv Bansal, the other accused named in the FIR and various other witnesses. The Committee also examined various documents, including data of phone calls exchanged between Mrs. Justice Nirmal yadav and Mr.Ravinder Singh and his wife Mohinder Kaur, Mr.Sanjiv Bansal and Mr.Ravinder Singh, Mr.Rajiv Gupta and Mr. Sanjiv Bansal. On the basis of evidence and material before it, the Committee of Hon'ble Judges has drawn an inference that the money delivered at the residence of Hon'ble Ms.Justice Nirmaljit Kasectionur was in fact meant for Ms.Justice Nirmal Yadav."

50. *In* ***Sri. Abani Kanta Ray Vs. State (1995) 4 Supp. SCC 169*** *where it is ruled as under;*

"It is, therefore, settled law that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before courts of law unless it is really necessary for the decision of the case, as an integral part thereof to animadvert on that conduct We hold that the adverse remarks made against the appellant were neither justified nor called for."

(at page 62) " ..... What the learned Judge has said is based entirely on conjecture and

suspicion judicial disposition of a case. .....
(at page 63) "We may observe in conclusion that Judges should not use strong and carping language while criticizing the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint They must have the humility to recognize that they are not infallible and any harsh and disparaging strictures passed by them against any party may be mistaken and unjustified and if so, they may do considerable harm and mischief and result in injustice. here, in the present case, the observations made and strictures passed by B.M. Lal, J. were totally unjustified and unwarranted and they ought not to have been made."
(at page 66) Again this Court in A.M. Mathur vs. Pramod Kumar Gupta, 1990 (2) SCR 1100, ***reiterated this position while expunging the diappearing remarks made against an advocate who was also the former Advocate General of the State while dismissing a review petition.***
The Judges Branch is a seat of power Not only do judges have power to make binding decisions, their decisions legitimate the use of power by other officials. ***The Judges have the absolute and unchallenged control of the Court domain, But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. We concede that the Court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct.*** *(See (i) R.K. Lakshmanan v. A.K. Srinivasan, [1976] 1 SCR 204 and (ii)Niranjan Patnaik v. Sashibhushan Kar, [1986] 2 SCC 567 at 576)."*

51. *Hon'ble Supreme Court in* ***Dr. Mehmood Nayyar Azam Vs. State of Chattisgarh & Ors. (2012) 8 SCC 1*** *had ruled as under;*

*"****Article 21 of the Constitution - RIGHT TO LIFE includes the right to live with human dignity and all that goes along***

with it – *If reputation is injured by unjustified acts of Public servants then Writ Court can grant compensation- Rs.5.00 lacs (Rupees five lacs only) should be granted towards compensation to the appellant - law cannot become a silent spectator - The law should not be seen to sit by limply, while those who defy if go free, and those who seek its protection lose hope - When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector- The action of the State, must be "right, just and fair". Using any form of torture would neither be 'right nor just nor fair' and, therefore, would be impermissible, being offensive to Article 21 -* ***Any psychological torture inflicts immense mental pain. A mental suffering at any age in life can carry the brunt and may have nightmarish effect on the victim. The hurt develops a sense of insecurity, helplessness and his self-respect gets gradually atrophied- the authorities possibly have some kind of sadistic pleasure or to "please someone" meted out the appellant with this kind of treatment. It is not to be forgotten that when dignity is lost, the breath of life gets into oblivion.*** *In a society governed by rule of law where humanity has to be a laser beam, as our compassionate constitution has so emphasized, the police authorities cannot show the power or prowess to vivisect and dismember the same. When they pave such path, law cannot become a silent spectator - The law should not be seen to sit by limply, while those who defy if go free, and those who seek its protection lose hope.*

B] The High Court, despite no factual dispute, has required him to submit a representation to the State Government for adequate relief pertaining to grant of compensation after expiry of 19 years with a further stipulation that if he is aggrieved by it, he can take recourse to requisite proceedings available to him under law. We are pained to say that this is not only asking a man to prefer an appeal from Caesar to Caesar's wife but it also compels him like a cursed Sisyphus to carry the stone to the top of the mountain wherefrom the stone rolls

down and he is obliged to repeatedly perform that futile exercise.".

52. Garware Polyester Ltd. and Anr.Vs.The State of Maharashtra and Ors.2010 SCC OnLine 2223 *it is ruled as under;*

> ***"Contempt of Courts Act – All the officers /authorities are bound to follow the procedure laid down by High Court in its judgment –*** *The legal proceeding is initiated by the officer is against the judgment of High Court amounts to contempt of High Court – show cause notice is issued to Mr. Moreshwar Nathuji Dubey, Dy.Commissioner, LTU, Aurangabad, returnable after four weeks to show cause, as to why action under the provisions of the Contempt of Courts Act should not be initiated against him."*

53. *In* ***High Court of Karnataka Vs Jai Chaitanya Dasa 2015 (3) AKR 627*** *it is read as under;*

> ***"200.*** *There is the danger of a Judge placing over emphasis on the dignity of the Court in a manner which would be in conflict with the equally valuable principle of independence of the Bar in the advocacy of causes. An advocate in the conduct of his case is entitled to considerable latitude and the Courts should not be unduly sensitive about their dignity. Advocates like Judges are after all human beings and in the heat of argument occasional loss of temper is but natural. However, the advocate must not do anything which lowers public confidence in the administration of justice."*

54. *That, the abovesaid circumstances ex-facie shows that the Justice D. S. Naidu was actuated with malice, ill-will, oblique and ulterior motive and for some extraneous consideration was in undue haste to pass an order favoring the accused without he is not having jurisdiction to pass such order as he is not assigned with the roster of quashing of the proceeding.*

The conduct of Adv. MDP partner the advocate for accused Appellant and Sr. Counsel S. U. Kamdar is also proves the conspiracy that the Appellant did not choose to file Criminal Appeal since last 8 months because the assignment was with another Judge Smt. S. S. Jadhav and of sudden when the partial modification in sitting list was done on 29th May, 2019 the accused filed Criminal Appeal on 15.06.2019 to take before Justice Naidu and got it circulated even without withdrawing the Writ Petition (C) No. 4131/ 2019 filed with same prayer.

55. *The malafides of Justice D. S. Naidu are Writ large as can be seen from the fact that on 15.07.2019 when my Counsel Adv. Nilesh Ojha pointed out this fact then* ***Justice Naidu mid argument granted time to accused to withdraw the said petition but did not mention the reason of adjournment in the order.***

The order dated 15.07.2019 reads as under;

" Post the matter on 22/07/2019."

56. *Thereafter Adv. MDP Partners withdrew Writ Petition (C) No. 4131/ 2019.*

57. *The order dated 17th July,2019 reads as under;*

> ***"1.***
> *Not on board. Taken on board.*
> ***2***.
> *This matter pertains to the assign ment of the*
> *Hon'ble Shri Justice S. K. Shinde. As the regular Court is not available, the matter is moved for urgent listing before this Court.*
> ***3.****Learned Counsel for petitioner seeks leave to withdraw the Petition*
> *with liberty to file a fresh proceedings.*
> ***4.****The Writ Petition is allowed to b e with*
> *drawnwith liberty as prayed for and the same is disposed*
> *of as such."*

On the contrary the same Judge Naidu refused to grant time to the respondent No. 1 to file reply in the registry.

Article 14 of the constitution mandates ***"Equality before law."***

Article 14 reads as under;

> ***"14.*** *Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth"*

58. *In* ***Kishor M. Gadhave Patil Vs. State 2016 (5) Mh.L.J.75.*** *it is ruled that the discrimination is a legal Malice. It is read as under*

> ***"LEGAL MALICE :-*** *Discrimination between two person is Lefgal Malice- The fact that another employee of the respondent was also a co- petitioner in the Civil writ filed in this Court. However , no action is taken against him leaves much to be desired and makes bona fides of the respondents suspect is a factor which brings the respondent virtually within the ambit of legal malice;*
> *For the reason recorded above, reasonable inference has to be drawn as regards existence of legal mala fides."*

59*. In the case of* ***West Bengal State Electricity Board Vs. Dilip Kumar Ray (AIR 2007 SC 976),*** *it is ruled as under;*

> *"****Malice in law""A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with the innocent***

mind: he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of mind is concerned, he acts ignorantly, and in that sense innocently". Malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause. *See S. R. Venkataraman v. Union of India, (1979) 2 SCC 491."*

60. *Hon'ble Supreme Court in* ***Kalabharati Advertising Vs. Hemant Vimalnath Narichania And Ors.(2010) 9 SCC 437*** *had ruled as under;*

"A. Legal Malice: The State is under obligation to act fairly without ill will or malice in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. *Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended."* ***It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. Passing an order for an unauthorized purpose constitutes malice in law."***

61. # CHARGE # BREACH OF THE OATH TAKEN AS A HIGH COURT JUDGE :-

In ***Indirect Tax Practitioners Association Vs. R.K. Jain, (2010) 8 SCC 281*** *it is ruled that;*

"Judge have their accountability to the society and their accountability must be judged by their conscience and oath of their office, that is to defend and uphold the Constitution and the laws without fear and favor with malice towards none, with charity for all, we strive to do the right."

Section 218 of the IPC reads as under;

218. Public servant framing incorrect

record or writing with intent to save person from punishment or property from forfeiture*.—Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

62. *Hon'ble Bombay High Court in the case of* ***Anverkhan Mahamad khan Vs. Emperor 1921 SCC OnLineBom 126*** *it is ruled as under;*

"Indian Penal Code Section 218 – The gist of the section is the stiffening of truth and the perversion of the course of justice in cases where an offence has been committed it is not necessary even to prove the intention to screen any particular person. It is sufficient that he know it to be likely that justice will not be executed and that someone will escape from punishment. "

63. *Section 219 of the IPC reads as under;*

219. Public servant in judicial proceeding corruptly making report, etc., contrary to law.—*Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.*

64. *In* ***R.R. Parekh Vs. High Court of Gujrat (2016) 14 SCC 1,*** *Hon'ble Supreme Court had upheld the order of dismissal of a Judge. It is ruled as under;*

"A Judge passing an order against provisions of law in order to help a party is said to have been actuated by an oblique motive or corrupt practice - breach of the governing principles of law or procedure by a Judge is indicative of judicial officer has been actuated by an oblique motive or corrupt practice - No direct evidence is necessary - A charge of

misconduct against a Judge has to be established on a preponderance of probabilities - The Appellant had absolutely no convincing explanation for this course of conduct - Punishment of compulsory retirement directed.

A wanton breach of the governing principles of law or procedure by a Judge is indicative of judicial officer has been actuated by an oblique motive or corrupt practice. In the absence of a cogent explanation to the contrary, it is for the disciplinary authority to determine whether a pattern has emerged on the basis of which an inference that the judicial officer was actuated by extraneous considerations can be drawn - It is not the correctness of the verdict but the conduct of the officer which is in question- . There is on the one hand a genuine public interest in protecting fearless and honest officers of the district judiciary from motivated criticism and attack. Equally there is a genuine public interest in holding a person who is guilty of wrong doing responsible for his or his actions. Neither aspect of public interest can be ignored. Both are vital to the preservation of the integrity of the administration of justice - A charge of misconduct against a Judge has to be established on a preponderance of probabilities - No reasons appear from the record of the judgment, for We have duly perused the judgments rendered by the Appellant and find merit in the finding of the High Court that the Appellant paid no heed whatsoever to the provisions of Section 135 under which the sentence of imprisonment shall not be less than three years, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court. Most significant is the fact that the Appellant imposed a sentence in the case of each accused in such a manner that after the order was passed no accused would remain in jail any longer. Two of the accused were handed down sentences of five months and three months in such a manner that after taking account of the set-off of the period during which they had remained as under-trial prisoners, they would be released from jail. The Appellant had absolutely no convincing explanation for this course of conduct."

65. *Hon'ble Supreme Court in* ***Superintendent of Central Excise***

Vs. Somabhai Ranchhodhbhai Patel AIR 2001 SC 1975 *, ruled as under;*

> *"(A) Contempt of Courts Act (70 of 1971), S.2 –* ***The level of judicial officer's understanding can have serious impact on other litigants*** *-*
> *Misinterpretation of order of Supreme Court - Civil Judge of Senior Division erred in reading and understanding the Order of Supreme Court - Contempt proceedings initiated against the Judge - Judge tendered unconditional apology saying that with his limited understanding, he could not read the order correctly. While passing the Order, he inadvertently erred in reading and understanding the Order of Supreme Court - Supreme Court issued severe reprimand – Held, The officer is holding a responsible position of a Civil Judge of Senior Division. Even a new entrant to judicial service would not commit such mistake assuming it was a mistake - It cannot be ignored that the level of judicial officer's understanding can have serious impact on other litigants. There is no manner of doubt that the officer has acted in most negligent manner without any caution or care whatsoever- Without any further comment, we would leave this aspect to the disciplinary authority for appropriate action, if any, taking into consideration all relevant facts. We do not know whether present is an isolated case of such an understanding? We do not know what has been his past record? In this view, we direct that a copy of the order shall be sent forthwith to the Registrar General of the High Court. ".*

66. *In* ***Umesh Chandra Vs State of Uttar Pradesh & Ors. 2006 (5) AWC 4519 ALL*** *it is ruled as under;*

> ***"If Judge is passing illegal order either due to negligence or extraneous consideration giving undue advantage to the party then that Judge is liable for action in spite of the fact that an order can be corrected in appellate/revisional jurisdiction - The acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the Judicial Officer, in such cases imposition of penalty of dismissal from service is well***

justified

The order was passed giving undue advantage to the main accused - grave negligence is also a misconduct and warrant initiation of disciplinary proceedings - in spite of the fact that an order can be corrected in appellate/revisional jurisdiction but if the order smacks of any corrupt motive or reflects on the integrity of the judicial officer, enquiry can be held .

JUDICIAL OFFICERS - has to be examined in the light of a different standard that of other administrative officers. There is much requirement of credibility of the conduct and integrity of judicial officers - the acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, in such cases imposition of penalty of dismissal from service is well justified - Judges perform a "function that is utterly divine" and officers of the subordinate judiciary have the responsibility of building up of the case appropriately to answer the cause of justice. "The personality, knowledge, judicial restrain, capacity to maintain dignity" are the additional aspects which go into making the Courts functioning successfully - the judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock of all the doors fail, people approach the judiciary as a last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth because of the power he wields. A Judge is being judged with more strictness than others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside which will lead to a catastrophe in the justice delivery system resulting in the failure of public confidence in the system. We must remember woodpeckers inside pose larger threat than the storm

outside

The Inquiry Judge has held that even if the petitioner was competent to grant bail, he passed the order giving undue advantage of discharge to the main accused and did not keep in mind the gravity of the charge. This finding requires to be considered in view of the settled proposition of law that grave negligence is also a misconduct and warrant initiation of disciplinary proceedings .

The petitioner, an officer of the Judicial Services of this State, has challenged the order of the High Court on the administrative side dated 11.02.2005 (Annex.11) whereby the petitioner has been deprived of three increments by withholding the same with cumulative effect.

The petitioner, while working as Additional Chief Metropolitan Magistrate, Kanpur, granted bail on 29.06.1993 to an accused named Atul Mehrotra in Crime Case No. 3240 of 1992 under Section 420, 467, 468, I.P.C. Not only this, an application was moved by the said accused under Section 239, Cr.P.C. for discharge which was also allowed within 10 days vide order dated 06.08.1993. The said order of discharge was however reversed in a revision filed by the State According to the prosecution case, the accused was liable to be punished for imprisonment with life on such charges being proved, and as such, the officer concerned committed a gross error of jurisdiction by extending the benefit of bail to the accused on the same day when he surrendered before the Court. Further, this was not a case where the accused ought to have been discharged and the order passed by the officer was, therefore, an act of undue haste.

The then Chief Manager, Punjab National Bank, Birhana Road Branch, Kanpur Nagar made a complaint on the administrative side on 11.11.1995 to the then Hon'ble Chief Justice of this Court. The matter was entrusted to the Vigilance Department to enquire and report. After almost four and half years, the vigilance inquiry report was submitted on 14.03.2002 and on the basis of the same the petitioner was suspended on 30th April, 2002 and it was resolved to initiate disciplinary proceedings against the

petitioner. A charge sheet was issued to the petitioner on 6th September, 2002 to which he submitted a reply on 22.10.2002. The enquiry was entrusted to Hon'ble Justice Pradeep Kant, who conducted the enquiry and submitted a detailed report dated 06.02.2002 (Annex-8). A show cause notice was issued to the petitioner along with a copy of the enquiry report to which the petitioner submitted his reply on 19.05.2004 (Annex.10). The enquiry report was accepted by the Administrative Committee and the Full Court ultimately resolved to reinstate the petitioner but imposed the punishment of withholding of three annual grade increments with cumulative effect which order is under challenge in the present writ petition.

B) JUDICIAL OFFICERS - has to be examined in the light of a different standard that of other administrative officers. There is much requirement of credibility of the conduct and integrity of judicial officers - the acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, in such cases imposition of penalty of dismissal from service is well justified - Judges perform a "function that is utterly divine" and officers of the subordinate judiciary have the responsibility of building up of the case appropriately to answer the cause of justice. "The personality, knowledge, judicial restrain, capacity to maintain dignity" are the additional aspects which go into making the Courts functioning successfully - the judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock of all the doors fail, people approach the judiciary as a last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth because of the power he wields. A Judge is being judged with more strictness than others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary

must take utmost care to see that the temple of justice does not crack from inside which will lead to a catastrophe in the justice delivery system resulting in the failure of public confidence in the system. We must remember woodpeckers inside pose larger threat than the storm outside

In Government of Tamil Nadu Vs. K.N. Ramamurthy, AIR 1997 SC 3571, the Hon'ble Supreme Court held that exercise of judicial or quasi judicial power negligently having adverse affect on the party or the State certainly amounts to misconduct.

In M.H. Devendrappa Vs. The Karnataka State Small Industries Development Corporation, AIR 1998 SC 1064, the Hon'ble Supreme Court ruled that any action of an employee which is detrimental to the prestige of the institution or employment, would amount to misconduct.

In High Court of Judicature at Bombay Vs. Udaysingh & Ors., A.I.R. 1997 SC 2286 the Hon'ble Apex Court while dealing with a case of judicial officer held as under:-

"Since the respondent is a judicial officer and the maintenance of discipline in the judicial service is a paramount matter and since the acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, we think that imposition of penalty of dismissal from service is well justified."

This Court in Ram Chandra Shukla Vs. State of U.P. & Ors., (2002) 1 ALR 138 held that the case of judicial officers has to be examined in the light of a different standard that of other administrative officers. There is much requirement of credibility of the conduct and integrity of judicial officers.

In High Court of Judicature at Bombay V. Shirish Kumar Rangrao Patil & Anr., AIR 1997 SC 2631, the Supreme Court observed as under:-

"The lymph nodes (cancerous cells) of corruption constantly keep creeping into the vital veins of the judiciary and the need to stem it out by judicial surgery lies on the judiciary itself by its self-imposed or corrective

measures or disciplinary action under the doctrine of control enshrined in Articles 235, 124 (6) of the Constitution. It would, therefore, be necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and self-introspection.

When such a constitutional function was exercised by the administrative side of the High Court any judicial review thereon should have been made not only with great care and circumspection, but confining strictly to the parameters set by this Court in the aforesaid decisions.--------"

In Government of Andhra Pradesh Vs. P. Posetty, (2000) 2 SCC 220, the Hon'ble Supreme Court held that sense of propriety and acting in derogation to the prestige of the institution and placing his official position under any kind of embarrassment may amount to misconduct as the same may ultimately lead that the delinquent had behaved in a manner which is unbecoming of an employee/Government servant.

In All India Judges' Association Vs. Union of India & Ors., AIR 1992 SC 165, the Hon'ble Supreme Court observed that Judges perform a "function that is utterly divine" and officers of the subordinate judiciary have the responsibility of building up of the case appropriately to answer the cause of justice. "The personality, knowledge, judicial restrain, capacity to maintain dignity" are the additional aspects which go into making the Courts functioning successfully.

In Tarak Singh & Anr. Vs. Jyoti Basu & Ors., (2005) 1 SCC 201, the Hon'ble Supreme Court observed as under:-

"Today, the judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock of all the doors fail, people approach the judiciary as a last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth because of the power he wields. A Judge is being judged with more strictness than others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside which will lead to a catastrophe in the justice delivery system resulting in the failure of public confidence in the system. We must

remember woodpeckers inside pose larger threat than the storm outside."

67. *The appeal is a criminal Appeal and the proceedings before before the Metropolitan Magistrate is Police Report as per section 343, of Cr.P.C. and law laid down in* ***State of Goa Vs. Jose Maria Albert Vales Alias Robert Vales (2018) 11 SCC 659*** *therefore the necessary party is the state and without making the state as a party and without hearing the public prosecutor (P.P.) the Court cannot pass any order. But Justice D.S.Naidu acted against this basic rule.*

68. *All public power is a sacred trust and must be subjected to accountability and its process in a democracy is corrective criticism and fair comment. It was rightly observed by Justice Black* ***Judges Vs. California 314 US 252 at 289 (1941)*** *that respect for judiciary cannot be won by shielding judges form public criticism and an enforced silence, however, limited, solely in the name of preserving the dignity of the bench would probably engender resentment, suspicion and contempt much more than it would enhance respect.* ***(emphasis supplied).***

Recently, the power to punish for contempt of Court has been used and seen as a means of suppressing all criticism. Justice Frankfurt had said about criticism "Judges as person or courts as institution are entitled. to no greater immunity from criticism than other persons or institutions. Just because the holders of judicial office are identified with the interest of justice, they may forget their common human frailness and fallibilities. There have sometimes been martinets upon the bench as there have also been pompous wielders of authority who have used the paraphernalia of power in support of what they call their dignity. Therefore, judges must be kept mindful of their limitations and of their ultimate responsibility by a vigorous stream of criticism expressed with candor, however blunt, ***Judges Vs. California 314 US 252 at 289 (1941)****. Judges were expected to be "a body of men who were to be the repositories of law, who by their disciplined training and character and by withdrawal from the unusual temptations of private interest may reasonably be expected to be as free, impartial and independent as the lot of humanity will admit. So strongly were the framers of the Constitution beht on securing a region of law that they endowed the judicial office with extraordinary safeguards and prestige … that is what courts are for".*
S.V. United Nine Workers of America 330 US 258 at 308-309.

69. *Ideally Court acknowledges the broader right of a citizen to criticize the systematic inadequacies in the larger public interest and to believe what he considers to be true and to speak out his mind, though not perhaps, always with best of tastes and speak perhaps, with greater courage than care for exactitude* ***(see : Sheela Barse Vs. UOI (1998) 4 SCC 226).***

But People are feeling this respect is only in letter and not in spirit. In practice the courts an obsessed with their dignity and deter to be accountable. No democracy is stable unless the court becomes an integral part of peoples' process. The court is for the people and therefore its credentials are based on dispensation of justice on dispensation of justice to the national constituency without fear or

favour with utter impartiality. Francis Bacon' in his essay on Judicature emphasized that "the place of justice is a hallowed place; and therefore not only the Bench but the foot pace and precincts and purpose thereof ought to be preserved without scandal and corruption. Judicial office is essentially a public trust. Society is therefore entitled to expect that a judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venal influences,"

70. *Hon'ble High Court in the case of* ***Rajinder Singh Alias Manu Vs. State 2004 Cri.L.J. 4023*** *it is ruled as under;*

> *19****. It is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done (AIR 1957 SC 425) . Confidence in the administration of justice is an essential element of good Government, and reasonable apprehension of failure of justice in the mind of the litigant public should, therefore, be taken into serious consideration. Courts should not fail to remember that it is their duty no less to preserve an outward appearance of impartiality than to maintain the internal freedom from business. Transfer in certain cases is made not because the party approaching the Court will not have a fair and impartial trial but because the party has reasonable apprehension that it will not have such a trial.*** *Examination of the accused under Section 313 Cr.PC amounting to lengthy cross-examination, refusal to give opportunity to cross-examine the witnesses etc. are some of the instances where transfer of a case is justified.* ***When the whole procedure was extremely arbitrary and in direct contravention of law and the Judge displayed plenty of zeal and want of judicial spirit, the apprehension entertained by a party that it will not have a fair trial is justified.*** *In the case on hand, the way the ld. Judge dealt with the case, the manner in which questions were put to different accused persons during their examination under Section 313 Cr.PC and some observations made in the orders lead to suggest that he has already formed an idea not conducive to fair trial, and in fact some of the ld. counsels during argument before this Court expressed their apprehension in this regard.* ***In such circumstances, it is desirable that the case should be dealt with by a Judge other than Mr. LA. Shah.***

71. *Hon'ble Justice Dr. B.S.Chauhan in the case of* ***Prof. Ramesh Chandra Vs State MANU/UP/0708/2007*** *ruled as under;*

> *"In M. Narayanan vs. State of Kerala [(1963)*

IILLJ 660 SC], the Constitution "Bench of the Hon'ble Supreme Court interpreted the expression 'abuse' to mean as misuse, i.e. using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means.

In Erusian Equipment & Chemicals Ltd. v. State of West Bengal and Anr.([1975] 2 SCR 674), the Supreme Court observed that where Government activity involves public element, the "citizen has a right to gain equal treatment", and when "the State acts to the prejudice of a person, it has to be supported by legality." Functioning of "democratic form of Government demands equality and absence of arbitrariness and discrimination."

Every action of the executive Government must be informed by reasons and should be free from arbitrariness. That is the very essence of rule of law and its bare minimum requirement.

The decision taken in an arbitrary manner contradicts the principle of legitimate expectation and the plea of legitimate expectation relates to procedural fairness in decision making and forms a part of the rule of non-arbitrariness as denial of administrative fairness is Constitutional anathema.

The rule of law inhibits arbitrary action and such action is liable to be invalidated. Every action of the State or its instrumentalities should not only be fair, legitimate and above-board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even apparently give an Impression of bias, favoritism and nepotism.

Procedural fairness is an implied mandatory requirement to protect arbitrary action where Statute confers wide power coupled with wide discretion on the authority. If procedure adopted by an authority offends the fundamental fairness or established ethos or shocks the conscience, the order stands vitiated. The decision making process remains bad.

Official arbitrariness is more subversive of doctrine of equality than the statutory discrimination. In spite of statutory discrimination, one knows where he stands but; the wand of official arbitrariness can be waved in all directions indiscriminately.

Similarly, in S.G. Jaisinghani v. Union of India

and Ors.([1967] 65 ITR 34 (SC)), the Constitution Bench of the Apex Court observed as under:

"In the context it is important to emphasize that absence of arbitrary power is the first essence of the rule of law, upon which our whole Constitutional System is based. In a system governed by rule of law, discretion, when conferred upon Executive Authorities, must be confined within the clearly defined limits. Rule of law, from this point of view, means that the decision should be made by the application of known principle and rules and h general such, decision should be predictable and the citizen should know where he is, if a decision is taken without any principle or without any rule, it is unpredictable and such a decision is" antithesis to the decision taken in accordance with the rule of law."

Even in a situation where an authority is vested with a discretionary power, such power can be exercised by adopting that mode which best serves the interest and even if the Statute is silent as to how the discretion should be exercised, then too the authority cannot act whimsically or arbitrarily and its action should be guided by reasonableness and fairness because the legislature never intend that its authorities could abuse the laws or use it unfairly. Any action which results in unfairness and arbitrariness results in violation of Article 14 of the Constitution. It has also been emphasized that an authority cannot assume to itself an absolute power to adopt any procedure and the discretion must always be exercised according to law. It was, therefore, obligatory for the Chancellor to have held a proper enquiry in accordance with the principles of natural justice and mere giving of show cause notice requiring the petitioner to submit an explanation does not serve the purpose. The factual position that emerges in the present case is that the report of the Commissioner, Jhansi formed the sole basis for taking action against the Vice-Chancellor.

A Constitution Bench of the Hon'ble Supreme Court in Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors. ([1978] 2 SCR 272), while considering the issue held that observing the principles of natural justice is necessary as it may adversely affect the civil rights of a person. While deciding the said case, reliance

was placed by the Hon'ble Supreme Court on its earlier judgments in State of Orissa v. Dr. (Miss) Binapani Dei and Ors. (1967 IILLJ 266 SC) wherein the Court held that the procedural rights require to be statutorily regulated for the reason that sometimes procedural protections are too precious to be negotiated or whittled down.

In Dr.Binapani Dei (supra), the Hon'ble Apex Court held as under:

"It is one of the fundamental rules of our constitutional set up that every citizen is protected against the exercise of arbitrary authority by the State or its officers If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity."

Discretion - It signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste - Discretion cannot be arbitrary - But must be result of judicial thinking - Word in itself implies vigilant circumspection and care.

The contention that the impugned order was liable to be set aside inasmuch as the Chancellor had proceeded in hot haste after receiving the report from the State Government on 2nd June, 2005 as he issued the notice to the Vice-Chancellor on 24th June, 2005 and passed the impugned order on 16th July, 2005 when his term was going to end on 31st July, 2005 if, also worth acceptance.

Constitution of India - Article 14 - Principles of natural justice - If complaint made is regarding mandatory facet of principles of natural justice - Proof of prejudice not required.

In a case where a result of a decision taken by the Government the other party is likely to be adversely affected, the Government has to exercise its powers bona fide and not arbitrarily. The discretion of the Government cannot be absolute and in justiciable vide Amarnath Ashram Trust Society v. Governor of U.P. (AIR 1998 SC 477).

Each action of such authorities must

pass the test of reasonableness and whenever action taken is found to be lacking bona fide and made in colorable exercise of the power, the Court should not hesitate to strike down such unfair and unjust proceedings. *Vide Hansraj H. Jain v. State of Maharashtra and Ors[(1993) 3 SCC 634].*

In fact, the order of the State or State instrumentality would stand vitiated if it lacks bona fides as it would only be a case of colourable exercise of power. In State of Punjab and Anr.v.Gurdial Singh and Ors. [(1980) 1 SCR 1071] the Hon'ble Apex Court has dealt with the issue of legal malice which is, just different from the concept of personal bias. The Court observed as under:

> *"When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the Court calls it a colourable exercise and is undeceived by illusion.... If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impels the action mala fides or fraud on power vitiates the...official act."*

In Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Ors. [(1991) I LLJ 395 SC] and DwarkaDass and Ors. v. State of Haryana (2003 CriLJ 414) the Supreme Court observed that "discretion when conferred upon the executive authorities, must be confined within definite limits. The rule of law from this point of view means that decision should be made by the application by known-principles and rules and in general, such decision should be predictable and the citizen should know where he is.

The scope of discretionary power of an authority has been dealt with by the Supreme Court in Bangalore Medical Trust v. B.S. Muddappa and Ors [(1991) 3 SCR 102]and it has been observed:

> *"Discretion is an effective tool in administration. But wrong notions about it results in ill-conceived consequences. In law it provides an*

option to the authority concerned to adopt one or the other alternative. But ***a better, proper and legal exercise of discretion is one where the authority examines the fact, is aware of law and then decides objectively and rationally what serves the interest better. When a statute either provides guidance or rules or regulations are framed for exercise of discretion then the action should be in accordance with it. Even where statutes are silent and only power is conferred to act in one or the other manner, the Authority cannot act whimsically or arbitrarily. It should be guided by reasonableness and fairness. The legislature never intends its authorities to abuse the law or use it unfairly.”***

In Suman Gupta and Ors.v.State of J. & K. and Ors.([1983] 3 SCR 985), the Supreme Court also considered the scope of discretionary powers and observed:

“We think it beyond dispute that the exercise of all administrative power vested in public authority must be structured within a system of controls informed by both relevance and reason - relevance in relation to the object which it seeks to serve, and reason in regard to the manner in which it attempts to do so. Wherever the exercise of such power affects individual rights, there can be no greater assurance protecting its valid exercise than its governance by these twin tests. A stream of case law radiating from the now well known decision in this Court in Maneka Gandhi v. Union of India has laid down in clear terms that Article 14 of the Constitution is violated by powers and procedures which in themselves result in unfairness and arbitrariness. It must be remembered that our entire constitutional system is founded in the rule of law, and in any system so designed it is impossible to conceive of legitimate power which is arbitrary in character and travels beyond the

bounds of reason.'

In Union of India v. Kuldeep Singh (AIR 2004 SC 827), the Supreme Court again observed:

> ***"When anything is left to any person, judge or Magistrate to be done according to his discretion, the law intends it must be done with sound discretion, and according to law.****(See Tomlin's Law Dictionary.) In its ordinary meaning, the word "discretion" signifies unrestrained exercise of choice or will; freedom to act according to one's own judgment; unrestrained exercise of will; the liberty or power of acting without control other than one's own judgment. But, when applied to public functionaries, it means a power or right conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others.* ***Discretion is to discern between right and wrong; and therefore, whoever hath power to act at discretion, is bound by the rule of reason and law."***
>
> ***Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, the discernment which enables a person to judge critically of what is correct and proper united with caution; nice soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colourable glosses and pretences, and not to do according to the will and private affections of persons. When It is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the***

limit, to which an honest man, competent to the discharge of his office ought to confine himself *(per Lord Halsbury, L.C., in Sharp v. Wakefield). Also see S.G. Jaisinghani v. Union of India { [1967] 65 ITR 34 (SC) }.*

The word "discretion" standing single and unsupported by circumstances signifies exercise own judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently therefore a discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore, where the legislature concedes discretion it also imposes a heavy responsibility.

MandalVikas Nigam Ltd. v. Girja Shankar Pant and Ors (AIR 2001 SC 24).while examining the legality of an order of dismissal that had been passed against the General Manager (Tourism) by the Managing, Director. In this context, while considering the doctrine of principles or natural justice, the Supreme Court observed:

"It is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence of this country. The judicial process itself embraces a fair and reasonable opportunity to defend though, however, we may hasten to add that the, same is dependent upon the facts and circumstances of each individual case.... It is on this context, the observations of this Court in the case of SayeedurRehman v. The State of Bihar ([1973] 2 SCR 1043) seems to be rather apposite."

The omission of express requirement of fair hearing in the rules or other source of power is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties.

G) Incidentally, Hidyatullah, C.J., in Channa basappa Basappa Happali v. State of Mysore ([1971] 2 SCR 645), recorded the need of compliance of certain requirements in a departmental enquiry as at an enquiry, facts have to be proved and the person proceeded against must have an opportunity to cross-examine witnesses and to give his own version or explanation about the evidence on which he is charged and to lead his defence. On this state of law simple question arises in the contextual facts, has this been complied with? The answer however on the factual score is an emphatic "no".

Was the Inquiry Officer justified in coming to such a conclusion on the basis of the charge-sheet only? The answer cannot possibly be in the affirmative. If the records have been considered, the immediate necessity would be to consider as to who is the person who has produced the same and the next issue could be as regards the nature of the records-unfortunately there is not a whisper in the rather longish report in that regard. Where is the Presenting Officer? Where is the notice fixing the date of hearing? Where is the list of witnesses? What has happened to the defence witnesses? All these questions arise but unfortunately no answer is to be found in the rather longish Report. ***But if one does not have it-Can it be termed to be in consonance with the concept of justice or the same tantamounts to a total miscarriage of justice. The High Court answers it as miscarriage of justice and we do lend out concurrence therewith.***

H) If a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following other course is not permissible *A decision of the King's Bench Division in the case of Denby (William) and Sons Limited v. Minister of Health [(1936) 1 KB 337] may be considered Swift, J. while dealing with*

the administrative duties of the Minister has the following to state:

" 'Discretion' means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion : Rooke's case (1598) 5 Co Rep 99b 100a; according to law, and not humor. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself.

When the Statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. It has been hither to uncontroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all, Other methods or mode of performance are impliedly and necessarily forbidden."

The aforesaid settled legal proposition is based on a legal maxim "Expressioun iusestex clusioalterius", meaning thereby that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following other course is not permissible his maxim has consistently been followed, as is evident from the cases referred to above. A similar view has been reiterated in HareshDayaram Thakur v. State of Maharashtra and Ors (AIR 2000 SC 266).

The Commissioner did not examine any witness in the presence of the Vice-Chancellor; nor was the Vice-Chancellor given any opportunity to cross-examine them. Even date, time or place was not fixed for the enquiry and neither any Presenting Officer had been appointed.

Removal of the Vice-Chancellor from such an office is a very serious matter and it not only curtails the statutory

term of the holder of the office but also casts a stigma on the holder as allegations rendering him untrustworthy of the office are found to be proved. It, therefore, becomes all the more necessary that great care should be taken in holding the enquiry for removal of the Vice-Chancellor of the University and the principles of natural justice should be strictly complied with.

The contention advanced by Sri NeerajTripathi that the Chancellor was justified in restricting the scope of enquiry in his discretionary powers to the issuance of the notice alone cannot be accepted. The Supreme Court has repeatedly observed that even in a situation where an authority is vested with a discretionary power, such power can be exercised by adopting that mode which best serves the interest and even if the Statute is silent as to how the discretion should be exercised, then too the authority cannot act whimsically or arbitrarily and its action should be guided by reasonableness and fairness because the legislature never intend that its authorities could abuse the laws or use it unfairly. Any action which results in unfairness and arbitrariness results in violation of Article 14 of the Constitution. It has also been emphasized that an authority cannot assume to itself an absolute power to adopt any procedure and the discretion must always be exercised according to law. It was, therefore, obligatory for the Chancellor to have held a proper enquiry in accordance with the principles of natural justice and mere giving of show cause notice requiring the petitioner to submit an explanation does not serve the purpose. The order of removal of the Vice-Chancellor is, therefore, liable to be set aside only on this ground.

The contention of Sri NeerajTripathi, learned Counsel for the Chancellor that even in such situation, the order should not be set aside as the petitioner has not been able to substantiate that prejudice had been caused to him for

not observing the principles of natural justice cannot also be accepted. In the first instance, as seen above, prejudice had been caused to the petitioner in the absence of a regular enquiry but even otherwise, the Supreme Court in State Bank of Patiala and Ors. v. S.K. Sharma [(1996) IILLJ 296 SC] had observed that if the complaint made is regarding the mandatory facet of the principles of natural justice, then proof of prejudice is not required.

In Dr. Bool Chand v. The Chancellor Kurukshetra University ((1968) II LLJ 135 SC), the Hon'ble Supreme Court examined a similar case wherein there was no procedure prescribed for removal of the Vice Chancellor under the Act applicable therein. After examining the statutory provisions applicable therein, the Court lime to the following conclusion:

"The power to appoint a Vice Chancellor has its source in the University Act; investment of that power carries with it the power to determine the employment; but the power is coupled with duty. The power may not be exercised arbitrarily, it can, be only exercised for good cause, i.e. in the interest of the University and only when it is found after due enquiry held in manner consistent with the rules of natural justice that the holder of the office is unfit to continue as Vice Chancellor."

I) For directing a fresh enquiry on the same allegations/charges, authority is required to record reasons otherwise it may become a tool for harassment of the delinquent in the hands of authority and in that case it may tantamount to a mala fide or colorable exercise of power.

The expression 'willful' excludes casual, accidental, bonafide or unintentional acts or genuine inability. It is to be noted that a willful act does not encompass accidental, involuntary or negligent. It must be intentional, deliberate, calculated and conscious with full knowledge of legal consequences flowing there from The

expression 'willful' means an act done with a bad purpose, with an evil motive.

'Wilful' means an act or omission which is cone voluntarily and intentionally and with a specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose.

Hon'ble Supreme Court held that word 'otherwise' should be construed as ejusdem generis and must be interpreted to mean some kind of legal obligation or some transaction enforceable at law.

J) Earlier an enquiry had been conducted, and allegation was found to be baseless. It could not have been reopened. Criminal prosecution in this respect had also been launched but it failed.

Observation by the Chancellor that the petitioner did not lead any evidence in support of denial of the charge of giving employment to his close relatives is self-contradictory and supports the case of the petitioner, as he had not been given a chance to lead evidence on the issue. It could be possible for him only if a regular inquiry was conducted. Petitioner's preliminary objections that provisions of Section 8(1) to 8(7) were not complied with while conducting the inquiry, had been brushed aside by the Chancellor being merely "technical". Such a course was not permissible."

72. K.Veeraswami Vs. Union Of India (1991) 3 SCC 655 *it is ruled as under;*

`(53) …… ***The judiciary has no power of the purse or the sword. It survives only by public confidence and it is important to the stability of the society that the confidence of the public is not shaken. The Judge whose character is clouded***

and whose standards of morality and rectitude are in doubt may not have the judicial independence and may not command confidence of the public. He must voluntarily withdraw from the judicial work and administration.

(54) …….. The emphasis on this point should not appear superfluous. Prof. Jackson says "Misbehavior by a Judge, whether it takes place on the bench or off the bench, undermines public confidence in the administration of justice, and also damages public respect for the law of the land; if nothing is seen to be done about it, the damage goes unrepaired. This a must be so when the judge commits a serious criminal offence and remains in office". (Jackson's Machinery of Justice by J.R. Spencer, 8th Edn. pp. 369-

(55) The proved "misbehaviour" which is the basis for removal of a Judge under clause (4) of Article 124 of the Constitution may also in certain cases involve an offence of criminal misconduct under Section 5(1) of the Act. But that is no ground for withholding criminal prosecution till the Judge is removed by Parliament as suggested by counsel for the appellant. One is the power of Parliament and the other is the jurisdiction of a criminal court. Both are mutually exclusive. Even a government servant who is answerable for his misconduct which may also constitute an offence under the Indian Penal Code or under S. 5 of the Act is liable to be prosecuted in addition to a departmental enquiry. If prosecuted in a criminal court he may be punished by way of imprisonment or fine or with both but in departmental enquiry, the highest penalty that could be imposed on him is dismissal. The competent authority may either allow the prosecution to go on in a court of law or subject him to a departmental enquiry or subject him to both concurrently or consecutively. It is not objectionable to initiate criminal proceedings against public servant before exhausting the disciplinary proceedings, and a fortiori, the <u>prosecution of a Judge for criminal misconduct before his removal by Parliament for proved misbehaviour is unobjectionable.</u>

"…….But we know of no law providing protection for Judges from criminal prosecution. Article 361(2) confers immunity

from criminal prosecution only to the President and Governors of States and to no others. Even that immunity has been limited during their term of office. ***The Judges are liable to be dealt with just the same way as any other person in respect of criminal offence. It is only in taking of bribes or with regard to the offence of corruption the sanction for criminal prosecution is required.***

(61) For the reasons which we have endeavored to outline and subject to the directions issued, we hold that for the purpose of clause (c) of S. 6(1 of the Act the President of India is the authority competent to give previous sanction for the prosecution of a Judge of the Supreme court and of the High court.

(79) Before parting with the case, we may say a word more. This case has given us much concern. We gave our fullest consideration to the questions raised. We have examined and re-examined the questions before reaching the conclusion. We consider that the society's demand for honesty in a judge is exacting and absolute. ***The standards of judicial behaviour, both, on and off the bench, are normally extremely high. For a Judge to deviate from such standards of honesty and impartiality is to betray the trust reposed in him. No excuse or no legal relativity can condone such betrayal.*** *From the standpoint of justice the size of the bribe or scope of corruption cannot be the scale for measuring a Judge's dishonour.* ***A single dishonest Judge not only dishonours himself and disgraces his office but jeopardizes the integrity of the entire judicial system.***

(80) A judicial scandal has always been regarded as far more deplorable than a scandal involving either the executive or a member of the legislature. The slightest hint of irregularity or impropriety in the court is a cause for great anxiety and alarm. "A legislator or an administrator may be found guilty of corruption without apparently endangering the foundation of the State. But a Judge must keep himself absolutely above suspicion" to preserve the impartiality and independence of the judiciary and to have the public confidence thereof.

Let us take a case where there is a positive finding recorded in such a

proceeding that the Judge was habitually accepting bribe, and on that ground he is removed from his office. On the argument of Mr Sibal, the matter will have to be closed with his removal and he will escape the criminal liability and even the ill-gotten money would not be confiscated. Let us consider another situation where an abettor is found guilty under S. 165-A of the Indian Penal Code and is convicted. The main culprit, the Judge, shall escape on the argument of the appellant. In a civilized society the law cannot be assumed to be leading to such disturbing results.

73. *In* ***State Bank of Travancore Vs Mathew K.C. 2018 (3) SCC 85*** *it is ruled as under;*

"JUDICIAL ADVENTURISM BY HIGH COURT – PASSING ORDER BY IGNORING LAW SETTLED BY COURT.

It is duty of the court to apply the correct law even if not raised by the party. If any order against settled law is to be passed then it can be done only by a reasoned order, Containing a discussion after noticing the relevant law settled.

16. It is the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex-parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order.

18. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. and Anr. MANU/SC/0639/1997 : 1997 (6) SCC 450, observing:

32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order

which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

74. *While delivering 2nd lecture on M.C. Setalvad Memorial Lecture Series sometime in the year 2006, the Hon'ble Mr. Justice Y.K.Sabharwal (the then CJI) expressed that –*

> ***"A Judge would always be polite & considerate and imbued with a sense of humility. He would not disturb the submissions of the lawyers midway only to project a "know-all" image for himself. This also means that he would be sitting with an open mind, eager to be advised by the counsel or the parties****.*

75. *On the point of predictability of the outcome of a case and transparency in the judiciary, the reputed and well-known learned authors and legal experts of Bangladesh in* ***"The Desired Qualities of a Good Judge"****,have expressed thus:*

> ***"In all acts of judgment, the Judges should be transparent so that not only the lawyers but also the litigants can easily predict the outcome of a case. Transparency and predictability are essential for the judiciary as an institution of public credibility."***

*In "A.M. Mathur vs. Pramod Kumar Gupta; (1990) 2 SCC 533", it was held that –****the quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary.***

Other qualities of a good judge have been described by the said authors as under:

> *"(i)* ***A judge is a pillar of our entire justice system and the public expects highest and irreproachable conduct from anyone performing a judicial function.***
>
> *(ii)* ***Judgesmust be knowledgeable about the law, willing to undertake in-depth legal research, and able to write decisions that are clear, logical and cogent. Their judgment should be sound and they should be able to make informed decisions that will stand up to close scrutiny.***
>
> *(iii) Centuries ago Justinian said that precepts of law are three in number i.e. to live honestly, to give every man his due and to injure none.*
>
> *(iv)* ***Judiciary as an organ of the state has to administer fair justice according to the direction of the Constitution and the mandate***

of law.

(v) Every judge is a role model to the society to which he belongs. The same are embodied in all the religious scriptures. ***Socrates once stated that a judge must listen courteously, answer wisely, considers soberly and decides impartially.***

(vi) The qualities of a good judge include patience, wisdom, courage, firmness, alertness, incorruptibility and the gifts of sympathy and insight. In a democracy, a judge is accorded great respect by the state as well as its citizens. He is not only permitted to assert his freedom and impartiality but also expected to use all his forensic skill to protect the rights of the individual against arbitrariness.

(vii) ***Simon Rifkind laid down "The courtroom, sooner or later, becomes the image of the judge. It will rise or fall to the level of the judge who presides over it... No one can doubt that to sit in the presence of a truly great judge is one of the great and moving experiences of a lifetime."***

(viii) There is no alternative of qualified and qualitative judges who religiously follow the rule of law and administer good governance.

(ix) ***The social service, which the Judge renders to the community, is the removal of a sense of injustice.***

(x) ***Judiciary handled by legal person is the custodian of life and property of the people at large,*** *and so the pivotal and central role as played by the judicial officers should endowed higher degree of qualities in consonance with the principles of "standard of care", "duty of care" and "reasonable person" as necessary with judicial functionaries.*

(xi) ***The American Bar Association once published an article called Good Trial Judges in which it discussed the difference in the qualities of a good judge and a bad judge and noted that practicing before a "good judge is a real pleasure," and "practicing before a bad judge is misery.***

(xii) ***The Judges exercise the judicial power on trust. Normally when one sits in the seat of justice,he is expected to be honest, trustworthy, truthful and a highly responsible person. The public perception of a Judge is very important. Marshal, Chief Justice of the United States Supreme Court said, "we must never forget that the only real source of power we as judges can tap is the respect of the people. It is undeniable that the Courts are acting for the people who have reposed***

confidence in them." That is why Lord Denning said, "Justice is rooted in confidence, and confidence is destroyed when the right-minded go away thinking that the Judge is biased".

(xiii) A Judge ought to be wise enough to know that he is fallible and therefore, ever ready to learn; great and honest enough to discard all mere pride of opinion, and follow truth wherever it may lead, and courageous enough to acknowledge his errors.

(xiv) Judge 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. Moreover, patience and gravity of hearing is also an essential part of justice, and an over speaking Judge is known as well tuned cymbal.

(xv) ***It is the duty of the Judges to follow the law,as they cannot do anything whatever they like.*** *In the language of Benjamin N. Cardozo – "The Judge even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles".*

(xvi) ***Judges should be knowledgeable about the law, willing to undertake in-depth legal research, and able to write decisions that are clear and cogent.***

(xvii) ***If a Judge leaves the law and makes his own decisions, even if in substance they are just, he loses the protection of the law and sacrifices the appearance of impartiality which is given by adherence to the law.***

(xviii) A Judge has to be not only impartial but seen to be impartial too.

(xix) Every judge is a role model to the society to which he belongs. The judges are certainly, accountable but they are accountable to their conscience and people's confidence. As observed by Lord Atkin – "Justice is not a cloistered virtue and she must be allowed to suffer the criticism and respectful, though outspoken, comments of ordinary men".

(xx) ***With regard to the accountability of the Judges of the subordinate Courts and Tribunals it may be mentioned that the Constitution authorizes the High Court Division to use full power of superintendence and control over subordinate Courts and Tribunals. Under the Constitution, a guideline in the nature of Code of Conduct can be formulated for the Judges of the subordinate courts for the effective control and supervision of the High Courts Division. In this method, the***

judicial accountability of the Judges of the subordinate courts could be ensured.

76. *In* ***Baradakanta Mishra Ex-Commissioner of Endowments Vs. Bhimsen Dixit, (1973) 1 SCC 446****, a member of Judicial Service of State of Orissa refused to follow the decision of the High Court. The High Court issued a notice of contempt to the appellant and thereafter held him guilty of contempt which was challenged before the Supreme Court. The Supreme Court held as under:-*

"15. ***The conduct of the appellant in not following previous decisions of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of Contempt. The analogy of the inferior court"s disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of Contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly the deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court.Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court, generally, but is also likely to subvert the Rule of Law and engender harassing uncertainty and confusion in the administration of law".***

77. Hon'ble Supreme Court in the case of in ***Re: M.P. Dwivedi and Ors. AIR 1996 SC 2299*** *it is ruled as under;*

"VIOLATION OF GUIDELINES LAID DOWN BY SUPREME COURT BY POLICE AND JUDGE OF SUBORDINATE COURTS – THEY ARE GUILTY OF CONTEMPT.

Held, Contemner No.1, M.P. Dwivedi, was Superintendent of Police of District Jhabwa at the relevant time. notice was being issued to him for the reason that, being over all in charge of the police administration in the distinct, he was responsible to ensure strict compliance with the directions given by this Court .

Contemner No.2, DharmendraChoudhary, was posted as SDO (Police) at Aliraipur at the relevant time.Contemners Nos. 1 and 2, even though not directly involved in the said incidents since they were not present, must be held responsible for having not taken adequate steps to prevent such actions and even after the said actions came to their knowledge, they condoned the illegality by not taking stern action against persons found responsible for this illegality. We, therefore, record our disapproval of the conduct of all the five contemners Nos. 1 to 5 in this regard and direct that a note regarding the disapproval of their conduct by this Court be placed in the personal file of all of them.

Contemner No.7, B. K. Nigam, was posted as Judicial Magistrate First Class - contemner was completely insensitive about the serious violations of the human rights of accused and defiance of guidelines by Police - This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated - Keeping in view that the contemner is a young Judicial Officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner.

Held, Thecontemner Judicial Magistrate has tendered his unconditional and unqualified apology for the lapse on his part - The contemner has submitted that he is a young Judicial Officer and that the lapse was not intentional. But the contemner, being a judicial officer is expected to be aware of law laid down by this Court - It appears that the contemner was completely insensitive about the serious violations of the human rights of the undertrial prisoners in the matter of their handcuffing in as much as when the prisoners were produced before him in Court in handcuffs, he did not think it necessary to take any action for the removal of handcuffs or against the escort party for bringing them to the Court in handcuffs and taking them away in the handcuffs without his authorisation. This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the

citizens are not violated. Keeping in view that the contemner is a young Judicial Officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner.

We also feel that judicial officers should be made aware from time to time of the law laid down by this Court and the High Court, more especially in connection with protection of basic human rights of the people and, for that purpose, short refresher courses may be conducted at regular intervals so that judicial officers are made aware about the developments in the law in the field."

78. *In* ***Baradakanta Mishra Ex-Commissioner of Endowments Vs. Bhimsen Dixit, (1973) 1 SCC 446****, a member of Judicial Service of State of Orissa refused to follow the decision of the High Court. The High Court issued a notice of contempt to the appellant and thereafter held him guilty of contempt which was challenged before the Supreme Court. The Supreme Court held as under:-*

"***15. The conduct of the appellant in not following previous decisions of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of Contempt. The analogy of the inferior court"s disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of Contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly the deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court.Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court, generally, but is also likely to subvert the Rule of Law and engender harassing uncertainty and confusion in the administration of law".***

79. *In* ***New Delhi Municipal Council Vs. M/S Prominent Hotels Limited 2015 SCC Online Del 11910*** *it is ruled as under;*

30.28. *The impugned judgment under challenge, stands vitiated on account of several serious errors of law, apparent on the face of it and the Trial Court not only acted arbitrarily and irrationally on a perverse understanding or misreading of the materials but also misdirected himself on the vital issues before him so as to render the impugned judgment to be one in utter disregard of law and the precedents. Although the impugned judgment purports to determine the claims of parties, a careful scrutiny of the same discloses total non-application of mind to the actual, relevant and vital aspects and issues in their proper perspective. Had there been a prudent and judicious approach, the Trial Court could not have awarded any relief whatsoever to the Licensee.*

30.29. The impugned judgment is based on mere conjectures and pure hypothetical exercises, absolutely divorced from rationality and reality, inevitably making law, equity and justice, in the process, a casualty. The impugned judgment is so perverse, arbitrary and irrational that no responsible judicial officer could have arrived at such a decision.

30.30. The impugned judgment bristles with numerous infirmities and errors of very serious nature undermining the very credibility and objectivity of the reasoning as well as the ultimate conclusions arrived at by the Trial Court. The impugned judgment has resulted in a windfall in favour of the Licensee, more as a premium for their own defaults and breaches. The Licensee has enjoyed the subject property without paying the licence fee in terms of the licence deed which has accumulated to the tune of Rs. 122 crores by virtue of the impugned judgment of the Trial Court.

30.31. The conclusions in the impugned judgment are seriously vitiated on account of gross misreading of the materials on record. Conclusions directly contrary to the indisputable facts placed on record throwing over board the well-settled norms, the basic and fundamental principle that a violator of reciprocal promises cannot be crowned with a prize for his defaults.

30.32. The conclusions arrived at by the Trial Court are nothing but sheer perversity and contradiction in terms. Even common sense, reason and ordinary prudence would commend for rejecting the claim of the Licensee.

30.33. The manner in which the Trial Court has chosen to decree the suit not only demonstrates perversity of approach, but per se proves flagrant violation of the principles of law. The principles of well settled law are found to have been observed

more in their breach.

30.34. The Trial Court appears to have relied upon mere surmises and conjectures as though it constituted substantive evidence. The impugned judgment suffers from obvious and patent errors of law and facts.

30.35. The Trial Court failed in the duty and obligation to maintain purity of standards and preserve full faith and credibility in the judicial system. The impugned judgment, on the face of it, is shown to be based upon a proposition of law which is unsound and findings recorded are absurd, unreasonable and irrational.

30.36. This case warrants imposition of costs on the petitioners in terms of the judgments of the Supreme Court in Ramram eshwari Devi v. Nirmala Devi (supra) and Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria (supra), Subrata Roy Sahara v. Union of India (supra) and of this Court in Harish Relan v. Kaushal Kumari Relan & Ors. in RFA(OS) 162/2014 decided on 03rd August, 2015, Punjab National Bank v. Virender Prakash, MANU/DE/0620/2012 : 2012 V AD (Delhi) 373 and Padmawati v. Harijan Sewak Sangh (supra).

30.37. For the reasons discussed hereinabove, the appeal is allowed. The Licensee's suit was not maintainable. The Trial Court had no jurisdiction in this matter. The impugned judgment and decree are non-est and therefore set aside. The Licensee's suit is dismissed with costs of Rs. 5,00,000/- to be paid by the Licensee to NDMC within two months. All pending applications are disposed of.

30.38. This Court is constrained to hold that the Licensee made a false claim, dragged the case for years by filing one application after the other and misled the Court on law as well as facts. The Licensee did not pursue the proceedings honestly before the Trial Court.

FAILURE TO FOLLOW HIGHER COURT'S DECISION AND PASSING ORDER BY IGNORING LAW DECLARED BY HIGHER CORTS MAKES THE JUDGE LIABLE FOR ACTION UNDER CONTEMPT: - In Re: M.P. Dwivedi & Ors., (1996) 4 SCC 152, the Supreme Court initiated suo moto contempt proceedings against seven persons including the Judicial Magistrate, who disregarded the law laid down by the Supreme Court- In, (1973) 1 SCC 446, the appellant therein, a member of Judicial Service of State of Orissa refused to follow the decision of the High Court. The High Court issued a notice of contempt to the appellant and thereafter held him guilty of contempt.

The orders passed by this Court are the law of the

land in terms of Article 141 of the Constitution of India. No court or tribunal and for that matter any other authority can ignore the law stated by this Court - directions and even spelt out in their judgments, certain guidelines, which are to be operative till proper legislations are enacted - This Court also expressed the view that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system - Section 12 of the Act contemplates disobedience of the orders of the court to be wilful and further that such violation has to be of a specific order or direction of the court

If the Trial Court does not follow the well settled law, it shall create confusion in the administration of justice and undermine the law laid down by the constitutional Courts - The consequence of the Trial Court not following the well settled law amounts to contempt of Court. Reference in this regard may be made to the judgments given below - if a law on a particular point has been laid down by the High Court, it must be followed by all authorities and tribunals in the State - and they cannot ignore it either in initiating proceedings or deciding on the rights involved in such a proceeding - If in spite of the earlier exposition of law by the High Court having been pointed out and attention being pointedly drawn to that legal position, in utter disregard of that position, anything done by any authority, it must be held to be a wilful disregard of the law laid down by the High Court and would amount to civil contempt as defined in section 2(b) of the Contempt of Courts Act, 1971 - in the administration of justice, judges and lawyers play equal roles. like judges, lawyers also must ensure that truth triumphs in the administration of justice - Failure to follow Higher Court's decision and ignorance of law makes the Judge liable for action under Contempt : every High 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- In Re: M.P. Dwivedi & Ors., (1996) 4 SCC 152, the Supreme Court initiated suo moto contempt proceedings against seven persons including the Judicial Magistrate, who disregarded the law laid down by the Supreme Court - Lethargy, ignorance, official delays and absence of motivation can hardly be offered as any defence in an action for contempt.

Inordinate delay in complying with the orders of the courts has also received judicial criticism. Inaction or even dormant behaviour by the officers in the highest echelons in the hierarchy of the Government in complying with the directions/orders of this Court certainly amounts to disobedience. Even a lackadaisical attitude, which itself may not be deliberate or wilful, have not been held to be a sufficient ground of defence in a contempt proceeding.

22.9. In Priya Gupta v. Addl. Secy. Ministry of Health and Family Welfare and others, (2013) 11 SCC 404, the Supreme Court ruled that . The orders passed by this Court are the law of the land in terms of Article 141 of the Constitution of India. No court or tribunal and for that matter any other authority can ignore the law stated by this Court. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. There can be no hesitation in holding that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court also expressed the view that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and to abide by the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law. It is expected that none of these institutions should fall out of line with the requirements of the standard of discipline in order to maintain the dignity of institution and ensure proper administration of justice. It is true that Section 12 of the Act contemplates disobedience of the orders of the court to be wilful and further that such violation has to be of a specific order or direction of the court. Constitution has placed upon the judiciary, the responsibility to interpret the law and ensure proper administration of justice. In carrying out these constitutional functions, the courts have to ensure that dignity of the court, process of court and respect for administration of justice is maintained. Violations which are likely to impinge upon the faith of the public in

administration of justice and the court system must be punished, to prevent repetition of such behaviour and the adverse impact on public faith. With the development of law, the courts have issued directions and even spelt out in their judgments, certain guidelines, which are to be operative till proper legislations are enacted. The directions of the court which are to provide transparency in action and adherence to basic law and fair play must be enforced and obeyed by all concerned. The law declared by this Court whether in the form of a substantive judgment inter se a party or are directions of a general nature which are intended to achieve the constitutional goals of equality and equal opportunity must be adhered to and there cannot be an artificial distinction drawn in between such class of cases. Whichever class they may belong to, a contemnor cannot build an argument to the effect that the disobedience is of a general direction and not of a specific order issued inter se parties. If over-enthusiastic executive attempts to belittle the importance of the court and its judgments and orders, and also lowers down its prestige and confidence before the people, then greater is the necessity for taking recourse to such power in the interest and safety of the public at large. The power to punish for contempt is inherent in the very nature and purpose of the court of justice. In our country, such power is codified.

22. Consequences of the Trial Court disregarding well settled law - If the Trial Court does not follow the well settled law, it shall create confusion in the administration of justice and undermine the law laid down by the constitutional Courts - It is immaterial that in a previous litigation the particular petitioner before the Court was or was not a party, but if a law on a particular point has been laid down by the High Court, it must be followed by all authorities and tribunals in the State - and they cannot ignore it either in initiating proceedings or deciding on the rights involved in such a proceeding - If in spite of the earlier exposition of law by the High Court having been pointed out and attention being pointedly drawn to that legal position, in utter disregard of that position, proceedings are initiated, it must be held to be a wilful disregard of the law laid down by the High Court and would amount to civil contempt as defined in section 2(b) of the Contempt of Courts Act, 1971 . The consequence of the Trial Court not following the well settled law amounts to contempt of Court. Reference in this regard may be made to the judgments given below.
It is implicit in the power of supervision conferred on

a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefore, hold that the law declared by the highest Court in the State is binding on authorities, or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings, contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction."(Emphasis supplied)

22.4. In Baradakanta Mishra Ex-Commissioner of Endowments v.Bhimsen Dixit, (1973) 1 SCC 446, the appellant therein, a member of Judicial Service of State of Orissa refused to follow the decision of the High Court. The High Court issued a notice of contempt to the appellant and thereafter held him guilty of contempt which was challenged before the Supreme Court. The Supreme Court held as under:-

"15. The conduct of the appellant in not following previous decisions of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of Contempt. The analogy of the inferior court''s disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of Contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly the deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court, generally, but is also likely to subvert the Rule of Law and engender harassing uncertainty and confusion in the administration of law"(Emphasis supplied)

22.5. In Re: M.P. Dwivedi & Ors., (1996) 4 SCC 152, the Supreme Court initiated suo moto contempt proceedings against seven persons including the Judicial Magistrate, who disregarded the law laid down by the Supreme Court against handcuffing of

under-trial prisoners.

The Supreme Court held this to be a serious lapse on the part of the Magistrate, who was expected to ensure that basic human rights of the citizens are not violated. The Supreme Court took a lenient view considering that Judicial Magistrate was of young age. The Supreme Court, however, directed that a note of that disapproval to be placed in his personal file. Relevant portion of the said judgment is reproduced hereunder: -

"22. ... It appears that the contemner was completely insensitive about the serious violations of the human rights of the undertrial prisoners in the matter of their handcuffing inasmuch as when the prisoners were produced before him in court in handcuffs, he did not think it necessary to take any action for the removal of handcuffs or against the escort party for bringing them to the court in handcuffs and taking them away in handcuffs without his authorisation. This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated. Keeping in view that the contemner is a young judicial officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner. We also feel that judicial officers should be made aware from time to time of the law laid down by this Court and the High Court, more especially in connection with protection of basic human rights of the people and, for that purpose, short refresher courses may be conducted at regular intervals so that judicial officers are made aware about the developments in the law in the field."(Emphasis supplied)

22.6. In T.N. Godavarman Thirumulpad v. Ashok Khot, (2006) 5 SCC 1, the Supreme Court held that disobedience of the orders of the Court strike at the very root of rule of law on which the judicial system rests and observed as under:-

"5. Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. 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. That is why it is imperative and invariable that courts' orders are to be followed and complied with."(Emphasis supplied)

22.7. In Maninderjit Singh Bitta v. Union of India, (2012) 1 SCC 273, the Supreme Court held as under:-

"26. ... Disobedience of orders of the court strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs...

29. Lethargy, ignorance, official delays and absence of motivation can hardly be offered as any defence in an action for contempt. Inordinate delay in complying with the orders of the courts has also received judicial criticism. ... Inaction or even dormant behaviour by the officers in the highest echelons in the hierarchy of the Government in complying with the directions/orders of this Court certainly amounts to disobedience. ... Even a lackadaisical attitude, which itself may not be deliberate or wilful, have not been held to be a sufficient ground of defence in a contempt proceeding.

22.8. In Mohammed Ajmal Mohammed Amir Kasab v. State of Maharashtra (2012) 9 SCC 1, the Supreme Court directed that it is the duty and obligation of the Magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, it should be provided to him from legal aid at the expense of the State. The Supreme Court further directed that the failure of any magistrate to discharge this duty would amount to dereliction in duty and would made the concerned magistrate liable to departmental proceedings.

22.9. In Priya Gupta v. Addl. Secy. Ministry of Health and Family Welfare and others, (2013) 11 SCC 404, the Supreme Court held as under:-

"12. The government departments are no exception to the consequences of wilful disobedience of the orders of the Court. Violation of the orders of the Court would be its disobedience and would invite action in accordance with law. The orders passed by this Court are the law of the land in terms of Article 141 of the Constitution of India. No court or tribunal and for that matter any other authority can

ignore the law stated by this Court. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. There can be no hesitation in holding that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court also expressed the view that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and to abide by the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

13. These very principles have to be strictly adhered to by the executive and instrumentalities of the State. It is expected that none of these institutions should fall out of line with the requirements of the standard of discipline in order to maintain the dignity of institution and ensure proper administration of justice.

xxx xxx xxx

19. It is true that Section 12 of the Act contemplates disobedience of the orders of the court to be wilful and further that such violation has to be of a specific order or direction of the court. To contend that there cannot be an initiation of contempt proceedings where directions are of a general nature as it would not only be impracticable, but even impossible to regulate such orders of the court, is an argument which does not impress the court. As already noticed, the Constitution has placed upon the judiciary, the responsibility to interpret the law and ensure proper administration of justice. In carrying out these constitutional functions, the courts have to ensure that dignity of the court, process of court and respect for administration of justice is maintained. Violations which are likely to impinge upon the faith of the public in administration of justice and the court system must be punished, to prevent repetition of such behaviour and the adverse impact on public faith. With the development of law, the courts have issued directions and even spelt out in their judgments, certain guidelines, which are to be operative till proper legislations are enacted. The directions of the court which are to provide

transparency in action and adherence to basic law and fair play must be enforced and obeyed by all concerned. The law declared by this Court whether in the form of a substantive judgment inter se a party or are directions of a general nature which are intended to achieve the constitutional goals of equality and equal opportunity must be adhered to and there cannot be an artificial distinction drawn in between such class of cases. Whichever class they may belong to, a contemnor cannot build an argument to the effect that the disobedience is of a general direction and not of a specific order issued inter se parties.

Such distinction, if permitted, shall be opposed to the basic rule of law.

23. ... The essence of contempt jurisprudence is to ensure obedience of orders of the Court and, thus, to maintain the rule of law. History tells us how a State is protected by its courts and an independent judiciary is the cardinal pillar of the progress of a stable Government. If over-enthusiastic executive attempts to belittle the importance of the court and its judgments and orders, and also lowers down its prestige and confidence before the people, then greater is the necessity for taking recourse to such power in the interest and safety of the public at large. The power to punish for contempt is inherent in the very nature and purpose of the court of justice. In our country, such power is codified...(Emphasis supplied)

22.10. In Subrata Roy Sahara v. Union of India (2014) 8 SCC 470, the Supreme Court held that the decisions rendered by the Supreme Court have to be complied with by all concerned. Relevant portion of the said judgment is as under: -

17. There is no escape from, acceptance, or obedience, or compliance of an order passed by the Supreme Court, which is the final and the highest Court, in the country. Where would we find ourselves, if the Parliament or a State Legislature insists, that a statutory provision struck down as unconstitutional, is valid? Or, if a decision rendered by the Supreme Court, in exercise of its original jurisdiction, is not accepted for compliance, by either the Government of India, and/or one or the other State Government(s) concerned? What if, the concerned government or instrumentality, chooses not to give effect to a Court order, declaring the fundamental right of a citizen? Or, a determination rendered by a Court to give effect to a legal right, is not acceptable for compliance? Where would we be, if decisions on private disputes rendered between private individuals, are not complied with? The answer though preposterous, is not far-fetched. In

view of the functional position of the Supreme Court depicted above, non-compliance of its orders, would dislodge the cornerstone maintaining the equilibrium and equanimity in the country's governance. There would be a breakdown of constitutional functioning, It would be a mayhem of sorts.

185.2. Disobedience of orders of a Court strikes at the very root of the rule of law on which the judicial system rests. Judicial orders are bound to be obeyed at all costs. Howsoever grave the effect may be, is no answer for non-compliance with a judicial order. Judicial orders cannot be permitted to be circumvented. In exercise of the contempt jurisdiction, courts have the power to enforce compliance with judicial orders, and also, the power to punish for contempt.

(iii) Precedents : What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.

80. <u>ROLE OF ADV.S.U.KAMDAR AND M.D.P PARTNERS</u> :-

***80.1** In **<u>E.S. Reddi Vs. Chief Secretary, Government of A.P (1987) 3 SCC 258</u>** it is ruled as under;*

A) Duty of Advocates towards Court – Held, he has to act fairly and place all the truth even if it is against his client – he should not withhold the authority or documents which tells against his client – It is a mistake to suppose that he is a mouthpiece of his client to say that he wants – He must disregard with instruction of his client which conflicts with their duty to the Court.

B) Duty and responsibility of senior counsel - By virtue of the pre-eminence which senior counsel enjoy in the profession, they not only carry greater responsibilities but they also act as a model to the junior members of the profession. A senior counsel more or less occupies a position akin to a Queen's counsel in England next after the Attorney General and the Solicitor General. It is an honor and privilege conferred on advocates of standing and experience by the chief justice and the Judges of this court. They thus become

leading counsel and take precedence on all counsel not having that rank- A senior counsel though he cannot draw up pleadings of the party, can nevertheless be engaged "to settle" i.e. to put the pleadings into "proper and satisfactory form" and hence a senior counsel settling pleadings has a more onerous responsibility as otherwise the blame for improper pleadings will be laid at his doors. (Para 10)

"(11) Lord Reid in Rondel v. Worsley has succinctly set out the conflicting nature of the duties a counsel has to perform in his own inimitable manner as follows :

Every counsel has a duty to his client fearlessly to raise every issue, advance every argument, and ask every question, however distasteful, , which he thinks will help his client's case. As an officer of the court concerned in the administration of justice, he has an overriding duty to the court, to the standards of his profession, and to the public, which may and often does lead to a conflict with his client's wishes or with what the client thinks are his personal interests. Counsel must not mislead the court, he must not lend himself to casting aspersions on the other party or witnesses for which there is no sufficient basis in the information in his possession, he must not withhold authorities or documents which may tell against his clients but which the law or the standards of his profession require him to produce. By so acting he may well incur the displeasure or worse of his client so that if the case is lost, his client would or might seek legal redress if that were open to him.

(12) Again as Lord Denning, M. R. in Rondel v. W would say :

He (the counsel) has time and again to choose between his 265 duty to his client and his duty to the court. This is a conflict often difficult to resolve; and he should not be under pressure to decide it wrongly. . . . When a barrister (or an advocate) puts his first duty to the court, he has nothing to fear. (words in brackets added).

In the words of Lord Dinning:

It is a mistake to suppose that he is the mouthpiece of his client to say what he wants :. . . . He must disregard the most specific instructions of his client, if they conflict with his duty to the court. The code which requires

a barrister to do all this is not a code of law. It is a code of honor. If he breaks it, he is offending against the rules of the profession and is subject to its discipline."

80.2. *In* ***Hindustan Organic Chemicals Ltd. Vs. ICI India Ltd. 2017 SCC Online Bom 74*** *it is read as under;*

> ***"DUTY OF ADVOCATES TO NOT TO MISLED THE COURT EVEN ACCIDENTALLY – THEY SHOULD COME BEFORE COURT BY PROPER ONLINE RESEARCH OF CASE LAW BEFORE ADDRESSING THE COURT.***
>
> *I have found counsel at the Bar citing decisions that are not good law.*
>
> ***The availability of online research databases does not absolve lawyers of their duties as officers of the Court. Those duties include an obligation not to mislead a Court, even accidentally. That in turn casts on each lawyer to carefully check whether a decision sought to be cited is or is not good law.*** *The performance of that duty may be more onerous with the proliferation of online research tools, but that is a burden that lawyers are required to shoulder, not abandon. Every one of the decisions noted in this order is available in standard online databases. This pattern of slipshod research is inexcusable****."***

80.3. *In* ***Heena Nikhil Dharia Vs. Kokilaben Kirtikumar Nayak and Ors. 2016 SCC OnLine Bom 9859*** *it is ruled as under ;*

> ***"DUTY OF ADVOCATE"***
>
> *A] The counsel in question was A. S. Oka, now Mr. Justice Oka, and this is what Khanwilkar J was moved to observe in the concluding paragraph of his judgement:*
>
> *While parting I would like to make a special mention regarding the fairness of Mr. Oka, Advocate. He conducted the matter with a sense of detachment. In his own inimitable style he did the wonderful act of balancing of his duty to his client and as an officer of the Court concerned in the administration of justice. He has fully discharged his overriding*

duty to the Court to the standards of his profession, and to the public, by not withholding authorities which go against his client. As Lord Denning MR in Randel v W. (1996) 3 All E. R. 657 observed: "Counsel has time and again to choose between his duty to his client and his duty to the Court. This is a conflict often difficult to resolve; and he should not be under pressure to decide it wrongly. Whereas when the Advocate puts his first duty to the Court, he has nothing to fear. But it is a mistake to suppose that he (the Advocate) is the mouthpiece of his client to say what he wants. The Code which obligates the Advocate to disregard the instructions of his client, if they conflict with his duty to the Court, is not a code of law — it is a code of honour. If he breaks it, he is offending against the rules of the profession and is subject to its discipline.

This view is quoted with approval by the Apex Court in Re. T. V. Choudhary, [1987] 3 SCR 146 (E. S. Reddi v Chief Secretary, Government of AP & Anr.).

The cause before Khanwilkar J may have been lost, but the law gained, and justice was served.

B] Thirteen years ago, Khanwilkar J wrote of a code of honour. That was a time when we did not have the range, width and speed of resources we do today. With the proliferation of online databases and access to past orders on the High Court website, there is no excuse at all for not cross-checking the status of a judgement. I have had no other or greater access in conducting this research; all of it was easily available to counsel at my Bar. Merely because a judgement is found in an online database does not make it a binding precedent without checking whether it has been confirmed or set aside in appeal. Frequently, appellate orders reversing reported decisions of the lower court are not themselves reported. The task of an advocate is perhaps more onerous as a result; but his duty to the court, that duty of fidelity to the law, is not in any lessened. If anything, it is higher now.

C] Judges need the Bar and look to it for a dispassionate guidance through the law's thickets. When we are encouraged instead to

lose our way, that need is fatally imperilled. Judges need the Bar and look to it for a dispassionate guidance through the law's thickets. When we are encouraged instead to lose our way, that need is fatally imperilled."

80.4. *In* ***Lal Bahadur Gautam Vs. State of UP 2019 SCC OnLine SC 687*** *it is ruled as udner;*

> ***10.*** *Before parting with the order, we are constrained to observe regarding the manner of assistance rendered to us on behalf of the respondent management of the private college. Notwithstanding the easy access to information technology for research today, as compared to the plethora of legal Digests which had to be studied earlier,* ***reliance was placed upon a judgment based on an expressly repealed Act by the present Act, akin to relying on an overruled judgment. This has only resulted in a waste of judicial time of the Court, coupled with an onerous duty on the judges to do the necessary research. We would not be completely wrong in opining that though it may be negligence also, but the consequences could have been fatal by misleading the Court leading to an erroneous judgment****.*
>
> ***11. Simply, failure in that duty is a wrong against the justice delivery system in the country. Considering that over the years, responsibility and care on this score has shown a decline, and so despite the fact that justice is so important for the Society, it is time that we took note of the problem, and considered such steps to remedy the problem. We reiterate the duty of the parties and their Counsel, at all levels, to double check and verify before making any presentation to the Court. The message must be sent out that everyone has to be responsible and careful in what they present to the Court. Time has come for these issues to be considered so that the citizen's faith in the justice system is not lost. It is also for the Courts at all levels to consider whether a particular presentation by a party or conduct by a party has occasioned unnecessary waste of court time, and if that be so, pass appropriate orders in that regard. After all court time is to be utilized for justice***

<u>delivery and in the adversarial system, is not a licence for waste.</u>

12. As a responsible officer of the Court and an important adjunct of the administration of justice, the lawyer undoubtedly owes a duty to the Court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client as observed in State of Punjab & Ors. vs. Brijeshwar Singh Chahal & Ors., (2016) 6 SCC 1: "34....relationship between the lawyer and his client is one of trust and confidence. As a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as mouthpiece of his client....."

13. The observations with regard to the duty of a counsel and the high degree of fairness and probity required was noticed in D.P. Chadha vs. Triyugi Narain Mishra and others, (2001) 2 SCC 221: "22. A mere error of judgment or expression of a reasonable opinion or taking a stand on a doubtful or debatable issue of law is not a misconduct; the term takes its colour from the underlying intention. But at the same time misconduct is not necessarily something involving moral turpitude. It is a relative term to be construed by reference to the subject-matter and the context wherein the term is called upon to be employed. A lawyer in discharging his professional assignment has a duty to his client, a duty to his opponent, a duty to the court, a duty to the society at large and a duty to himself. It needs a high degree of probity and poise to strike a balance and arrive at the place of righteous stand, more so, when there are conflicting claims. While discharging duty to the court, a lawyer should never knowingly be a party to any deception, design or fraud. While placing the law before the court a lawyer is at liberty to put forth a proposition and canvass the same to the best of his wits and ability so as to persuade an exposition which would serve the interest of his client so long as the issue is capable of that resolution by adopting a process of reasoning. However, a point of law well

settled or admitting of no controversy must not be dragged into doubt solely with a view to confuse or mislead the Judge and thereby gaining an undue advantage to the client to which he may not be entitled. Such conduct of an advocate becomes worse when a view of the law canvassed by him is not only unsupportable in law but if accepted would damage the interest of the client and confer an illegitimate advantage on the opponent. In such a situation the wrong of the intention and impropriety of the conduct is more than apparent. Professional misconduct is grave when it consists of betraying the confidence of a client and is gravest when it is a deliberate attempt at misleading the court or an attempt at practicing deception or fraud on the court. The client places his faith and fortune in the hands of the counsel for the purpose of that case; the court places its confidence in the counsel in case after case and day after day. A client dissatisfied with his counsel may change him but the same is not with the court. And so the bondage of trust between the court and the counsel admits of no breaking.

24. It has been a saying as old as the profession itself that the court and counsel are two wheels of the chariot of justice. In the adversarial system, it will be more appropriate to say that while the Judge holds the reigns, the two opponent counsel are the wheels of the chariot. While the direction of the movement is controlled by the Judge holding the reigns, the movement itself is facilitated by the wheels without which the chariot of justice may not move and may even collapse. Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of the chariot. As responsible officers of the court, as they are called – and rightly, the counsel have an overall obligation of assisting the courts in a just and proper manner in the just and proper administration of justice. Zeal and enthusiasm are the traits of success in profession but overzealousness and misguided enthusiasm have no place in the personality of a professional.

26. A lawyer must not hesitate in telling the court the correct position of law when it is undisputed and admits of no exception. A view of the law settled by the ruling of a

superior court or a binding precedent even if it does not serve the cause of his client, must be brought to the notice of court unhesitatingly. This obligation of a counsel flows from the confidence reposed by the court in the counsel appearing for any of the two sides. A counsel, being an officer of court, shall apprise the Judge with the correct position of law whether for or against either party."

14. That a higher responsibility goes upon a lawyer representing an institution was noticed in State of Rajasthan and another vs. Surendra Mohnot and others, j(2014) 14 SCC 77: "33. As far as the counsel for the State is concerned, it can be decidedly stated that he has a high responsibility. A counsel who represents the State is required to state the facts in a correct and honest manner. He has to discharge his duty with immense responsibility and each of his action has to be sensible. He is expected to have higher standard of conduct. He has a special duty towards the court in rendering assistance. It is because he has access to the public records and is also obliged to protect the public interest. That apart, he has a moral responsibility to the court. When these values corrode, one can say "things fall apart". He should always remind himself that an advocate, while not being insensible to ambition and achievement, should feel the sense of ethicality and nobility of the legal profession in his bones.

We hope, that there would be response towards duty; the hallowed and honoured duty."

80.5. *In* ***State Of Orissa Vs. Nalinikanta Muduli (2004) 7 SCC 19*** *it is ruled as under ;*

"THE ADVOCATE RELYING ON OVERRULED JUDGMENT IS A GUILTY OF PROFESSIONAL MISCONDUCT.

" The conduct of an Advocate by citing a overruled judgment is falling standard of professional.

Citing case which was overruled by Supreme Court - is Falling standard of professional conduct - Deprecated .

It was certainly the duty of the counsel for the respondent before the High Court to bring to the notice of the Court that the decision relied upon before the High Court has been overruled by this

Court and it was duty of the learned counsel not to cite an overruled judgment .

It is a very unfortunate situation that learned counsel for the accused who is supposed to know the decision did not bring this aspect to the notice of the learned single Judge. Members of the Bar are officers of the Court. They have a bounden duty to assist the Court and not mislead it. Citing judgment of a Court which has been overruled by a larger Bench of the same High Court or this Court without disclosing the fact that it has been overruled is a matter of serious concern. It is one thing that the Court notices the judgment overruling the earlier decision and decides on the applicability of the later judgment to the facts under consideration on it - It was certainly the duty of the counsel for the respondent before the High Court to bring to the notice of the Court that the decision relied upon by the petitioner before the High Court has been overruled by this Court. Moreover, it was duty of the learned counsel appearing for the petitioner before the High Court not to cite an overruled judgment - We can only express our anguish at the falling standards of professional conducts."

80.6. *In* ***Ujwala J. Patil Vs. Slum Rehabilitation Authority 2016 SCC Online Bom 5259*** *it is ruled as under ;*

"ADVOCATE - STANDARD OF MORAL, ETHICAL AND PROFESSIONAL CONDUCT -

has a duty to the Court which is paramount. It is a mistake to suppose that he is the mouthpiece of his client to say what he wants or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice. He must not consciously misstate the facts. He must not knowingly conceal the truth. He must not unjustly make a charge of fraud, that is, without evidence to support it. He must produce all the relevant authorities, even those that are against him.

Although, we do not propose to say anything with regard to the actions of the learned counsel appearing for the

petitioner, we must reject the submissions of the learned counsel that it was not their duty to disclose the history and the fate of previous litigations upon the substantially same issue andthat they are bound only by the instructions of the petitioner, who has engaged their services. *In our opinion, the observation made by Lord Denning in* ***Rondel vs. Worsley*** *(1966) 3 All E.R. 657 (CA) affords a complete answer to such contention. The Supreme Court in the case of* ***Himachal Pradesh Scheduled Tribes Employees Federation & Anr. vs. Himachal Pradesh Samanaya Varg Karamchari Kalayan Mahasangh & Ors,*** *has expressly approved the exposition of very high standard of moral, ethical and professional conduct expected to be maintained by members of the legal profession by quoting the observation in* ***Rondel vs. Worsley****. In paragraphs 31 and 32, the Hon'ble Supreme Court has observed thus:*

"31. When a statement is made before this Court it is, as a matter of course, assumed that it is made sincerely and is not an effort to overreach the Court. Numerous matters even involving momentous questions of law are very often disposed of by this Court on the basis of the statement made by the learned counsel for the parties. The statement is accepted as it is assumed without doubt, to be honest, sincere, truthful, solemn and in the interest of justice. The statement by the counsel is not expected to be flippant, mischievous, misleading and certainly not false. This confidence in the statements made by the learned counsel is founded on the assumption that the counsel is aware that he is an officer of the Court.

32. Here, we would like to allude to the words of Lord Denning, in ***Rondel v. Worsley*** *about the conduct expected of an advocate:*

"... As an advocate he is a minister of justice equally with the Judge.

... I say 'all he honourably can' because his duty is not only to his client. He has a duty to the court which is paramount. It is a mistake to suppose that he is the mouthpiece of his client to say what he wants: or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice. He must not

*consciously misstate the facts. He must not knowingly conceal the truth. He must not unjustly make a charge of fraud, that is, without evidence to support it. He must produce all the relevant authorities, even those that are against him***.**

He must see that his client discloses, if ordered, the relevant documents, even those that are fatal to his case. He must disregard the most specific instructions of his client, if they conflict with his duty to the court. The code which requires a barrister to do all this is not a code of law. It is the code of honour." (QB p. 502) In our opinion, the aforesaid dicta of Lord Denning is an apt exposition of the very high standard of moral, ethical and professional conduct expected to be maintained by the members of legal profession. We expect no less of an advocate/counsel in this country."

*[**Emphasis supplied**]"*

81. REQUEST:- *It is therefore humbly requested for* ***;***

1. ***To direct prosecution under section 218, 219, 504, 192, 193, 211, 511 ,r/w 120 (B) & 34 of IPC. as done in K. Rama Reddy Vs. State (1998) 3 ALD 305 against accused Judge D.S. Naidu, Advocate S.U. Kamdar, MDP & Partner and the staff of High Court registry for conspiracy of forum shopping and an attempt to get an order of quashing of the proceeding before Magistrate from a Court of J. D.S.Naidu who have no assignment in fact the assignment is with Division Bench of Justice Ranjit More as per Bombay High Court rules & law laid down in Farooq Abdul Gani Surve Vs. State of Maharashtra 2012 All MR (Cri) 131 and followed in Ratan Tata 2019 SCC OnLine Bom 1324.***

2. ***Direction to committee constituted under "In-House-Procedure" to enquire the following charges against Justice D.S.Naidu;***

#CHARGE 1 # *Section 218, 219, 511 r/w 120(B) and 34 of Indian penal code.*
Hearing a case which is not assigned to him with ulterior motive to grant undeserving relief to the accused in a serious case of fraud on Court for grabbing a property worth Rs.500 Crores. In a similar case "Judge & advocates" were prosecuted by Hon'ble High Court in

K.Rama Reddy Vs. State (1998) 3 ALD 305. *under section 120-B, 193, 466, 468 and 471 of IPC.*

#CHARGE 2 # *Contempt of Supreme Court in* ***Pandurang Vs. State (1986) 4 SCC 436****. The Judge cannot decide jurisdiction against the rules framed by the High Court. He cannot hear the matter out of roaster.*

#CHARGE 3 # *I.P.C. – 504, 500, - Using defamatory words against advocate for ulterior purposes. Judge can be prosecuted without sanction as it is not the part of the official duty of a Judge.* ***[Bidhi Singh Vs. M.S.Mandyal 1993 Cri.L.J 499****,* ***B. S. Sambhu Vs. T. S. Krishnaswamy AIR 1983 SC 64]***

#CHARGE 4 # SECTION 14 OF CONTEMPT OF COURT :- *For degrading and insulting treatment to advocate.****[Harish Chandra Mishra Vs. Hon'ble Mr. Justice Ali Ahmad 1986 (34) BLJR 63****, High Court of Karnataka Vs. Jai Chaitanya dasa 2015 (3) AKR 627****,* ***Muhammad Sahfi, Advocate Vs. Chaudhary Qadir Bakhsh, AIR 1949 Lah 270****, Sh. H. Syama Sundara Rao Vs. Union of India (UOI) , 2007 Cri. L. J. 2626****]*

#CHARGE 5 # *wilful Contempt of directions given by Full Bench of Supreme Court in* ***(1963) 2 SCR 22*** *by not allowing the advocate to argue his case and continuous interruption in sarcastic manner for ulterior purposes.*

#CHARGE 6 # FRAUD ON POWER – *Undue haste to pass order in favor of accused in 'state case' without making state as a party. Proves malafides – CBI investigation necessary.* ***[Noida Entrepreneurs Association Vs. Noida (2011) 6 SCC 508]***

The 'State Case' was been heard by Justice D. Naidu without state being made party and without calling the Public Prosecutor to file his say. The 'Registrar of the Court' who is main 'Complainant' was also not made the party. Such undue haste is sufficient to draw an inference of malafide intention and C.B.I. be directed to investigate the entire conspiracy as per law laid down in ***Noida Entrepreneurs Association Vs. Noida (2011) 6 SCC 508*** *and* ***Prof. Ramesh Chandra Vs***

State MANU/UP/0708/2007.

#CHARGE 7 # BREACH OF OATH TAKEN AS A HIGH COURT JUDGE:- *by behaving in an ill-motivated manner and giving undue favor to accused for extraneous consideration. Judge Naidu breached the oath taken as a High Court Judge and therefore forfeited his right to continue as a Judge.*

#CHARGE 8 # FRAUD ON POWER*:- Deliberate ignorance of material on record to help the accused. Judge is guilty of fraud on power.* ***[Vide: Vijay Shekhar Vs. Union of India 2004 (3) Crimes 33 (Full Bench)]***

 # CHARGE 9 # Framing of incorrect record of the High Court –The advocate for accused filed appeal before Judge D.S.Naidu with undue haste even not withdrawing their Writ Petition filed for same relief. When this fact was brought to the notice of Court the Judge D.S. Naidu granted time to accused and adjourned the matter, but did not mentioned the reason for adjournment in the order dated 15.07.2019.

 # CHARGE 10 # Judge D.S.Naidu is liable to be dismissed forthwith as per law laid down in R.R. Parekh Vs. High Court of Gujrat (2016) 14 SCC 1 & K. Veeraswami Vs. Union of India (UOI) 1991 (3) SCC 655 *as it is ex-facie proved that he acted in wanton breach of the procedures of law , Bombay High Court Rules and Hon'ble Supreme Court directions to grant undeserving relief to an accused in a serious case of around Rs.500 Crores.*

#CHARGE 11 # Legal Malice – *Malice in law & Malice in Fact – Discrimination and unequal treatment between two advocates by granting time to advocate for accused and not granting time to advocate for de-facto complainant. Judge D.S.Naidu is guilty of Malice in Law & Malice in Fact.* ***[Vide: Kishor M. Gadhave Patil Vs. State 2016 (5) Mh.L.J.75, Kalabharati Advertising Vs. Hemant Vimalnath Narichania And Ors. (2010) 9 SCC 437, West Bengal State Electricity Board Vs. Dilip Kumar Ray AIR 2007 SC 976****]*

#CHARGE 12 # *Violation of Article 14 of*

the Constitution of India by giving unequal treatment and discrimination to serve their ulterior purposes. Judge guilty of offences under section 511, 218, 219 of Indian penal code. ***[Vide: Nanha S/o Nabhan Kha v. State of U.P. 1993 CRI. L. J. 938]***

#CHARGE 13 # *Threatening and pressurizing the advocate about action under Contempt without any lawful basis and therefore guilty of offence under section 511 r/w. 220 & 211 of IPC* ***[Vide: Hari Das Vs. State AIR 1964 SC 1773, Afzalur Rahman Vs. Emperor AIR 1943 FC 18, Sita Ram Chandu Lall Vs. Malkit Singh MANU/PH/0113/1955]***

 # CHARGE 14 # CONTEMPT OF ITS OWN COURT:

Threatening the advocate with ulterior motive that the advocate will flinch from his services to client. ***[Mrs. Damayanti G. Chandiraman V. S***

26. PRAYER: It is therefore requested for;

1. Direction for appointing a committee as per **'In-House - Procedure'** to enquire serious offences against Justice D. S. Naidu, Judge of Bombay High Court.

2. Direction to C.B.I. to investigate the charges under section **211, 218, 219, 385, 220,465, 466, 469,471, 474, 192, 166, 167 r/w 120 (B) & 34 of I.P.C.**

3. Direction as per **'In-House-Procedure'** to Chief Justice Bombay High Court to not to assign any judicial work to Shri. D. S. Naidu.

4. Direction to Justice D. S. Naidu to resign forthwith as per **'In-House-Procedure'** and as per law laid down by Constitution Bench in **K. Veeraswami Vs. Union of India (UOI) (1991) 3 SCC 655** as his incapacity, fraud on power and offences against administration of justice areex-facie proved.

5. Action against Justice D. S. Naidu for abating the Public and Lawyers to not to follow the Supreme Court & High Court judgments and to do some experiment which is prohibited by Full Bench of Hon'ble Supreme Court in **Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy**

Engineering Works (P) Ltd. (1997) 6 SCC 450.

6. Taking Suo-Moto action under Contempt of Court's Act and section 219,220 r/w 120 (B) & 34 of IPC against Justice **D. S. Naidu & Justice P. N. Ravindran** for deliberate disregard and defiance of law laid down by Full Bench of Hon'ble Supreme Court in Re: Vinay Chandra's case **(1995) 2 SCC 584** and **Sukhdev Singh Sodhi VS. Chief Justice S. Teja Singh, 1954 SCR 454** and in **Dr. L.P. Mishra Vs. State (1998) 7 SCC 379 (F.B.)** for convicting Adv. C. K. Mohanan who made allegations against Justice Naidu.

7. Direction to Justice P. Nandrajog, Chief Justice of Bombay High Court to act as per law laid down in **Re: M. P. Dwivedi AIR 1996 SC 2299** to take immediate action to prevent further Contempt of Supreme Court when serious criminal offences by Justice D.S. Naidu or any other Judges of Bombay High Court are brought to his notice.

DATE :_____

PLACE: MUMBAI

Adv.Ishwarlal Agarwal
Working President
National Co-ordination Committee
INDIAN BAR ASSOCIATION