# INDIAN BAR ASSOCIATION

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**Registration NO: PRSEC/E/2019/07995**

**Date: 24.04.2019**

**To,**

1. **Hon'ble Chief Justice, Bombay High Court**

With copy To:

1. **Hon'ble President of India**
2. **Hon'ble Chief Minister, Maharashtra State**
3. **Addl. Chief Secretary , Home Department**
4. **Director General of Police, Mumbai**
5. **Commissioner of Police, Amravati**
6. **Police Station Officer, Badnera, Amravati.**

**Sub:** **1.** Taking action under Contempt of Court's Act, 1971 against concerned guilty officers of Badnera Police Station, involved in utter disregard and defiance of the law laid down by Hon'ble Bombay High Court in the Case of **Rajeshwar 2014 ALL MR 573 ,Ramkrishna Baburao Maske ,1974 SCC OnLine Bom 68., R.Muthukaran MANU/TN/0810/2017, Shaila Sebastian Vs. R. Jawaharaj and Another (2018) 7 SCC 581** where it is ruled than when no property is involved then the offence of cheating under section 420 is not made out and on the allegation of signing on behalf of other without any authorization the offence of cheating and forgery under section 463, 468 etc. is made out and Police have no right to register such FIR and to investigate . But on 1st June, 2017 an FIR is registered under section 420, & 468 of Indian Penal Code thereby lowered down the majesty and dignity of the Hon'ble Bombay High Court and Hon'ble Supreme Court and therefore strict action under section 167,211,220,r/w 120(B) & 34 of Indian Penal Code, Section 145(2) Maharashtra Police Act and under Contempt of Court's Act, is necessary against concerned guilty Police

officers of Badnera in view of law laid down in **Re: M.P.Dwivedi AIR 1996 SC 2299.**

**2. Gross violation of Article 21 of the Constitution of India and Contempt of Hon'ble Supreme Court judgement in T.T. Anthony AIR 2001 SC 2637 ,Amit shah's case (2013) 6 SCC 348** & Division Bench of Hon'ble Bombay High Court.

**3. Giving investigation against guilty Police Officer to CID as per law laid down in Sudhir Vora Vs Commissioner of Police 2004 Cri.L.J. 2278.(Bom) (D.B)**

Hon'ble Sir,

**1.** By way of this representation ,I would like to bring to your notice the gross violation of fundamental rights of an advocate at the hands of some police officers of Badnera Police Station, Amravati.

**2.** The brief fact is that one mentally sick advocate Chandrashekhar Shinde was working in the an NGO "HUMAN RIGHTS SECURITY COUNCIL"

**3.** Duo to his unlawful activities he (C.S.Shinde ) was thrown out of the NGO on around 20th October, 2007. Then in order to take revengesaid Chandrashekhar Shinde sent a letter to Human Rights Commission that the said NGO had misused his name and it is alleged that his signature is put in the covering letter dated 17th September, 2017 by someone else without any authorization and therefore action be taken against National President Adv. Nilesh Ojha.

**4.** The falsity of the said Complaint is explained in detail with documentary proofs by Adv. Nilesh Ojha in the Writ Petition No. 1998 of 2017. Filed against said C.S.Shinde & Shri. M.A. Sayeed of Human Rights Commission.

**5.** Also vide a letter dated 17.01.2019 by Rashid Khan Pathan, National Secretary of Human Rights Security Council, had given all the proofs of malafides of said C.S.Shinde and connivance of Shri. M.A.Sayeed.

**6.** Apart from the said falsity, dishonesty & illegality of aforesaid C.S.Shinde, the main aspect is regarding the gross violation of law laid down by Hon'ble

Bombay High Court and Hon'ble Supreme Court at the hands of some police personals of Badnera Police Station which is capulized as under.

**7.** That on 01.06.2017 Badnera Police registered an F.I.R. under section 420, 468, of Indian Penal Code.

However even if the complaint/allegations made by said Chandrashekhar Shinde about making his signature on a document unauthorizedly are taken to be true then also offence of forgery or cheating is not made out in view of law laid down in:

(i) **Ramkrishna Baburao Maske Vs.Kishan Shivraj Shelke 1974 SCC OnLine Bom 68**

(ii) **R. Muthukumaran and Ors. Vs. Ramesh Babu and Ors. MANU/TN/0810/2017**

**iii) Shaila Sebastian Vs. R. Jawaharaj and Another (2018) 7 SCC 581**

**iv) Aparajita Nath Vs State (2007) 2 GLR 567**

**8. Rajeshwarrao and Ors. Vs. The State of Maharashtra and Ors. 2014 ALL MR (Cri) 573,** where it is ruled as under;

> "***Sections 420, 468, 471, 120B of IPC – Quashing of F.I.R. – Bogus signature of complainant in the register produced before Charity Commissioner – do not attract any offence of cheating and forgery – F.I.R. quashed.***
>
> *Cheating requires that the person so deceived to deliver any property to any person. After reading the report from any angle, none amongst the ingredients of delivery of any property or any act or omission thereby deceiving the complaint, is not even barely described. Cognizance cannot be taken by police.*
>
> *The act of the police officer taking cognizance is thus, bad not only due to non-application of mind, but it is bad even if application of mind is presumed. Impugned registration of FIR is vitiated by reason of jurisdictional error of failing to note that there does not exist description of commission of*

*any offence in the FIR and hence, cognizance of the report lodged by respondent No. 3 is wholly unjust and is not tenable in law and is required to be quashed and set aside.*

*Accusation that the complainant have never signed the attendance register of any meeting still, by fabrication of record and preparation of bogus documents, the record of his attendance has been created. Signatures done in the name thereon, are bogus, which complainant have not done. Held, the complaint does not fall within the case of cheating and forgery.*

*The background of allegations the offence purported to be committed before the competent court, no cognizance would be competent by the police in absence of report by the Public servant concerned.*

*In spite of the fact that the opinion was sought by the police as to registration of offence from Deputy Director of Prosecution and that the offence was registered thereafter, does not excuse the police from application of mind on their own before registration of offence."*

**9.** In the case of **Aparajita Nath Vs State (2007) 2 GLR 567**, it is read as under:-

***"Cheating by personation - Ingredients - Sec. 416,419,420 of IPC - without delivery of property no offence of cheating can be made out.***

***Merely writing in other names or identifying oneself in another name without any intention to deceive others cannot be said to constitute offence of cheating. Criminal impersonation even if true, the facts do not constitute an offence under Section 419 IPC. The accused stands discharged.***

***In the case of Bashirbhai Mohamedbhai v. State of Bombay wherein the Supreme Court observed that making of the false representation is one of***

***the ingredients for the offence of cheating and delivery of property is another ingredient and both of these ingredients are required to establish the charge.***

***In the instant case, there is no allegation that the petitioner has deceived the complainant/informant in any manner or that the informant/complainant was induced to part with any property which is the first part of Section 415 IPC.***"

**10.** Pannaram Vs. State of Rajasthan and Ors. MANU/RH/0708/2017 where it is ruled as under;

***"I.P.C. 420, 467, 468, 741 not made out for furnishing false information to a public servant-***

*Furnishing false information before a public servant cannot be equated with the execution of a false document. If what is executed is not a false document, there is no forgery and if there is no forgery, then no offence under the provisions of sections under sections 420, 467, 468, 471 IPC is made out.*

*From bare reading of the impugned FIR, it is clear that there is no averment to the effect that the accused by using fraudulent means induces the complainant or any person so cheated to deliver some valuable security etc. Hence, the offence punishable under section 420 IPC cannot be said to be made out from allegations contained in the impugned FIR.*

*Upon perusal of the impugned FIR, it is apparent that the main allegation of the complainant in the impugned FIR is to the effect that the accused-person has furnished false information or has not furnished correct information. If the said allegations of the complainant are accepted to be true then too, the offence, which at best can be said to be committed by the accused would be of making statement in connection with an election which is punishable under section 171-G IPC or furnishing false information to any*

*public servant punishable under section 177 IPC or the offences punishable under sections 181, 193, 199 and 200 IPC. However, all the above mentioned offences are non-cognizable offences. As per the provisions of sub-section (2) of section 155 CrPC, a Police Officer cannot investigate into the allegations of non-cognizable offence without any order of the Magistrate having power to try such case or commit the case for trial, however, no such order of the Magistrate concerned is available on record.*

*In view of the above discussions, this Court is of the opinion that the impugned FIR is liable to be quashed."*

**11.** Hon'ble Bombay High Court in **Ramkrishna Baburao Maske Vs.Kishan Shivraj Shelke  1974 SCC OnLine Bom 68,** had ruled as under;

***"Sec. 415,417,420 of I.P.C. – These section cannot be invoked without there being property involved in the transaction*** *-In the matter of deception there should be intention of wrongful gain to one person or wrongful loss to another person. This means that, there should be a gain by wrongful means of property. In so far as the facts and circumstances of our case are concerned, the question of property does not arise at all.*

*For the purpose of causing wrongful loss or wrongful gain the prosecution has to establish that gain or loss was by unlawful means and that was of property to which the person gaining or losing was not legally entitled. In other words, the result of concealment of fact should be for the purpose of wrongful gain by unlawful means of property. In the instant alleged cheating such a dishonest concealment of fact is absent. The facts of our case, therefore, show that there was no wrongful gain to the accused nor there was any wrongful loss to the complainant. If that is so, then one of the ingredients viz. dishonest concealment of fact cannot he said to have been established in this ease.*

*"What is 'dishonesty' is also defined in Section 24, Indian Penal Code, Whoever does any thing with intent of causing wrongful gain to one person or wrongful loss to another*

*person is said to do that thing dishonestly. Wrongful gain and wrongful loss are also defined in Section 23, Indian Penal Code. Wrongful gain is gain by unlawful means of property to which the person gaining is not legally entitled. Wrongful loss is loss by unlawful means of property to which the person losing is legally entitled. Therefore, in the matter of deception there should be intention of wrongful gain to one person or wrongful loss to another person. This means that, there should be a gain by wrongful means of property. In so far as the facts and circumstances of our case are concerned, the question of property does not arise at all.*

*The learned Magistrate, therefore, was right in acquitting the accused"*

**12.** Hon'ble High Court in **R.Muthukaran MANU/TN/0810/2017** case had ruled as under;

*"**A. Forgery – Merely signing on behalf of others on a document does not amounts to forgery it is wrong but not an offence unless by the alleged forgery some wrongful gain to maker and wrongful loss of property to which the person losing it is legally entitled - the primary intention was to induce the registrar to believe that the certificate was signed by the Headmaster of the Government School, it was no doubt a wrong thing to do, but that does not make it an offence under the Penal Code - 'Fraudulently" is defined by Section 25 IPC to be "doing of things with an intent to defraud, but not otherwise.**"*

*'Dishonestly'' is defined by Section 24 IPC to be "the doing of any thing with an intention of causing wrongful gain to one person or wrongful loss to another."*

*'Wrongful gain" is defined by Section 23 IPC to be " the gain by unlawful means of a property to which the person gaining is not legally entitled and "**Wrongful loss" has been defined as the same section to be "the loss by unlawful means of property to***

***which the person losing it is legally entitled."*** *In construing Sections 24 and 25 IPC we are of the opinion that the primary and not the remote intention of the accused must be looked at.*

*By falsely inducing the registrar to believe that the certificate was signed by the headmaster of the Government School under Public management to be permitted to sit for the entrance examination. Now this primary intention of the accused was not, we think, fraudulent or dishonest within the meaning of Sections 25 and 24, Indian Penal Code........*

*We held that the accused could not be prosecuted under Sections 471 IPC as there was no dishonest or fraudulent intent.*

*We are therefore of the opinion that upon the facts stated, the accused was not guilty under Section 471, Indian Penal Code in as much as his use of the forged document with the knowledge or belief that it was forged, was not fraudulent or dishonest."*

*"In ParmainderKaur v. State of U.P, MANU/SC/1765/2009 : AIR 2010 SC 840, the Hon'ble Supreme Court while considering a case where, like in the case in hand, the figure "1" was added in the date of the document, held that there is no making of false document under Section 464 IPC and quashed the criminal prosecution against the accused therein. Para 14 & 17 of the said Judgment are extracted hereunder:*

*To attract the second clause of Section 464 there has to be alteration of document dishonestly and fraudulently. So in order to attract clause "Secondly" if the document is to be altered it has to be for some gain or with such objective on the part of the accused. Merely changing a document does not make it a false document. Presuming that the figure "1" was added as was done in this case, it cannot be said that the document became false for the simple reason that the*

*appellant had nothing to gain from the same. She was not going to save the bar of limitation.*

***B.*** *It is also relevant to refer to the Judgment of the Hon'ble Calcutta High Court in Queen Empress v. Haradhan, MANU/WB/0012/1892: ILR 1892 Cal (29) 380, wherein a case similar to the case on hand was considered, where the accused a student created a certificate as though it was signed by a headmaster of a Government School so as to enable him to undertake the entrance exam. In furtherance of such certificate, he was permitted to take entrance exam, which he cleared successfully. Thereafter, he was charged for having used a forged document and to have committed forgery. In the case in hand, the reverse is the charge sheet against the petitioners that the accused manipulated the attendance register so as to prevent the de facto complainant from taking his examination. The Calcutta High Court after considering the provisions of the Code, held that no offence of forgery can be laid against the accused therein as the Court found that the facts do not satisfy the requirement of being dishonest or fraudulent within the meaning of Sections 24 & 25 of the Penal Code, it is held as follows:*

*"*As regards forgery the intention to commit fraud must be the mere intention, not possible and remote one, here the primary intention was to induce the registrar to believe that the certificate was signed by the Headmaster of the Government School, it was no doubt a wrong thing to do, but that does not make it an offence under the Penal Code.*

*To support a charge under Section 471 IPC the prosecution must prove*

*(i) that the document in respect of which the charge is made is forged.;*

*(ii) that the accused used*

*(iii) that at the time he used it he knew or had reason to believe that it was forged*

*(iv) that at the time he used it which such knowledge or belief he did so*

*fraudulently or dishonestly.*

*'Fraudulently" is defined by Section 25 IPC to be "doing of things with an intent to defraud, but not otherwise "*

*'Dishonestly'' is defined by Section 24 IPC to be "the doing of any thing with an intention of causing wrongful gain to one person or wrongful loss to another."*

*'Wrongful gain" is defined by Section 23 IPC to be " the gain by unlawful means of a property to which the person gaining is not legally entitled and "Wrongful loss" has been defined as the same section to be "the loss by unlawful means of property to which the person losing it is legally entitled." In construing Sections 24 and 25 IPC we are of the opinion that the primary and not the remote intention of the accused must be looked at.*

*By falsely inducing the registrar to believe that the certificate was signed by the headmaster of the Government School under Public management to be permitted to sit for the entrance examination. Now this primary intention of the accused was not, we think, fraudulent or dishonest within the meaning of Sections 25 and 24, Indian Penal Code........*

*We held that the accused could not be prosecuted under Sections 471 IPC. We are therefore of the opinion that upon the facts stated, the accused was not guilty under Section 471, Indian Penal Code in as much as his use of the forged document with the knowledge or belief that it was forged, was not fraudulent or dishonest."*

*__C.__ Therefore, to attract the offence under Sections 465, 466 and 469, there should be dishonest concealment of facts. "What is dishonesty' is also defined in Section 24 of Indian Penal Code, whoever does any thing with intent of causing wrongful gain to one person or wrongful loss to another person is said to have done that thing dishonestly. Wrongful gain and wrongful loss are also defined in Section 23, Indian Penal Code. Wrongful gain is a gain by unlawful means of property to which the person gaining is not legally entitled. Wrongful loss is a loss by unlawful means of property to which the person losing is legally entitled. Therefore, in the matter of deception there should be intention of wrongful gain to one person or wrongful loss to another person. This means that, there should be a gain by wrongful means of property. Insofar as the facts and circumstances of our case are concerned, the question of property does not arise at all.*

**13.** Hon'ble Supreme Court in **Shaila Sebastian Vs. R. Jawaharaj and Another (2018) 7 SCC 581** case had ruled as under;

***"Sections 420,423 and 465, IPC read with 109, IPC. - High Court concluded that, as no case is made out under Section 464, IPC and therefore offence under Section 420 of the IPC being a consequential one, equally cannot be sustained –***

***Unless and untill ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete.***

***The High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same.***

*Although we acknowledge the appellant's plight who has suffered due to alleged acts of forgery, but we are*

*not able to appreciate the appellant's contentions as a penal statute cannot be expanded by using implications.*

*It must be borne in mind that, where there exists no ambiguity, there lies no scope for interpretation. The contentions of the appellant are contrary to the provision and contrary to the settled law. The prosecution could not succeed to prove the offence of forgery by adducing cogent and reliable evidence. Apart from that, it is not as though the appellant is remediless. She has a common law remedy of instituting a suit challenging the validity and binding nature of the mortgage deed."*

**14.** But the concerned Police officer of Badnera Police Station with malafide intention and ulterior motive to cause damage to the Advocate Nilesh Ojha and to help the said Chandrashekhar Shinde had prepared the F.I.R with abovesaid sections and therefore the concerned Police officers of Badnera Police Station are liable for action under section 167, 211, 220, 120(B) & 34 of Indian Penal Code, section 145 (2) of Maharashtra Police Act and under Contempt of Court's Act.

**15.** Hon'ble Bombay High Court in **<u>Garware Polyester Ltd. and Anr. Vs. The State of Maharashtra and Ors.</u>** **<u>2010 SCC OnLine 2223</u>** had ruled as under;

***"<u>Contempt of Courts Act – All the officers /authorities are bound to follow the procedure laid down by High Court in its judgment –</u>*** *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. MoreshwarNathuji 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.***"***

**16.** In **<u>Re: M. P Dwivedi AIR 1996 SC 2299,</u>** it is ruled has under;

***"A) <u>VIOLATION OF GUIDELINES LAID DOWN BY SUPREME COURT BY POLICE AND JUDGE OF SUBORDINATE COURTS – THEY ARE GUILTY OF</u>***

***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, The contemner 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."*

**17.** In **Raman Lal Vs. State 2001 Cr.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] 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.*

*C] 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.*

*D] 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 contineture Quia 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."*

**18.** In. **Sudhir Vora Vs. Commission of Police 2004 Cr. L. J 2278(Bom) (D.B)** it is ruled as under;

> ***"(A)*** *Criminal P.C. (2 of 1974), S.24 - PUBLIC PROSECUTOR - Public prosecutor - Should not defend police officer against whom allegations of acts of commission or omission are made.*
>
> ***(B)*** *When Complaint against police is given then it has to be investigated by Crime Branch and not by any officer attached to the same police station."*

**19.** Failure to take action against guilty Police officer will make the Senior officer responsible for action **[Re: M. P Dwivedi AIR 1996 SC 2299 ]**

**20. Second F. I. R :-** Contempt of Supreme Court Judgemnt in **T. T Anthony case**:-

All the allegation made by Chandrashekar Shinde in the F.I.R. registered at Badnera on 1st June, 2017 were made by him earlier during the investigation before Pusad Police Station being F.I.R. No. 191 of 2010.

The Investigation Officer in the said FIR recorded the statement of C.S.Shinde on 21.08.2010 and on 08th June, 2013. In the said investigation the similar allegations of making complaints by signing on behalf of some other member of NGO were already investigated.

Then after 10 years second FIR on the same allegation is not permissible.

Therefore Second F.I.R. and investigation on the similar allegation is illegal and contempt of law laid down by Hon'ble Supreme Court.

That the Hon'ble Supreme Court in **Amit Shah's case (2013) 6 SCC 348** had ruled as under;

> ***"That, It is settled principles of law that there cannot be two F.I.R.s and two investigating officers under two different crimes, which***

***aroused out of one and same incident. The Hon'ble Bombay High Court ,in case of Shivraj s/o Kundlikubale&Ors.Vs. The State of Maharashtra, have quashed second F.I.R***

*Similarly, Hon'ble Supreme Court in cases of* ***(i) T.T.Anthony Vs. State of Kerala and others, AIR 2001 SC 2637,Babubhai Vs. State of Gujrat and others (2010) 12 SCC 254; and in Amit Shah's (2013) 6 SCC 348****laid down ratio in both the above judgment and held that two First Information Reports in respect of the same transaction are not permissible.*

***When the First FIR was registered investigated and charge sheet filed - there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences – This Court has consistently laid down the law on the issue interpreting the Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution.***

*The second FIR filed by the CBI Mumbai, is contrary to the directions issued in judgment and accordingly the same is quashed -. It would clearly be beyond the purview of sections 154 and 156 Cr.P.C , nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second orsuccessive FIRs, not being a counter – case , filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and respect of which pursuant to the first FIR either investigation in under way or final report under section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power to quash the second FIR.*

*As per law laid down by this Court in C.*

*<u>Muniappan</u> (2010) 9 SCC 567 even if two separate complaint had been lodged, they could be clubbed together and one charge sheet could be filed – if two parts of the same transaction are investigated and prosecuted by different agencies, it may cause failure of justice not only in one case but in other trial as well – the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in section 173 Cr.P.C – in Swamirathnam AIR 1957 SC 340, law is laid down that The charge, discloses one single conspiracy, although spread over several years. There was only one object of the conspiracy and that was to cheat members of the public. The fact that in the course of year others joined the conspiracy or that several incident of cheating took place in pursuance of the conspiracy did not change the conspiracy and did not charge the conspiracy and did not split up a single conspiracy into several conspiracies – the instances ofcheating were in pursuance of the conspiracy and were therefore parts of the same transaction filing of a fresh FIR by the CBI is contrary to various decisions of this Court – the second FIR filed by the CBI Mumbai, is contrary to the directions issued in judgment and accordingly the same is quashed. As a consequence, the charge sheet filed on 04.09.2012, in pursuance of the second FIR, be treated as a supplementary charge sheet in the first FIR.*

*Where one person alone is the accused and the interaction or intervention of the act of more persons than one does not come in, it would where the same act is committed by several persons, be not only inconvenient but indicious to try all the several persons separately. This would lead to unnecessary multiplicity to trails involving avoidable inconvenience to the witnesses and avoidable expenditure of public time and money . No corresponding advantage can be*

*gained by the accused persons by following the procedure of seprate trials. Where , however ,several offences are alleged to have been committed by several accused personsit may be more reasonable to follow the normal rule of separate trials. But here , again , if those offences are alleged not to be wholly unconnected but as forming part of the same transaction the only consideration that will justify separate trials would be the embracement or difficulty caused to the accused persons in defending themselves.*

*The sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect ofthe same incident , giving rise to one or more cognizable offences, consequence upon filing of successive FIRs whether before or after filing the final report under section 173(2) Cr.P.C, any, a case of abuse of statutory power of investigation based on the second or successive FIRs , not being a counter –case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173 (2) has been forwarded to the magistrate ,may be a fit case for exercise of power to quash the second FIR.*

*From the above discussion it follows that under the scheme of the provisions of sections154, 155, 156, 157, 162, 169, 170, and 173 C.rP.C only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of section 154 Cr.P.C. Thus there can be no fresh investigation in respect of the same cognizable offence or the same occurrence or incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of apolice station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been*

*committed in the course of the same transaction or the same occurrence and file one or more reports as provided is section 173 Cr.P.C.*

*The second FIR is part of the same conspiracy and culminated into the same series of acts forming part of the same transaction in which the offence alleged in the first FIR was committed – both these cold blooded offence are inter –connected , they ought not to be tried separately as it may give rise to conflicting findings, raise issues of issue estoppels and /or res judicata and end up derailing or frustrating the interest of justice – if two part of same transaction are investigated and prosecuted by different agencies, it may cause failure of justice not only in one case but in other trial as well.*

*The court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents having two or more parts of the same transaction .this court parts of the same transaction . this court further held that if the answer is in affirmative , the second FIR is liable to be quashed.*

*The ratio laid down in Kari Choudhary's case (supra) is heavily relied on by learned ASG appearing for the CBI . In that decision , it was held that decision ,it was held that when there are two rival version in respect of the same episode, theywould normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigation agency.*

*SUMMARY*

*c) Even after filing of such a report, if he comes into possession of further information or material, there is no need to register a fresh FIR, he is empowered to make further investigation normally with the leave of the Court and where during further investigation, he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further*

*reports which is evident from sub-section (8) of Section 173 of the Code. Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 of the Code. Thus, there can be no second FIR and, consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences.*

*d) Further, on receipt of information about a cognizable offence or an incident giving rise to a cognizable offences or offences and on entering FIR in the Station House Diary, the officer-in-charge of the police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Code. Sub-section (8) of Section 173 of the Code empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report(s) to the Magistrate. A case of fresh investigation based on the second or successive FIRs not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173 (2) has been forwarded to the Magistrate, is liable to be interfered with by the High Court by exercise of power under Section 482 of the Code or under Articles 226/227 of the Constitution.*

*e) First Information Report is a report which gives first information with regard to any offence. There cannot be second FIR in respect of the same offence/event*

*because whenever any further information is received by the investigating agency, it is always in furtherance of the first FIR.*

*i) Administering criminal justice is a two-end process, where guarding the ensured rights of the accused under Constitution is as imperative as ensuring justice to the victim. It is definitely a daunting task but equally a compelling responsibility vested on the court of law to protect and shield the rights of both. Thus, a just balance between the fundamental rights of the accused guaranteed under the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. Accordingly, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences. As a consequence, in our view this is a fit case for quashing the second FIR to meet the ends justice.and subsequently collect reliable evidences to establish the same.*

*CONCLUSION:*

*53) In the light of the specific stand taken by the CBI before this Court in the earlier proceedings by way of assertion in the form of counter affidavit, status reports, etc. we are of the view that filing of the second FIR and fresh charge sheet is violative of fundamental rigths under Article 14, 20 and 21 of the Constitution since the same relate to alleged offence in respect of which an FIR had already been filed and the court has taken cognizance.*

*Filing fresh FIR is contrary to various judicial pronouncements which is demonstrated in the earlier part of our judgment.*

*54) In view of the above discussion and conclusion, the second FIR dated 29.04.2011 being RC No. 3 (S)/2011/Mumbai filed by the CBI is contrary to the directions issued in judgment and order dated*

*08.04.2011 by this Court in Writ Petition (Criminal) No. 115 of 2009 and accordingly the same is quashed. As a consequence, the charge sheet filed on 04.09.2012, in pursuance of the second FIR, be treated as a supplementary charge sheet in the first FIR.*"

**21. Afterthought concocted story by Chandrashekar Shinde:**

That, the said Chandrashekar Shinde was expelled from NGO on 20.07.2007 and on 27th October, 2007 he made allegation. But how he come to know that his signature was put on a letter dated 17th September, 2007 was explained nowhere.

Also, his statement was reordered by Pusad Police on 21.08.2010 and 08.06.2013 to investigation of F.I.R. No. 191/ 2010 then he had not mentioned anything about this fact of signature because it was false and concocted.

Then after 10 years unexplained deley he raised this issue with ulterior motive.

**22. Unexpected Delay of 10 years:-** the alleged incident was of the year 2007 and the order is passed in 2010 i.e. after 10 years and on this ground also the entire proceeding is vitiated in view of law laid down by Hon'ble Supreme Court in **Jagdish** v. **Ashok Kumar Gureja 2008 Cr.L.J. 908,** where it is ruled as under;

"***Criminal P.C. (2 of 1974), S.340- Filing of false document - Delay in making complaint - Application for taking action for perjury filed after lapse of four and half years - it would not be proper to give any such direction after four and a half years and it would not be expedient in the interest of justice - Is not maintainable.***

*Though there is no limitation for prosecuting a person for perjury, but certainly, while forming an opinion by the Court, the Court has to consider the dictum of the law and the wisdom of the legislature that it is expedient in the interest of justice that an inquiry should be made into any offence."*

**23. Mental status of said Chadrashekhar Shinde :-**

That the said Chandrashekhar Shinde is mentally sick and having tendency to make false frivolous Complaints against everybody. Due to his

failure in profession and personal life and out of his frustration **he had attacked Chairman of Pusad Bar Association in Court premises and therefore resolution is passed by all the Advocates of Pusad Bar Association against him.**

Out of his frustration he had made complaints against

**i) Shri. Rajeeev Satav, M.P, Congress**

**ii) Shri. Vijay Khadse, Ex. M.L.A. Congress**

**iii) Adv. Ashish Deshmukh, Chairman of Bar Council of Mahrashtra and Goa**

**iv) Police Station officers of Umerkhad Police**

**v) Around 200 citizens of Umarkhad**

**vi) Too many other political leaders, reporters etc.**

and when Umarkhed Police was supposed to take action against Chandrashekhar Shinde for false, frivolous and scandalous complaint. He withdrew his Complaint saying that Police have no jurisdiction to investigate it.

This shows his mental level and this needs to be taken in to consideration for taking action against him Section. 211 of Indian Penal Code.

**24.** That the basic order dated 12th April, 2017 passed by Shri. M.A. Sayeed, member of State Human Rights Commission nowhere states as to exactly which offence is committed and therefore the said order is itself illegal in view of law laid down by Full Bench of Hon'ble Supreme Court in **Har Gobind and others** Vs. **The State of Haryana AIR 1979 SC 1760**, where it is ruled as under;

> ***"Criminal P.C. (5 of 1898), S.476 - Non genuine and forged document produced in Court - Prosecution for offence on the direction by public authority - Finding regarding exact offence committed, is required - Absence of finding - Order filing complaint cannot be supported in law. It was incumbent on the Court directing the complaint to record a clear finding regarding the exact offence which was committed by the party to the proceeding. In the absence of such a finding the order filing the complaint cannot be supported in law. (Para 1)***
>
> *The will was not genuine and was forged document. The Courts really found was that the will was*

> *executed under suspicious circumstances and not that it was a downright forgery. The Court of the Addl. District Judge which filed the complaint has not at all given any finding as to the part played by the appellants in the execution of the will. Nor has he clarified as to how the appellants could be prosecuted under Sections 467/109."*

But the concerned officers of Badnera Police Station have registered the offence under section 420,468, of Indian Penal Code and this itself is highly illegal.

**25.** That the police have no jurisdiction to investigate the case if any Non-Cognizable offence is disclosed in view of section 155 (2) of Criminal Procedure Code.

> *"**155 (2).** No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial ".*

**26.** Hon'ble High Court in the case of **Nabisab and Ors. Vs.The State of Karnataka MANU/KA/1351/2017** where it is ruled that;

> *"Police have registered the case even under Section 420 of the I.P.C. only with an intention to get over the mandatory requirements of Section 155(2) of the Cr.P.C. and to proceed with the investigation according to their whims and fancies. Even in earlier cases no public came forward to give the complaint that they have been cheated by any of the petitioners. So the police suo motu registered the case even for the said offence. Therefore, their intention is very clear that it is to abide or overcome of obtaining prior permission from the concerned Magistrate Court.*
>
> *Under such circumstances, I am of the opinion that the petitioners, in all the above petitions, have succeeded in establishing their contention that registration of First Information Reports are in derogation of the mandatory requirements of law, without fulfillment of the said requirements. Even according to the factual story of the prosecution,*

*there is no material to show that the petitioners/accused have committed such alleged offences.*

*All the petitions are allowed. The above mentioned FIRs in and the charge-sheet/criminal cases are hereby quashed. The criminal proceedings initiated against the petitioners based on the FIRs and chargesheet, are hereby quashed invoking the jurisdiction under Section 482 of Cr.P.C."*

**27.** Hon'ble High Court in the case of **Nisha Priya Bhatia Vs. State NCT of Delhi and Ors MANU/KA/1351/2017** where it is ruled that;

*"In the present case the allegations in the FIR only disclosed commission of non-cognizable offences. Thus, the FIR was registered and investigated contrary to the provisions of Sections 154 and 155(2) Cr.P.C.*

*Since the above noted FIR and the proceedings pursuant thereto are liable to be quashed on the issue noted above itself and this Court is not required to further delve into the issue whether the above noted FIR was a result of mala fide exercise of power or the other grounds as agitated."*

**28. Cognizance by any Court barred due to provisions of 195 of Criminal Procedure Code:-**

That the allegations in the present case were regarding the false information given to the commission then as per provisions of section 195 of Criminal Procedure Code police could not have registered F.I.R. on the complaint by a private person. In fact the Complainant should be the registrar of the Human Rights Commission and the private Complaint by Chandrashekar Shinde was illegal.

Hon'ble Supreme Court in **Narendra Kumar Shrivastava's case (2019) 3 SCC 318**, quashed such proceedings. It is ruled as under;

"**20.** This Court in **M.S. Ahlawat (supra)** has clearly held that private complaints are absolutely barred in relation to an offence said to have been committed under Section 193 IPC and that the procedure

prescribed under Section 195 of the Cr.P.C. are mandatory. It was held that:

*"5. Chapter XI IPC deals with "false evidence and offences against public justice" and Section 193 occurring therein provides for punishment for giving or fabricating false evidence in a judicial proceeding. Section 195 of the Criminal Procedure Code (CrPC) provides that where an act amounts to an offence of contempt of the lawful authority of public servants or to an offence against public justice such as giving false evidence under Section 193 IPC etc. or to an offence relating to documents actually used in a court, private prosecutions are barred absolutely and only the court in relation to which the offence was committed may initiate proceedings. Provisions of Section 195 CrPC are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that section. It is settled law that every incorrect or false statement does not make it incumbent upon the court to order prosecution, but (sic) to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice.*

*6. Section 340 CrPC prescribes the procedure as to how a complaint may be preferred under Section 195 CrPC. While under Section 195 CrPC it is open to the court before which the offence was committed to prefer a complaint for the prosecution of the offender, Section 340 CrPC prescribes the procedure as to how that complaint may be preferred. Provisions under Section 195 CrPC are mandatory and no court can take cognizance of offences referred to therein (sic). It is in respect of such offences the court has jurisdiction to proceed under Section 340 CrPC and a complaint outside the provisions of Section 340 CrPC cannot be filed by any civil, revenue or criminal court under its inherent jurisdiction." (emphasis supplied)*

***23.*** *In* ***<u>Sachida Nand Singh (supra),</u>*** *this Court had*

*dealt with Section 195(1)(b)(ii) of the Cr.P.C unlike the present case which is covered by the preceding clause of the Section. The category of offences which fall under Section 195(1)(b)(i) of the Cr.P.C. refer to the offence of giving false evidence and offences against public justice which is distinctly different from those offences under Section 195(1)(b)(ii) of Cr.P.C, where a dispute could arise whether the offence of forging a document was committed outside the court or when it was in the custody of the court. Hence, this decision has no application to the facts of the present case."*

**29. <u>REQUEST</u>:- It is therefore humbly requested that:-**

**1.** Action under Contempt of Court's Act, 1971 be taken against concerned guilty officers of Badnera Police Station, involved in utter disregard and defiance of the law laid down by Hon'ble Bombay High Court in the Case of **<u>Rajeshwar 2014 ALL MR (Cri.) 573,</u>** **<u>Ramkrishna Baburao Maske 1974 SCC OnLine Bom 68., R. Muthukaran MANU/TN/0810/2017, Shaila Sebastian Vs. R. Jawaharaj and Another (2018) 7 SCC 581</u>** where it is ruled than when no property is involved then the offence of cheating under section 420 is not made out and on the allegation of signing on behalf of other without any authorization the offence of cheating and forgery under section 463, 468 etc. is made out and Police have no right to register such FIR and to investigate . But on 1st June, 2017 an FIR is registered under section 420, & 468 of Indian Penal Code thereby lowered down the majesty and dignity of the Hon'ble Bombay High Court and Hon'ble Supreme Court and therefore strict action under section 167,211,220,r/w 120(B) & 34 of Indian Penal Code, Section 145(2) Maharashtra Police Act and under Contempt of Court's Act, is necessary against concerned guilty Police officers of Badnera in view of law laid down in **<u>Re: M.P.Dwivedi AIR 1996 SC 2299</u>**

**2. Action for gross violation of Article 21 of the Constitution of India and Contempt of Hon'ble Supreme Court judgement in T.T. Anthony AIR 2001 SC 2637 ,Amit shah's case (2013) 6 SCC 348** & Division Bench of Hon'ble Bombay High Court, be taken.

**3. Investigation against guilty Police Officer be given to CID as per law laid down in Sudhir Vora Vs Commissioner of Police 2004 Cri.L.J. 2278.(Bom) (D.B)**

**Date: Date : 24.04.2019**
**Place : Mumbai**

**ADV.VIVEK RAMTEKE**
VICE PRESIDENT
MAHARASHTRA & GOA
**(INDIAN BAR ASSOCIATION)**