INDIAN BAR ASSOCIATION

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November 14, 2019

CASE NO BEFORE HON'BLE PRESIDENT OF INDIA :- PRSEC/E/2019/22071

To,

HON'BLE PRESIDENT OF INDIA

With Copy to;

1. **Hon'ble Prime Minister of India**
2. **Hon'ble Chief Justice of India**
3. **Hon'ble Home Minister of India**
4. **Director, C.B.I., New Delhi**
5. **Central Vigilance Commission, New Delhi**

Sub: **1. Direction to CBI to investigate the serious charges under Section 192, 167, 166, 201, 218, 219, 469, 466, 471, 474 r/w 120(B) & 34 of Indian Penal Code against Justice B.P.Collabwalla.**

2. Direction for enquiry as per "In- House-Procedure" for withdrawing all judicial work from Justice B.P.Collabawalla.

3. Direction to appropriate authority for initiating contempt Proceedings against B.P.Collabawalla by treating this Complaint as a petition in view of law laid down in Re: Justice C.S. Karnan (2017) 7 SCC 1.

1. Justice B. P. Colabawalla in the case of **Zainab Shaikh Vs. Labh Singh in N.O.M. No. 1515 of 2019 in Suit No. 695 of 2012** vide his order dated 4th July, 2019 took cognizance of Contempt against Adv. Vijay Kurle for asking recusal of Justice B.P.Colabawalla.

2. The said order is itself illegal and deliberate Contempt of Supreme Court on the part of Justice B. P. Collabawalla. The proofs showing deliberate abuse of power by Justice B.P Colabawalla are capulized as under;

 # CHARGE # 1. Don't know the basic procedures and acted in utter disregard and definance of law laid down by Constitution Bench of Supreme Court in **Baratkanta Mishra's case (1973) 1 SCC 446** liable for action under Contempt as per **Re: Justice C.S. Karnan (2017) 7 SCC 1:-**

The order dated 4th July, 2019 by Justice B.P. Collabawalla reads as under;

> ***"11.*** *Considering that both the aforesaid noticees have prima facie committed criminal contempt, the Registry, after issuance of the aforesaid Notices, shall place the same before the Bench hearing Criminal Contempt Matters as per the Regular Assignment for further orders and directions."*

In the said order dated 4th July, 2019 in in **N.O.M. No. 1515 of 2019 in Suit No. 695 of 2012,** Justice B. P. Colabawalla had taken a reference of subjudice Contempt proceedings against Adv. Vijay Kurle before Hon'ble Supreme Court in **'Re: Methews Nedumpara SMCP No. 01 of 2019.**

> ***"8.*** *I must also mention that this very Advocate has been indulging in these kind of malpractices even against other Judges of this Court as well as the Supreme Court of India. In fact, in Suo Motu Contempt Petition (Cri.) No.1 of 2019, the Hon'ble Supreme Court vide its order dated 27th March, 2019 has issued Notice of Contempt against this very Advocate (Shri Vijay Kurle) to explain as to why he should not be punished for Criminal Contempt of the Supreme Court of India.* ***The relevant portion of the Supreme Court order reads thus :-***
>
> *"**COURT NO. 5 SECTION XVII***
>
> ***S U P R E M E C O U R T O F I N D I A***
>
> ***RECORD OF PROCEEDINGS.***
>
> ***Suo Motu Contempt Petition (Crl) No. (s). 1/2019***

IN RE : MATHEWS NEDUMPARA

Date:- 27.03.2019 This matter was called on for hearing today

CORAM:HON'BLE MR JUSTICE ROHINTON FALI NARIMAN,

HON'BLE MR JUSTICE VINEET SARAN

For Petitioner(s) By Courts Motion

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

The Court came to the following conclusion, in terms of the signed reportable order:

"The punishment aspect of the contempt that was committed in the face of the Court stands disposed of."

Given the two complaints filed, it is clear that scandalous allegations have been made against the members of this Bench. We, therefore, issue notice of contempt to (1) Shri. Vijay Kurle; (2) Shri Rashid Khan Pathan; (3) Shri Nilesh Ojha and (4) Shri Mathews Nedumpara to explain as to why they should not be punished for criminal contempt of the Supreme Court of India, returnable within two weeks from today."

Above said order of Hon'ble Supreme Court was not part of the record of the case. Said order was taken by Justice Collabawalla at his own, without disclosing its source. In fact Judge is prohibited from using personal knowledge which is not the part of the record.

That, the abovesaid order of Hon'ble Supreme Court is relied by Justice Collabawalla to show the alleged earlier bad character of Adv. Vijay Kurle. Justice Collabawalla injudiciously wanted to project Adv. Vijay Kurle as an offender. Which is not permissible under our constitution. The word used by 'Justice Colabawalla' in his order dated 4th July, 2019 reads as under;

"If this was an isolated incident, I would have let off Mr. Kurle with a warnning"

3. It is highly illegal on the part of Justice Collabawalla to take reference of any subjudice contempt case to show the conduct of the lawyer. It is violative of Article 14 & 21 of the Constitution. It is Constitutional mandate that, no court can take reference of any pending case to infer any conduct of the party in contempt

proceedings.

Constitution Bench of Hon'ble Supreme Court in the case of **Baradkanta Mishra Vs. Registrar Of Orissa High Court (1974) 1 SCC 374** had set aside the judgments of High Court and ruled that, the provisions pending cases under Contempt cannot be taken note by the Court to draw any conclusion against the alleged contemnor.

It is ruled as under;

> ***"Contempt of Court Act, 19871 (70 of 1971)- Criminal contempt – Past acts of contempt not relevant and should not be taken in to consideration.***
>
> ***"59……On the facts, we agree that the spirit of defiance, extenuated partly by a sense of despair, is writ large in the writings of the appellant but wish to warn ourselves that his reported past violations should not prejudice a judicial appraisal of his alleged present criminal contempt. And the benefit of doubt, if any, belongs to the contemner in this jurisdiction."***

4. That, it is settled law that, any observation by the Court while taking cognizance of Contempt are only prima facie in nature and cannot be relied by High Court or any Court by drawing any inference against the alleged contemnor.

Hon'ble Supreme Court in **Manish Gupta Vs. Gurudas Roy AIR 1995 SC 1359 : (1995) 3 SCC 559** ruled as under;

> ***"CONTEMPT ON INFERENCE OF DISOBEDIENCE –*** *Merely because before the issuance of the corrected gradation list the High Court had already issued the rule on the contempt petition, an inference of intention of willful disobedience could not be drawn against the Department.*

5. Needless to mention here that, in all proceedings and in Contempt proceedings the alleged contemnor has a Constitutional protection of presumption of innocence and the pendency of any

case will not be a ground for any conclusion by any Judge. The Judges are barred from taking note of any subjudice case.

5.1. Three - Judge Bench in **Rajendra Wasnik Vs. State (2018) SCC OnLine SC 2799** it is ruled as under;

> ***"71.****The importance of a conviction as against a pending trial was emphasised in Mohd. Farooq Abdul Gafur v. State of Maharashtra37 wherein the* ***presumption of innocence was adverted to as a human right*** *and it was held in paragraph 178 of the Report:*
>
> *"178. In our opinion the trial court had wrongly rejected the fact that even though the accused had a criminal history, but there had been no criminal conviction against the said three accused. It had rejected the said argument on the ground that a conviction might not be possible in each and every criminal trial.* ***In our opinion unless a person is proven guilty, he should be presumed innocent****. Further, nothing has been brought on behalf of the State even after all these years, that the criminal trials that had been pending against the accused had resulted in their conviction. Unless the same is shown by the documents on records we would presume to the contrary.* ***Presumption of innocence is a human right. The learned trial Judge should also have presumed the same against all the three accused.*** *In our opinion the alleged criminal history of the accused had a major bearing on the imposition of the death sentence by the trial court on the three accused. That is why in our opinion he had erred in this respect." (Emphasis supplied by us)."*

5.2. Hon'ble Supreme Court in the case of **Satyabrata Biswas Vs. Kalyan Kumar Kisku (1994) 2 SCC 266** it is ruled as under;

> ***"Contempt of Court – Misuse of jurisdiction by Single Judge and Division Bench of High Court – The order cannot stand even for a moments scrutiny – Interference by Supreme Court Required – order of Division Bench set aside****.*

22.*When the removal of padlock was complained of in the appeal filed by the appellants herein, strangely delivery of possession was ordered!* ***The said order clearly betrays lack of understanding as to the scope of contempt jurisdiction and proceeds upon a total misappreciation of the facts. We are obliged to remark that both the learned Single Judge as well as the Division Bench had not kept themselves within the precincts of contempt jurisdiction. Instead peculiar orders have come to be passed totally alien to the issue and disregardful of the facts****. The orders of the learned Single Judge and that of the Division Bench cannot stand even a moment's scrutiny. Therefore, it is idle to contend that no interference is warranted under Article 136.*

5.3. In **State of Kerala Vs. Aboobacker ,2006 (3) KLJ 165** it is ruled as under;

"16.....Some of the witnesses such as P.Ws 22, 23, 24 and 34 examined by the prosecution were for the purpose of proving the previous bad character of the accused. In view of Section 54 of the Evidence Act it was not permissible for the prosecution to adduce any evidence in this regard nor was it permissible for the trial judge to allow such evidence to come on record.

32. *In paragraphs 87 and 88 of the judgment* ***the trial judge has considered the evidence of P.Ws 22 and 23 with regard to the previous bad character of the accused. It is not as if the judge was ignorant of the interdict in Sec. 54 of the Evidence Act as per which the previous bad character of the accused in a case of this nature is totally irrelevant. Such evidence should not have been allowed to go in. It was not only admitted in evidence but had also considerably influenced the trial Judge in her conclusions.***

35. The above extracts from the trial Courts'

judgment demonstrates the unpardonable lack of maturity, sobriety and moderation expected of a Sessions Judge. *While a puritanical approach of 'untouchability' towards the cause under trial and rank escapism from the the ground realities are eschewable heritage of the past, too much identification with the agonies of one of the parties to the lis before court is certainly not a befitting quality for a judge. It is indeed desirable that given the opportunity offered officially to remedy a social pathology one should find a judge at the service of the suffering humanity. But it should not also be forgotten that a judge who with an outburst of empathy towards the victim of a crime involves himself too much with the lachrymal scenes of social tragedies played before him in the court room, is sure to be mistaken as a partisan or biased arbiter. With all the dynamism and activist potential at his command the judge should be free from the syndrome of functional overstepping which, very often than not, is likely to be misunderstood as the exploits of a prejudiced mind. Although it is the substance rather than the form which really matters in every human enterprise, the facade of "appearance" is an illusion which we, in the larger fraternity of law, have unfortunately fostered. Justice should not only be done but should also appear to have been done. Every judge who has disciplined himself with this lofty ideal is sure to steer clear of an accusation of partisanship."*

6. Worth to mention here that, observation by Hon'ble Supreme Court in the said case which is relied by Justice B.P. Collabawalla, are itself proven to be wrong by Hon'ble Supreme Court itself vide its order dated 2nd September,2019.

In **Re: Vijay Kurle and Others 2019 SCC OnLine SC 1146** , Hon'ble Supreme Court vide it's order dated 2nd September 2019 discharged Adv. Mathews Nedumpara. It is observed by Hon'ble Supreme Court as under;

"***5.*** *Respondent No. 4, in his discharge application, has*

stated that he barely knows respondents no. 1 and 2 and has no concern with the communication sent by them. According to him, he is neither the author of this communication nor has he encouraged respondents no. 1 and 2 to send the same. ***At this stage there is no direct material to connect respondent no. 4 with the said communication.***

6. We, therefore, discharge Shri Mathews Nedumpara at this stage."

6.1. In abovesaid caseHon'ble Supreme Court is using the word 'alleged contemnor' for the rest 3 Respondents. The order dated 4th November, 2019 reads as under;

"Pursuant to order dated 30.09.2019, all the documents have been supplied to the alleged contemnors Nos. 1, 2 and 3. Alleged contemnor No. 2 has filed additional reply pursuant to the documents being supplied. Alleged contemnor Nos. 1 and 3 pray for and are granted three weeks' time to file additional reply, if any, after receipt of the documents."

6.2. Hence the reliance on said subjudice matter by Justice B.P. Colabawalla is itself sufficient to prove his immaturity, lack of basic knowledge of law and also ignorance of the law of contempt.

Justice Collabawalla is guilty of Contempt of law laid down by the of Constitution Bench of Hon'ble Supreme Court in **Baradkanta Mishra (1974) 1 SCC 374** *(Supra)*

6.3. Hon'ble Supreme Court 7- Judge Bench in **Re: C. S. Karnan (2017) 7 SCC 1** had ruled that, such High Court Judges should be punished and also their Judicial work be withdrawn.

*"**A)** High Court Judge disobeying Supreme Court direction and passing whimsical judicial order abusing process of court sentenced to six months imprisonment.*
His judicial work withdrawn.

B) *Even if petition is filed by a common man alleging contempt committed by a High Court Judge then Supreme Court is bound to examine these allegation."*

6.4. In **Superintendent of Central Excise Vs. Somabhai Ranchhodhbhai Patel (2001) 5 SCC 65** it is ruled that, the level of understanding of a Judge has great impact on the litigants and therefore strict action should be taken against such Judges.

It is 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- 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.

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."

6.5. In **Smt. Prabha Sharma Vs. Sunil Goyal and Ors. (2017) 11 SCC 77**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."

7. # CHARGE # 2:- <u>JUSTICE COLLABAWALLA DON'T KNOW BASIC RULE THAT JUDGE IS PROHIBITED FROM USING PERSONAL KNOWLEDGE AND ANY DOCUMENT WITHOUT DISCLOSINNG ITS SOURCE :-</u>

He is guilty of Section 219, 166, 167, 469, 471, 474 etc of IPC for passing order contrary to law and framing Court of record with inadmissible evidences to harm the reputation of a Lawyer.

7.1. That, the documents of order passed by Hon'ble Supreme Court in an unrelated case taken note by Justice B. P. Collabawalla was not the part of the record of the case and was taken on record by Justice B. P. Collabawalla from his personal knowledge which is prohibited for any Judge. The Ld. Judge did not disclosed the source of that information.

In **<u>Murat Lal Vs. Emperor, 1917 SCC OnLine Pat 1</u>** it is ruled as under;

<u>"A Judge cannot without giving evidence as a witness, import into a case, his knowledge of particular facts.</u>

The learned Sub-Deputy Magistrate acted erroneously in making this inspection. Certainly if he made the inspection, the law throws upon him the obligation of recording a minute or memorandum at once as part of the record in the case of what he had seen and how the facts presented themselves to him. A Judge cannot constitute himself a witness by inspecting the locus in quo, but local inspection by a Judge has the effect of converting him into something in the nature of a witness.

<u>An accused person must not be put at a disadvantage by any act of the Court, in that be may have the corresponding right of cross-examining : the person who has formed an opinion from what he has seen. Their Lordships of the Privy Council have laid down in very express terms that</u>

"it ought to be known, and their Lordships wish it to be distinctly understood, that a Judge cannot, without giving evidence as a witness, import into a case his own knowledge of particular facts."Hurpurshad v. Sheo Dyal 1876 SCC OnLine PC 12.

Now in this case the Sub-Deputy Magistrate did not record any minute of what he saw or what impression the inspection of the locus in quo created on his mind. Thus there is a well-grounded suspicion in the mind of the accused that the Sub-Deputy Magistrate has formed a decided and conclusive opinion from what he has seen at his inspection behind the backs of the parties, and, more especially affected by the conduct of the Sub-Deputy Magistrate. I believe the Sub-Deputy Magistrate has committed an error not intentionally, but more or less by accident due to want of proper care and caution; but the essence of justice is that it must be free from all taint or suspicion; and having regard to the action of the Sub Deputy Magistrate in making inspection of the locus in quo and failing to give due notice to the parties of his intention to view the disputed land and to make a proper record of what he saw there and what impression it made on his mind, I thinks it would not be in the interests of justice that he should farther try this case."

7.2. Hon'ble High Court in the matter of **Konda Sesha Reddy and others Vs. Muthyala China Pullaiah 1958 SCC OnLine AP 57**it is ruled as under ;

"15……It would indeed be a travesty of all known principles of justice, if Judges and Magistrates are allowed to use their knowledge gained otherwise than by the means allowed to them by law in judging the truth of a case. Here, even before the complainant was examined, the Magistrate admits that he had knowledge of the facts and was obviously using that knowledge. The learned

Sessions Judge was perfectly right in disapproving of the procedure."

7.3. In **Som MittalVs.Government of Karnataka** it is ruled as under;

"*Constitution of India, Art. 136, 141 – Court should refrain from travelling beyond and making observations alien to case"*

7.4. In **State of Kerala Vs. Aboobacker ,2006 (3) KLJ 165** it is ruled as under;

"It is really unfortunate that the trial Judge was more influenced by her personal predilections and other extraneous considerations than the proved circumstances in this case to justify the action by her on the accused. Most of the factors which influenced the Court below were irrelevant, having regard to the tests laid down by the Apex court.

A Judge cannot import into the case his own knowledge or belief of particular facts.

The sixth reason stated by the learned Judge also stems out of her extra legal perception. Such considerations should never enter the mind of a dispassionate repository of judicial power. A sentence has to suit not only the offence but also the offender. It should inter alia be commensurate with the manner of perpetration of the offence and should not therefore be unduly harsh or vindictive.

The above extracts from the trial Courts' judgment demonstrates the unpardonable lack of maturity, sobriety and moderation expected of a Sessions Judge. While a puritanical approach of 'untouchability' towards the cause under trial and rank escapism from the ground realities are eschewable heritage of the past, too much identification with the agonies of one of the parties to the lis before court is certainly not a befitting quality for a

judge. It is indeed desirable that given the opportunity offered officially to remedy a social pathology one should find a Judge at the service of the suffering humanity. But it should not also be forgotten that a Judge who with an outburst of empathy towards the victim of a crime involves himself too much with the lachrymal scenes of social tragedies played before him in the court room, is sure to be mistaken as a partisan or biased arbiter. With all the dynamism and activist potential at his command the Judge should be free from the syndrome of functional overstepping which, very often than not, is likely to be misunderstood as the exploits of a prejudiced mind. Although it is the substance rather than the form which really matters in every human enterprise, the facade of "appearance" is an illusion which we, in the larger fraternity of law, have unfortunately fostered. Justice should not only be done but should also appear to have been done. Every Judge who has disciplined himself with this lofty ideal is sure to steer clear of an accusation of partisanship.

Criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. *It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged.*

In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of the witnesses.

It must be remembered that criminal trial is meant for doing justice not only to the victim but also the accused and the Society at large.

Extreme penalty may be the most condign punishment for them. But a criminal court can do so only on proof before it according to law. Until such proof, the whole

case remains in the realm of allegations and accusations. Judges cannot act on such allegations or on the spicy versions supplied by the print or visual media. The temptation which a judge in his hermit-like existence should consciously resist is the populist media publicity for his deeds as a Judge. In the divine function of a Judge, there is no place for popularity. A judge who falls a prey to this weakness is sure to be guided by the heart rather than the head. A judge cannot be living in a world of fantasy while marshalling the evidence before him in the process of dispensation of justice in order to reconstruct a story different from the one propounded by the prosecution. The wealth of judicial experience gained by him should make him more and more informed, detached and objective rather than publicity-oriented.

The trial court as also the learned Judges of the Division Bench have animadverted upon the apathy or indifference which the police showed with respect to this case.

No judge with a sense of responsibility and seriousness could have conducted the trial in a grave crime in such a cavelier and careless manner as has been done by the learned Sessions Judge in this case. It is important to note that the accused standing in the dock before the presiding judge has the insulation (penetrable, no doubt) by way of the presumption of innocence in his favour during the trial. He is also entitled to the benefit of all reasonable doubts. For him the fate of the case may be a question of life and death. Hence it is all the more necessary for the trial Judge to conduct the trial in a fair and transparent manner giving no room for the accused to engender a fear that right from the very start of the trial he was presumed to be guilty rather than innocent and dealt with accordingly.

A copy of this judgment together with a copy of the paper book shall be forwarded to the Director, Kerala Judicial Academy to have a feedback of the performance of the officer concerned and to consider whether an intensive

and personalised training is warranted for the deficiencies and short comings in the impugned judgment as well as in the conduct of trial."

7.5. Hon'ble Supreme Court in **Shrirang Yadarao Waghmare Vs. State 2019 SCC OnLine SC 1237** it is ruled as under**;**

"10.** 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."

7.6. Hence it is clear that, Justice B.P. Collabawalla passed the order contrary to law with ulterior motive to harm the reputation of Adv. Vijay Kurle and therefore he is liable to be punished under section 219,167,166,etc of IPC.

Section **219** of Indian Penal Code 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 **167** of Indian Penal Code reads as under;

"167. Public servant framing an incorrect document with intent to cause injury.—*Whoever, being a public servant, and being, as 1[such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."*

Section **166** of Indian Penal Code reads as under;

"166. Public servant disobeying law, with intent to

cause injury to any person.—*Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both. Illustration A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section."*

8. #CHARGE 3 # PASSING AN ORDER IN A CASE WHERE HE IS DISQUALIFIED TO SIGN ANY ORDER AS HE HIMSELF WAS ACCUSED IN THE SAID CASE.

It is an offence under section 218 of IPC. It is also Contempt of Hon'ble Supreme Court judgments.

8.1. That, Justice B.P. Collabwalla took reference of the order dated 27th March, 2019 passed by Justice Rohinton F. Nariman's Bench, in SMCP (Crl.) No.01 of 2019**.[Reported in In Re: Methews Nedumpara 2019 SCC OnLine SC 824)]**

In the said order Hon'ble Supreme Court relied upon the letter dated 23rd March, 2019 sent by Mr.Kaiwan Kalyaniwalla of BILS who is close associate of Justice Collabawalla. The said letter is also co-signed by another self proclaimed agent of few Judges Mr. Milind Sathe of BBA.

The said letter is annexed to the above order.

In para of the said letter dated 23rd march, 2019 having reference of complaint against Justice Collabawalla by Adv. Vijay Kurle. Said para **3.13** reads as under;

"3.13. *The* ***Indian Bar Association also filed an application before Your Excellency****dated 23rd January, 2019 numbered as* ***PRSEC/E/2019/01530 against sitting Judges of the Bombay High Court being Hon'ble Mr. Justice K.K. Tated, Hon'ble Mr. Justice B.P. Colabawala and Hon'bie Mr. Justice N.J.***

Jamdar for having passed certain judicial orders. The said complaint was signed by Mr. Vijay Kurle. *The Bombay Bar Association responded to the said complaint pursuant to a Resolution of the Standing Committee and forwarded the same to Your Excellency's Secretariat, bringing to notice the correct factualperspective.*

A copy of the said complaint and the representation dated 29th January, 2019 made by the Bombay Bar Association are annexed at ***Annexure "11" and "12" hereto."***

8.2. Under these circumstances Justice B.P.Collabawalla was disqualified to sign any order related with that case as has been ruled by Hon'ble Supreme Court in the case of **Deepak Kumar Prahladka VS. Chief Justice Prabha Shanker Mishra (2004) 5 SCC 217.** It is ruled by Hon'ble Supreme Court as under;

"……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."

8.3. In **Re: Justice C.S.Karnan (2017) 7 SCC 1** 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."

8.4. Full Bench of Hon'ble Supreme Court in **Amicus Curiae Vs. Adv. Prashant Bhushan (2010) 7 SCC 592,** the Three – Judge Bench issued notice of contempt but Justice Kapadia did not signed the order as he himself was a party to the said case. It is observed as under;

"3. *On 6th November, 2009, when the said facts were placed before the Bench presided over by Hon'ble the Chief Justice, K.G. Balakrishnan, as His Lordship then was,* ***in which Justice Kapadia was also a member****, directions were given to issue notice and to post the matter before a three Judge Bench of which Justice Kapadia was not a member.* ***It should, however, be indicated that Justice Kapadia was not a party to the aforesaid order that was passed."***

8.5. In **Sukhdev Singh Sodhi VS. Chief Justice S. Teja Singh, 1954 SCR 454** it is ruled as under**;**

*"**23**. 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."*

It was further ruled that:

"All we say is that this must be left to the good sense of the judges themselves who, we are confident, will comport, 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."

8.6. Hon'ble Supreme Court in **State of Punjab Vs. Davinder Pal Singh Bhullar (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."

8.7. Recently, Supreme Court Bar Association **(S.C.B.A.)**, Supreme Court Advocate on Record Association **(S.C.A.O.R.A)** had condemned the act of Hon'ble CJI Ranjan Gogoi sitting in the Bench of a lady staffer in the case related with complaint against CJI Ranjan Gogoi **(himself).**

The Resolution passed by Supreme Court Bar Association (S.C.B.A.) dated **22ND APRIL, 2019** reads as under;

"***Resolution of Executive Committee of the Supreme Court Bar Association dated 22nd April, 2019***

The Executive Committee of the Supreme Court Bar Association in its emergent meeting has resolved that procedure adopted for conducting the Court proceedings on 20.04.2019, in the matter of allegations made by Ex-Employee of Supreme Court against the Hon'ble Chief Justice of India is in violation of procedure established by law as well as principle of natural justice.

The EC further resolves and requests the Hon'ble Full Court of the Hon'ble Supreme Court to take all such necessary steps as may be required in law in this regard.

The EC further resolves that without prejudice to any enquiry which may be initiated as above, it shall collect all the materials and facts with regard to the said allegations from Social Media, Electronic Media, Print Media and other available sources, which may be considered in its next meeting.

Sd/-

Vikrant Yadav

Hony. Secretary "

8.8. Hence it is clear that, Justice B.P. Collabwalla misused the

process of Court to settle his personal scores and also with ulterior motive to save himself from the anticipated litigation against himself. Such conduct of any Judge passing an order or creating an record of the proceeding to save himself is an offence under section 218 of IPC.

Section **218** of 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."*

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. "*

(I) Where it was proved that the accused's intention in making a false report was to save off the discovery of the previous fraud and save himself or the actual perpetrator of that fraud from legal punishment, it

was held that he was guilty of this offence,Girdhari Lal,(1886) 8 All 633.

(II) The section is concerned with bringing erring public servants to book for falsifying the public records in their charge. The essence of the offence under section 218 is intent to cause loss or injury to any public or person or thereby save any person from legal punishment or save any property from forfeiture or any other charge, **Biraja Prosad Rao Vs. Nagendra Nath, (1985) 1 Crimes 446 (Ori.)**

Actual commission of offence not necessary:-

(III) The actual guilt or innocence of the alleged offender is immaterial if the accused believes him guilty and intends to screen him, **Hurdut Surma, (1967) 8 WR (Cr.) 68**.

(IV) The question is not whether the accused will be able to accomplish the object he had in view, but whether he made the entries in question with the intention to cause or knowing it to be likely that he will thereby cause loss and injury. The fact that the accused conceived a foolish plan of injuring in retaliation of the disgrace inflicted upon him by his arrest is no ground for exculpating him from the offence, **Narapareddi Seshareddi, In Re, AIR 1938 Mad 595.**

(V) Where the accused increased the marks of particular persons for pecuniary benefits during the course of preparing final record for appointment as physical education teacher, it was held that the offence alleged is clearly made out, **Rakesh Kumar Chhabra Vs. State of H.P., 2012 CrLJ 354(HP)**

(VI) For the purpose of an offence punishable under section 218 the actual guilt or otherwise of the offender alleged as sought to be screened from punishment is immaterial. It is quite sufficient that the commission of a congnizable offence has been brought to the notice of the accused officially and that in order to screen the offender that accused prepared the record in a manner which he knew to be incorrect, **Moti Ram Vs. Emperor, AIR 1925 Lah 461.**

(VII) The Supreme Court has held that if a police officer has made a false entry in his diary and manipulated other records with a view to save the accused was subsequently acquitted of the offence cannot make it any the less an offence under this section, **Maulud Ahmad Vs. State of U.P.,(1964) 2 CrLJ 71 (SC).**

(VIII) **Framing of incorrect record** -Section 218. LP.C. is attracted when the public servant concerned whose official duty is to prepare or record incorrectly prepares the same. It is not material what mode is adopted for incorrect preparation of that record. Substitution of one leaf by another so as to omit a given entry from the page substituted is penal within the scope of second ingredient of section 218. Under Section 218. l.P.C. it is not the replacement or substitution of one page by another, which is culpable or penal but it is the incorrect preparation or framing of the record or writing, which apart from intension of causing loss for which the record is so prepared, makes the act penal. **Madanlal Vs Inderjit, AIR (1970) Punj 200.**

(IX) **Corruptly or maliciously committing any person for trial or confinement.** The foundation of an action for malicious prosecution lies in abuse of the process of Court by wrongfully setting the law in motion and it is designed to discourage the perversion of the machinery of justice for an improper purpose. **Shri Lakhan Lal Misra Vs Kashi Nath Dube, AIR 1960 MP 171.**

(X) Therefore the keeping of a person arrested on suspicion of his having committed an offence, in confinement even by a person who had legal authority to do so would be an offence under Section 220, if in the exercise of that authority a person kept another in confinement knowing that in so doing he was acting contrary to law. it is because confinement contrary to law exhibits malice in criminal law. **Afzalur Rahmman Vs Emperor, AIR 1943 FC 18.**

(XI) The words corruptly and maliciously in Section 220 are wide enough to cover confinement for the purpose of extortion. Where a Police Sub-Inspector wrongfully confines certain persons on charges of gambling in future and extorts money from them by putting them in fear of being challenged in Court upon offences which he knew to be false, the offence falls under Section 220 I.P.C. **Mansharam Gianchand Vs Employee 1942 Cri. LJ. 460.**

(XII) But compelling the victim to alight from a bus and taking him to a nearby street by accused amounts to wrongful restraint **Suryamoorathi Vs Govindswami AIR 1989 SC 1410.**

9. #CHARGE 4 # FRAUD ON POWER BY DELIBERATE IGNORING OF MATERIAL WITHIN KNOWLEDGE AND TAKING EXTRANEOUS MATERIAL IN TO CONSIDERATION:-

9.1. That, on earlier occasion Adv. Vijay Kurle had made complaint to Hon'ble CJI & Chief Justice of Hon'ble Bombay High Court against Justice **B.P. Collabawalla & Justice K.K. Tated** for taking action under provisions of IPC.

9.2. A Judicial order dated 25th January,2019 passed by Justice Collabawalla in this regard in the case between **Chandrashekhar Vs. Rohini Acharya2019 SCC OnLine Bom 104** which was argued by Adv. Vija yKurle. It is observed as under;

"5. *The main ground on which recall is sought is that the*

appellant was forced into giving the aforesaid undertaking. ***An application has also been made by the advocate for the appellant (and not appellant himself) to the Hon'ble the Chief Justice (on the administrative side) for having this matter transferred from this bench to another bench.*** *This application is dated 23.01.2019 and was filed in the Registry only today morning.* ***In order to enable the Hon'ble the Chief Justice to take decision on the application made by the Advocate for the appellant, we stand this matter over till a decision is taken by the Hon'ble the Chief Justice on the application filed by the advocate for appellant dated 23.01.2019.***

6. *We make it clear that we have not examined the merits of the Civil Application and the orders passed on 02.08.2018 and 13.08.2018 have not been stayed and continue to operate.*

7. *Parties are at liberty to apply after the decision of the Hon'ble the Chief Justice on the application dated 23.01.2019 filed by the advocate for the appellant.*

Sd/- ***Sd/-***

K.K. Tated ,J. **B.P. Collawalla. J**

This fact which was relevant for showing earlier request of recusal of Justice Collabwalla by Adv. Vijay Kurle was not referred in the order dated 4th July, 2019. But another order irrelevant and inadmissible in to case was taken in to consideration. This proves that, Justice B.P. Collabawalla was nursing grudge against Adv. Vijay Kurle and to settle his personal scores he misused the judicial process by issuing contempt notice and therefore he is guilty of 'Fraud on Power'.

9.3. Full Bench of Hon'ble Supreme Court **Vijay Shekhar Vs. Union of India (2004) 4 SCC 666** ruled as under;

"JUDGE PASSING AN ORDER BY IGNORING RELEVANT MATRIALS AND CONSIDERING EXTRANEOUS MATERIALS IS GUILTY OF 'FRAUD ON POWER:-

"9. *This Court in* ***Express Newspapers Pvt. Ltd. & Ors. v. Union of India & Ors. (AIR 1986 SC 872) at*** *para 118 has held thus :*

"Fraud on power voids the order if it is not exercised bona fide for the end design. *There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises* ***when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers.****The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in S. Pratap Singh v. State of Punjab, (1964) 4 SCR 733 : (AIR 1964 SC 733). A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an 'alien' purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order.The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in General Assembly of Free Church of Scotland v. Overtown, 1904 AC 515, 'that there is a condition implied in this as well as in other instruments which create powers, namely, that the power shall be used bona fide for the purpose for which they are conferred'. It was said by Warrngton, C.J. in Short v. Poole Corporation, (1926) 1 Ch 66 that :*

"No public body can be regarded as having

statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative."

In Lazarus Estates Ltd. V. Beasley, (1956) 2 QB 702 at Pp. 712-13 Lord Denning, LJ.said :

"No judgment of a Court, no order of Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

(emphasis supplied)

See also, in Lazarus case at p.722 per Lord Parker, C.J. :

"'Fraud' vitiates all transactions known to the law of however high a degree of solemnity."

All these three English decisions have been cited with approval by this Court in Pratap Singh's case."

***10.** Similar is the view taken by this Court in the case of **Ram Chandra Singh v. Savitri Devi and Ors**, **(2003) 8 SCC 319** wherein this Court speaking through one of us (Sinha, J.) held thus :*

*"Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter. **It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.** A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party*

makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata."

11. Thus, it is clear a fraudulent act even in judicial proceedings cannot be allowed to stand.

12. *In view of our finding that the complaint filed before the Court of Metropolitan Magistrate, Court No.10 at Ahmedabad in Criminal Case No.118 of 2004 dated 15.1.2004 is ex facie an act of fraud by a fictitious person, and an abuse of the process court, every and any action taken pursuant to the said complaint gets vitiated. Therefore, we think the complaint registered before the Metropolitan Magistrate, Court No.10 at Ahmedabad in Criminal Case No.118 of 2004 dated 15.1.2004 and all actions taken thereon including the issuance of non-bailable warrants is liable to be declared ab initio void, hence, liable to be set aside.*

13. *We, however, make it clear that the quashing of the abovesaid proceedings before the Metropolitan Magistrate, Court No.10, Ahmedabad would not in any way exonerate any of the parties to the above writ petition of charges levelled against them and the same will be considered independently and de hors the quashing this criminal proceedings."*

9.4. # MALICE IN LAW #

a) 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."*

b) 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.***

c) Section 220 of Indian Penal Code 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."*

10. # CHARGE 5 # ASKING RECUSAL OF A JUDGE CANNOT BE CONTEMPT AS RULED BY HON'BLE SUPREME COURT. THEREFORE COGNIZANCE OF CONTEMPT BY JUSTICE COLLABAWALLA IS AN OFFENCE UNDER SECTION 211, 220 OF IPC

10.1. Hon'ble Supreme Court in **P.K. Ghosh Vs. J.G. Rajput (1995) 3 SCC 744,** had ruled that, if any Judge instead of recusing from the case tries for initiation of Contempt

proceeding then the facet of rule of law will be eroded.

It is ruled as under;

> *" Contempt of Courts Act - Objection as to hearing of Contempt petition by a particular Judge - Failure to recuse himself is highly illegal - order vitiated -* ***The response given by B. J. Shethna, J. to Chief Justice of India indicated his disappointment that contempt proceedings were not initiated against the appellants for raising such an objection. The expression of this opinion by him is even more unfortunate.***
>
> *In the fact and circumstances of this case, we are* ***afraid that this facet of the rule of law has been eroded. We are satisfied that B. J. Shethna, J., in the facts and circumstances of this case, should have recused himself from hearing this contempt petition****, particularly when a specific objection to this effect was taken by the appellants in view of the respondent's case in the contempt petition wherein the impugned order came to be made in his favour****. In our opinion, the impugned order is vitiated for this reason alone.***
>
> *"10. A basic postulate of the rule of law is that 'justice should not only be done but it must also be seen to be done.' If there be a basis which cannot be treated as unreasonable for a litigant to expect that this matter should not be heard by a particular Judge and there is no compelling necessity, such as the absence of an alternative, it is appropriate that the learned Judge should recuse himself from the Bench hearing that matter. This step is required to be taken by the learned Judge not because he is likely to be influenced in any manner in doing justice in the cause, but because his hearing the matter is likely to give rise to a reasonable apprehension in the mind of the litigant that the mind of the learned Judge, may be subconsciously,*

has been influenced by some extraneous factor in making the decision, particularly if it happens to be in favour of the opposite party. Credibility in the functioning of the justice delivery system and the reasonable perception of the affected parties are relevant considerations to ensure the continuance of public confidence in the credibility and impartiality of the judiciary. This is necessary not only for doing justice but also for ensuring that justice is seen to be done."

10.2. Asking Recusal of a Judge is a right given to a Lawyer. Judges should not be hypersensitive to take it offensive and initiate Contempt proceedings. Either they recuse from hearing or reject the prayer but taking it as a Contempt is highly illegal. Recently Justice Arun Mishra decided the recusal request by Adv. Sham Diwan. The request was rejected but Constitution Bench did not find it as contempt. Earlier Constitution Bench decided the law of recusal.

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

A) CONTEMPT OF COURTS ACT, 1971 - SECTION 14 READ WITH ARTICLE 215 OF THE CONSTITUTION OF INDIA - ***Suo motu contempt against Advocates and parties for scandalous draft- Application filed by a party to the proceedings requesting a Judge to recuse himself from hearing the case on the ground that he is biased – Does not amount to contempt -***

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.

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.

A strong Judge will always uphold the law, and that is also the aim of advocacy, even though the Judge and the advocate may differ in their point of view. The advocate must not do anything which is calculated to obstruct, divert or corrupt the stream of justice.

198. The cardinal principle which determines the privileges and responsibilities of advocate in relation to the Court is that he is an officer of justice and friend of the Court. This is his primary position. A conduct, therefore, which is unworthy of him as an officer of justice cannot be justified by stating that he did it as the agent of his client. ***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.

201. The casualness and indifference with which some members practice the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole.

Hon'ble Apex Court in ***S. Mulgaokar, reported in MANU/SC/0067/1977 : AIR 1978 SC 727*** *has laid down the rules for guidance of the Judges. The first rule in this branch of contempt power is;*

" A wise economy of use by the Court of this branch of its jurisdiction. The Court should be willing to ignore, by a majestic liberalism, trifling and venial offenses - the dogs may bark, the caravan will pass. The court will not be prompted to act as a result of an easy irritability.

Secondly, to criticize the judge fairly, albeit fiercely, is no crime but a necessary right, twice blessed in a democracy. Free people are the ultimate guarantors of fearless justice. Such is the cornerstone of our Constitution; such is the touchstone of our Contempt power.

"We should not become hyper sensitive even where distortions and criticism oversteps the limits. We have to deflate vulgar denunciation by dignified bearing, condescending indifference and repudiation by judicial rectitude. ***THE BENEFIT OF DOUBT SHOULD BE GIVEN GENEROUSLY AGAINST THE JUDGE, .."***

Even though the provisions of the Code of Criminal

Procedure do not apply, yet, the degree of proof is the same. Benefit of reasonable doubt must go to the alleged contemnor. Contempt proceedings are summary proceedings. In a criminal case the accused has the benefit of presumption of innocence and an opportunity of demolishing the prosecution case without exposing himself to cross-examination. In cases of criminal contempt, the standard of proof has to be that of criminal case, i.e., charge has to be established beyond reasonable doubt.

***"91.** The law on the point of bias is fairly well settled. Lord Denning in the case of Metropolitan Properties Co. (FGC) Ltd., v. London Rent Assessment Panel Committee (1969) 1 QB 577 observed as under:*

"....in considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be nevertheless if right minded person would think that in the circumstances there was a real likelihood of bias on his part, then he should not sit. And if he does sit his decision cannot stand."

"The Court will not enquire whether he did in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence and confidence is destroyed when right-minded people go away thinking, 'the Judge was biased".

Frankfurter, J. in Public Utilities Commission of The District of Columbia v. Pollak, (1951) 343 US 451 at Pg. 466 has held thus:

"The judicial process demands that a Judge move within the framework of relevant legal rules and the court covenanted modes of though for ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case. There is a good deal of shallow talk that the judicial robe does not change the man within it. It does. The fact is that on the whole, Judges do lay aside private views in discharging their judicial functions. This achieved through training, professional habits, self-discipline and that fortunate alchemy by which men are loyal to the obligation with which they are entrusted. But it is also true reason cannot control the subconscious influence of feelings of which it is unaware. When there is ground for believing that such unconscious feelings may operate in the ultimate judgment or may not unfairly lead others to believe they are operating, Judges recuse themselves. They do not sit in judgment.

The Apex Court in the case of Mank Lal v. Dr. Prem Chand Singhvi & Others reported in MANU/SC/0001/1957 : AIR 1957 SC 425, explained the meaning of the word 'bias' as under:

"4. It is well settled that every member of a tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final

decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.

In dealing with cases of bias attributed to members constituting tribunals, it is necessary to make a distinction between pecuniary interest and prejudice so attributed. It is obvious that pecuniary interest however small it may be in a subject- matter of the proceedings, would wholly disqualify a member from acting as a judge. But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case. " The principle", says Halsbury, "nemo debet case judex in causaproprta sua precludes a justice, who is interested in the subject matter of a dispute, from acting as a justice therein". In our opinion, there is and can be no doubt about the validity of this principle and we are prepared to assume that this principle applies not only to the justice as mentioned by Halsbury but to all tribunals and bodies which are given jurisdiction to determine judicially the rights of parties."

*The Apex Court in the case of **A.K. Kraipak & Others v. Union of India and Others reported in MANU/SC/0427/1969 : AIR 1970 SC 150**, held as under:*

"The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned

Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct."

Again in the case of Bhajanlal, Chief Minister, Haryana v. Jindal Strips Limited & Others reported in MANU/SC/0836/1994 : (1994) 6 SCC 19, dealing with 'bias' the Supreme Court has held as under:

"Bias is the second limb of natural justice. Prima facie no one should be a Judge in what is to be regarded as 'sua cause', 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."

"10. A basic postulate of the rule of law is that 'justice should not only be done but it must also be seen to be done.' If there be a basis which cannot be treated as unreasonable for a litigant to expect that this matter should not be heard by a particular Judge and there is no compelling necessity, such as the absence of an alternative, it is appropriate that the learned Judge should recuse himself from the Bench hearing that matter. This step is required to be taken by the learned Judge not because he is likely to be influenced in any manner in doing justice in the cause, but because his hearing the matter is likely to give rise to a reasonable apprehension in the mind of the litigant that the mind of the learned Judge, may be subconsciously, has been influenced by some extraneous factor in making the decision, particularly if it happens to be in favour of the opposite party. Credibility in the

functioning of the justice delivery system and the reasonable perception of the affected parties are relevant considerations to ensure the continuance of public confidence in the credibility and impartiality of the judiciary. This is necessary not only for doing justice but also for ensuring that justice is seen to be done."

The Supreme Court in the case of Chetak Constructions Ltd. v. Om Prakash reported in MANU/SC/0294/1998 : (1998) 4 SCC 577, held as under:

"17. In the course of the impugned "reference", the learned single Judge has also suggested that contempt proceedings be initiated against some of the lawyers who appeared before him besides the appellant. On the basis of what we have noticed above, we find to cause to have been made out to institute contempt proceedings, as suggested. We may notice here that even on an earlier occasion the learned single Judge (Vyas, J.,) had in the same appeal (Misc. Appeal No. 143 of 1994) made a reference to this Court for taking action against Shri Girish Desai, Senior Advocate, representing the appellant besides his instructing counsel and the company secretary of the appellant under the Contempt of Courts Act. On 12.2.96, this Court declined to proceed against them for contempt of Court. Contempt of Court jurisdiction is a special jurisdiction. It has to be used cautiously and exercised sparingly. It must be used to uphold the dignity of the Courts and the majesty of law and to keep the administration of justice unpolluted, where the facts and circumstances so justify. "The corner stone of the contempt law is the accommodation of two constitutional values - the right of free speech and the right to independent justice. The ignition of contempt action should be substantial and mala fide

interference with fearless judicial action, not fair comment or trivial reflections on the judicial process and personnel". ***Long long ago in Queen v. Grey, (1900) 2 QB 36 at 40) it was said that Judges and Courts are alike open to criticism and if reasonable argument is offered against any judicial act as contrary to law or to the public good, no Court could or would treat it as contempt of Court." Therefore, contempt jurisdiction has to be exercised with scrupulous care and caution, restraint and circumspection. Recourse to this jurisdiction, must be had whenever it is found that something has been done which tends to effect the administration of justice or which tends to impede its course or tends to shake public confidence in the majesty of law and to preserve and maintain the dignity of the Court and the like situations. "The respect for judiciary must rest on a more surer foundation than recourse to contempt jurisdiction." We have given our careful consideration to the facts and circumstances of the case but are not persuaded to initiate contempt proceedings as suggested by the learned Single Judge either against the lawyers or the appellant for their "action" in making request to the learned Judge or recuse himself from the case. The reference to that extent is also declined.***

This Court after referring to the aforesaid judgments in the case of M/s. National Technological Institutions (NTI) Housing Co-operative Society Ltd., and Others v. The Principal Secretary to The Government of Karnataka, Revenue Department and Others reported in MANU/KA/1586/2012 : ILR 2012 KAR 3431, at paragraph 39, held as under:

"39. It is of the essence of judicial decisions and judicial administration that judges should act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a Judge might have operated against him in the final decision of the tribunal. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. A mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. The concept of natural justice has undergone a great deal of change in recent years. In the past, it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (Nemo debet case judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years, many more subsidiary rules came to be added to the rules of natural justice. The purpose of the rules of natural justice is to prevent miscarriage of justice. Arriving at a just decision is the aim of judicial enquiries. The rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a

Court that some principle of natural justice had been contravened, the Court should decide whether the observance of that rule was necessary for a just decision on the facts of that case."

Bias may be generally defined as partiality or preference. Frank J., in Linahan, Re (1943) 138 F 2nd 650, 652, observed thus:

"If however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the mind of the Judge, then no one has ever had a fair trial and no one ever will The human mind, even at infancy, is no blank piece of paper. We are born with predispositions and the processes of education, formal and informal, create attitudes which precede reasoning in particular instances and which, therefore, by definition, are prejudiced."

92. *Bias is a condition of mind which sways the judgment and renders the Judge unable to exercise impartiality in a particular case. Bias is likely to operate in a subtle manner. A prejudice against a party also amounts to bias. Reason cannot control the subconscious influence of feelings of which it is unaware. When there is ground for believing that such subconscious feelings may operate in the ultimate judgment or may not unfairly lead others to believe they are operating, Judges ought to recuse themselves. It is difficult to prove the state of mind of a person. Therefore, what we have to see is whether there is reasonable ground for believing that a person was likely to have been biased. A mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias, we have to take into consideration human probabilities and ordinary course of human conduct. The Court looks at the impression which would be given to an ordinary prudent man. Even if he was as impartial as could*

be, nevertheless if right minded person would think that in the circumstances there was a real likelihood of bias on his part, then he should not sit. And if he does sit, his decision cannot stand. For appreciating a case of personal bias or bias to the subject matter, the test is whether there was a real likelihood of bias even though such bias, has not in fact taken place. A real likelihood of bias presupposes at least substantial possibility of bias. The Court will have to judge the matter as a reasonable man would judge of any matter in the conduct of his own business. Whether there was a real likelihood of bias, depends not upon what actually was done but upon what might appear to be done. Whether a reasonable intelligent man fully apprised of all circumstances would feel a serious apprehension of bias. The test always is, and must be whether a litigant could reasonably apprehend that a bias attributable to a Judge might have operated against him in the final decision.

93. *Credibility in the functioning of the justice delivery system and the reasonable perception of the affected parties are relevant considerations to ensure the continuance of public confidence in the credibility and impartiality of the judiciary. This is necessary not only for doing justice but also for ensuring that justice is seen to be done. The initiation of contempt action should be only when there is substantial and mala fide interference with fearless judicial action, but not on fair comment or trivial reflections on the judicial process and personnel. The respect for judiciary must rest on a more surer foundation than recourse to contempt jurisdiction.*

94. *In the instant case, the necessity for filing the recusal application arose out of strong statements/observations made by the learned*

Judge, in open Court. It is reflected in his order as well as in the news paper publication. He has used words like 'blackmail', which have serious implications. The relevant portion of the order reads as under:--

"Considering the contents in the cover with the photographs, we are of the opinion that it is a black-mail tactics adopted by the persons who are involved to avoid this Bench and to scandalize Justice K.L. Manjunath and bring down the reputation of this Court".

95. *We are of the view that the word "blackmail" used in this context is inappropriate. Blackmail has been defined in the broad sense to mean compelling someone to act against their will for gaining or attempting to gain something of value or compelling another to act against such person's will by threatening to communicate accusations or statements about any persons that would subject such persons or any other person to public ridicule, contempt or degradation.*

96. *'Blackmail' is the use of threats to prevent another man from engaging in lawful occupation and writing libelous letters or letters that provoke breach of peace as well as use of intimidation for the purpose of collecting unpaid debt. It is a form of extortion, because the information is usually substantially true, it is for not revealing the information that is criminal but demand money to withhold it.*

97. *21st Century Dictionary gives the meaning of 'blackmail' as under:*

"to extort money, etc illegally from someone by threatening to reveal harmful information about them; to try to influence someone by using unfair

pressure or threats"

98. *Courts vary on interpreting what something of value includes; but it is not necessarily a money payment in all cases. Therefore, 'blackmail' presupposes that the information is usually substantially true having harmful implications. If it is said that somebody is blackmailing, then, the identity of the blackmailer should be usually known to the person who is blackmailed. The information which the blackmailer wants to expose should be true. If so exposed, it would be harmful to the blackmailed. From the material on record, when it is said that it is not known to the learned Judge who actually sent the cover with the aforesaid writing, the use of the said word has given rise to apprehension in the mind of the 1st respondent.*

116. *When such motives are attributed to their Counsel, even if the Counsel is not disturbed, one cannot expect the same equanimity on the part of the party who has engaged such a Senior Counsel. Fear lurks in their mind about the fate of their case, when the Judge is prejudiced against his Counsel and consequently they may apprehend that the said anger may be visited on the case. Such a situation is to be avoided for proper administration of justice and also to uphold the dignity and decorum of the Court.*

120. *After the order dated 15.09.2009, the High Court initiated suo moto contempt proceedings in compliance with the said order after obtaining the permission of the Hon'ble Chief Justice. When the matter was placed before the Bench consisting of Hon'ble Mr. Justice K. Sreedhar Rao and Hon'ble Mr. Justice Subhash B Adi. Hon'ble Justice Mr. K. Sreedhar Rao held that the conduct of A. 1 in filing the application for recusal cannot be construed as scandalous act, the language used in the affidavits*

is polite and courteous and no disparaging language is used in narrating the facts. The conduct of A. 1 in filing the recusal application and its contents appears to be bonafide. There is absolutely no material against A.1, A.3 to A.6 to hold them liable for contempt much less against A.2. Therefore he ordered for dropping of contempt proceedings against A. 1 to A.6."

10.4. In **Supreme Court Advocates-on-Record versus Union of India (2016) 5 SCC 808** it is ruled as under;

"In my respectful opinion, when an application is made for the recusal of a judge from hearing a case, the application is made to the concerned judge and not to the Bench as a whole. Therefore, my learned brother Justice Khehar is absolutely correct in stating that the decision is entirely his, and I respect his decision.

A complaint as to the qualification of a justice of the Supreme Court to take part in the decision of a cause cannot properly be addressed to the Court as a whole and it is the responsibility of each justice to determine for himself the propriety of withdrawing from a case.

Judge has to discharge his duties without fear or favour, affection or ill- will. Therefore, I am of the view that it is the constitutional duty, as reflected in one's oath, to be transparent and accountable, and hence, a Judge is required to indicate reasons for his recusal from a particular case.

The above principles are universal in application. Impartiality of a Judge is the sine qua non for the integrity institution. Transparency in procedure is one of the major factors constituting the integrity of the office of a Judge in conducting his duties and the functioning of the court. The litigants would

always like to know though they may not have a prescribed right to know, as to why a Judge has recused from hearing the case or despite request, has not recused to hear his case. Reasons are required to be indicated broadly. Of course, in case the disclosure of the reasons is likely to affect prejudicially any case or cause or interest of someone else, the Judge is free to state that on account of personal reasons which the Judge does not want to disclose, he has decided to recuse himself from hearing the case.<u>On the ground of him having conflicting interests.</u>

It is one of the settled principles of a civilised legal system that a Judge is required to be impartial. It is said that the hallmark of a democracy is the existence of an impartial Judge.

It all started with a latin maxim Nemo Judex in Re Sua which means literally – that no man shall be a judge in his own cause. There is another rule which requires a Judge to be impartial. The theoretical basis is explained by Thomas Hobbes in his Eleventh Law of Nature. He said

> *"If a man be trusted to judge between man and man, it is a precept of the law of Nature that he deal equally between them. For without that, the controversies of men cannot be determined but by war. He therefore, said that is partial in judgment doth what in him lies, to deter men from the use of judges and arbitrators; and consequently, <u>against the fundamental law of Nature, is the cause of war</u>."*

The expression recuse according to New Oxford English Dictionary means – (the act of a Judge) to excuse himself from a case because of possible conflict of interest for lack of impartiality.

R. Grant Hammond, Judicial Recusal: Principles, Process and Problems (Hart Publishing, 2009)

The House of Lords held that participation of Lord

Cottenham in the adjudicatory process was not justified. Though Lord Campbell observed:

> *"No one can suppose that Lord Cottenham could be, in the remotest degree, influenced by the interest he had in this concern: but, my Lords, it is of the last importance that the maxim that no man is to be a judge in his own cause be held sacred. And that is not to be confined to a cause in which he is a party, but applies to a cause in which he has an interest …. This will be a lesson to all inferior tribunals to take care not only that in their decrees they are not influenced by their personal interest, but to avoid the appearance of labouring under such an influence."*

In other words, where a Judge has a pecuniary interest, no further inquiry as to whether there was a "real danger" or "reasonable suspicion" of bias is required to be undertaken. But in other cases, such an inquiry is required and the relevant test is the "real danger" test.

> *"But in other cases, the inquiry is directed to the question whether there was such a degree of possibility of bias on the part of the tribunal that the court will not allow the decision to stand. Such a question may arise in a wide variety of circumstances. These include …. cases in which the member of the tribunal has an interest in the outcome of the proceedings, which falls short of a direct pecuniary interest. Such interests may vary widely in their nature, in their effect, and in their relevance to the subject matter of the proceedings; and there is no rule …. that the possession of such an interest automatically disqualifies the member of the tribunal from sitting. Each case falls to be considered on its own facts."*

The learned Judge examined various important cases on the subject and finally concluded:

"Finally, for the avoidance of doubt, I prefer to state the test in terms of real danger rather than real likelihood, to ensure that the court is thinking in terms of possibility rather than probability of bias. Accordingly, having ascertained the relevant circumstances, the court should ask itself whether, having regard to those circumstances, there was a real danger of bias on the part of the relevant member of the tribunal in question, in the sense that he might unfairly regard (or have unfairly regarded) with favour, or disfavour, the case of a party to the issue under consideration by him."

In substance, the Court held that in cases where the Judge has a pecuniary interest in the outcome of the proceedings, his disqualification is automatic. No further enquiry whether such an interest lead to a "real danger" or gave rise to a "reasonable suspicion" is necessary. In cases of other interest, the test to determine whether the Judge is disqualified to hear the case is the "real danger" test.

The Pinochet[105] case added one more category to the cases of automatic disqualification for a judge. Pinochet, a former Chilean dictator, was sought to be arrested and extradited from England for his conduct during his incumbency in office. The issue was whether Pinochet was entitled to immunity from such arrest or extradition. Amnesty International, a charitable organisation, participated in the said proceedings with the leave of the Court. The House of Lords held that Pinochet did not enjoy any such immunity. Subsequently, it came to light that Lord Hoffman, one of the members of the Board which heard the Pinochet case, was a Director and Chairman of a company (known as A.I.C.L.) which was closely linked with Amnesty International. An application was made to the

House of Lords to set aside the earlier judgment on the ground of bias on the part of Lord Hoffman.

23. Lord Wilkinson summarised the principles on which a Judge is disqualified to hear a case. As per Lord Wilkinson -

> *"The fundamental principle is that a man may not be a judge in his own cause. This principle, as developed by the courts, has two very similar but not identical implications. First it may be applied literally: if a judge is in fact a party to the litigation or has a financial or proprietary interest in its outcome then he is indeed sitting as a judge in his own cause. In that case, the mere fact that he is a party to the action or has a financial or proprietary interest in its outcome is sufficient to cause his automatic disqualification. The second application of the principle is where a judge is not a party to the suit and does not have a financial interest in its outcome, but in some other way his conduct or behaviour may give rise to a suspicion that he is not impartial, for example because of his friendship with a party. This second type of case is not strictly speaking an application of the principle that a man must not be judge in his own cause, since the judge will not normally be himself benefiting, but providing a benefit for another by failing to be impartial.*
>
> *In my judgment, this case falls within the first category of case, viz. where the judge is disqualified because he is a judge in his own cause. In such a case, once it is shown that the judge is himself a party to the cause, or has a relevant interest in its subject matter, he is disqualified without any investigation into whether there was a likelihood or suspicion of bias. The mere fact of his interest is sufficient to disqualify him unless he has*

made sufficient disclosure."

And framed the question;

> *"….the question then arises whether, in non-financial litigation, anything other than a financial or proprietary interest in the outcome is sufficient automatically to disqualify a man from sitting as judge in the cause."*

He concluded that,

> *"….the matter at issue does not relate to money or economic advantage but is concerned with the promotion of the cause, the rationale disqualifying a judge applies just as much if the judge's decision will lead to the promotion of a cause in which the judge is involved together with one of the parties"*

Lord Wilkinson opined that

> *even though a judge may not have financial interest in the outcome of a case, but in some other way his conduct or behaviour may give rise to a suspicion that he is not impartial…*

and held that:

> *"…If the absolute impartiality of the judiciary is to be maintained, there must be a rule which automatically disqualifies a judge who is involved, whether personally or as a director of a company, in promoting the same causes in the same organisation as is a party to the suit. There is no room for fine distinctions…"*

If a Judge has a financial interest in the outcome of a case, he is automatically disqualified from hearing the case.

In cases where the interest of the Judge in the case is other than financial, then the disqualification is not automatic but an enquiry is required whether the existence of such an interest disqualifies the Judge tested in the light of either on the principle of "real danger" or "reasonable apprehension" of bias.

The Pinochet case added a new category i.e that the Judge is automatically disqualified from hearing a

case where the Judge is interested in a cause which is being promoted by one of the parties to the case.

The court normally insists that the objection shall be taken as soon as the party prejudiced knows the facts which entitle him to object. If, after he or his advisers know of the disqualification, they let the proceedings continue without protest, they are held to have waived their objection and the determination cannot be challenged.

In our opinion, the implication of the above principle is that only a party who has suffered or likely to suffer an adverse adjudication because of the possibility of bias on the part of the adjudicator can raise the objection.

The argument of Shri Nariman, if accepted would render all the Judges of this Court disqualified from hearing the present controversy. A result not legally permitted by the "doctrine of necessity".

Not for advocating any principle of law, but for laying down certain principles of conduct.

It is not as if the prayer made by Mr. Mathews J. Nedumpara, was inconsequential.

They were unequivocal in their protestation.

The issue of recusal may be looked at slightly differently apart from the legal nuance. What would happen if, in a Bench of five judges, an application is moved for the recusal of Judge A and after hearing the application Judge A decides to recuse from the case but the other four judges disagree and express the opinion that there is no justifiable reason for Judge A to recuse from the hearing? Can Judge A be compelled to hear the case even though he/she is desirous of recusing from the hearing? It is to get over such a difficult situation that the application for recusal is actually to an individual judge and not the Bench as a whole.

Called upon to discharge the duties of the Office without fear or favour, affection or ill-will, it is only desirable, if not proper, that a Judge, for any

unavoidable reason like some pecuniary interest, affinity or adversity with the parties in the case, direct or indirect interest in the outcome of the litigation, family directly involved in litigation on the same issue elsewhere, the Judge being aware that he or someone in his immediate family has an interest, financial or otherwise that could have a substantial bearing as a consequence of the decision in the litigation, etc., to recuse himself from the adjudication of a particular matter. No doubt, these examples are not exhaustive.

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

A judge shall perform his or her judicial duties without favour, bias or prejudice.

A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.

A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially.

Such proceedings include, but are not limited to, instances wherethe judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

the judge previously served as a lawyer or was a material witness in the matter in controversy; or

the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice."

The simple question is, whether the adjudication by the Judge concerned, would cause a reasonable doubt in the mind of a reasonably informed litigant and fair-minded public as to his impartiality. Being an institution whose hallmark is transparency, it is only proper that the Judge discharging high and noble duties, at least broadly indicate the reasons for recusing from the case so that the litigants or the well- meaning public may not entertain any misunderstanding that the recusal was for altogether irrelevant reasons like the cases being very old, involving detailed consideration, decision on several questions of law, a situation where the Judge is not happy with the roster, a Judge getting unduly sensitive about the public perception of his image, Judge wanting not to cause displeasure to anybody, Judge always wanting not to decide any sensitive or controversial issues, etc. Once reasons for recusal are indicated, there will not be any room for attributing any motive for the recusal. To put it differently, it is part of his duty to be accountable to the Constitution by upholding it without fear or favour, affection or ill- will. Therefore, I am of the

view that it is the constitutional duty, as reflected in one's oath, to be transparent and accountable, and hence, a Judge is required to indicate reasons for his recusal from a particular case. This would help to curb the tendency for forum shopping.

In Public Utilities Commission of District of Columbia et al. v. Pollak et al.[706], the Supreme Court of United States dealt with a question whether in the District of Columbia, the Constitution of the United States precludes a street railway company from receiving and amplifying radio programmes through loudspeakers in its passenger vehicles. Justice Frankfurter was always averse to the practice and he was of the view that it is not proper. His personal philosophy and his stand on the course apparently, were known to the people. Even otherwise, he was convinced of his strong position on this issue. Therefore, stating so, he recused from participating in the case. To quote his words,

> *"The judicial process demands that a judge move within the framework of relevant legal rules and the covenanted modes of thought for ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case. There is a good deal of shallow talk that the judicial robe does not change the man within it. It does. The fact is that on the whole judges do lay aside private views in discharging their judicial functions. This is achieved through training, professional habits, self- discipline and that fortunate alchemy by which men are loyal to the obligation with which they are entrusted. But it is also true that reason cannot control the subconscious influence of feelings of which it is unaware. When there is ground for believing that such unconscious feelings may operate in the ultimate judgment, or may not unfairly lead others to believe they are*

operating, judges recuse themselves. They do not sit in judgment. They do this for a variety of reasons. The guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact.

This case for me presents such a situation. My feelings are so strongly engaged as a victim of the practice in controversy that I had better not participate in judicial judgment upon it. I am explicit as to the reason for my non-participation in this case because I have for some time been of the view that it is desirable to state why one takes himself out of a case."

According to Justice Mathew in S. Parthasarathi v. State of A.P.[707], in case, the right-minded persons entertain a feeling that there is any likelihood of bias on the part of the Judge, he must recuse. Mere possibility of such a feeling is not enough. There must exist circumstances where a reasonable and fair-minded man would think it probably or likely that the Judge would be prejudiced against a litigant.

If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision [see per Lord Denning, H.R. in (Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon and Others, etc. [(1968) 3 WLR 694 at 707]). We should not, however, be understood to deny that the Court might with greater propriety apply the "reasonable suspicion" test in criminal or in proceedings analogous to criminal proceedings."

The Constitutional Court of South Africa in The President of the Republic of South Africa etc. v. South African Rugby Football Union etc.[708], has made two very relevant observations in this regard:

"Although it is important that justice must be

seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour."

"It needs to be said loudly and clearly that the ground of disqualification is a reasonable apprehension that the judicial officer will not decide the case impartially or without prejudice, rather than that he will decide the case adversely to one party."

Ultimately, the question is whether a fair-minded and reasonably informed person, on correct facts, would reasonably entertain a doubt on the impartiality of the Judge. The reasonableness of the apprehension must be assessed in the light of the oath of Office he has taken as a Judge to administer justice without fear or favour, affection or ill-will and his ability to carry out the oath by reason of his training and experience whereby he is in a position to disabuse his mind of any irrelevant personal belief or pre-disposition or unwarranted apprehensions of his image in public or difficulty in deciding a controversial issue particularly when the same is highly sensitive."

10.5. <u>FRIVOLOUS CHARGE OF CONTEMPT IS AN OFFENCE UNDER SECTION 211, 220 OF IPC</u>

Full Bench of Hon'ble Supreme Court in the case of **<u>Hari Das &Another Vs. State AIR 1964 SC 1773: (1964) 2 Cri.L.J 737</u>** 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."

10.6. 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.*

10.7. Noor Mohamed @ Mohd. Shah R. Patel Vs. Nadirshah Ismailshah Patel &Anr., 2004 ALL MR (CRI.) 42 , it was held that;

"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. ”

10.8. In **Sita Ram Chandu LallVs. Malkit SinghMANU/PH/0113/1955,** it is ruled as under;

“***IPC SECTION 220- UNLAWFUL PROCEEDING TO PUT PRESSURE ON ACCUSED :-****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.

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

*"**SECTION 220 OF IPC :- PROCEEDING CONTRARY TO LAW OR FOR ULTERIOR PURPOSES IS OFFENCE UNDER SECTION 220 OF IPC:***

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."

11. #CHARGE 6# <u>DONT KNOW THE PROCEDURES OF CONTEMPT OF COURT'S ACT,1971 :-</u>

It is a ground for his removal from the post of a Judge**:-**

11.1. That, as per the order passed by Justice B.P.Collabwalla on 4th July,2019 it is his observation that, the conduct of Mr.Vijay Kurle by asking recusal of Justice B.P.Collabwalla is interference in the proceedings.

The relevant para of the order dated 4th July, 2019 reads as under;

***"11.** Considering that both the aforesaid noticees have prima facie committed criminal contempt, the Registry, after issuance of the aforesaid Notices, shall place the same before the Bench hearing Criminal Contempt Matters as per the Regular Assignment for further orders and directions."*

If for the sake of arguments, the abovesaid conclusion (though unlawful) are accepted to be correct then the procedure to be followed in such cases is as per section 14 of Contempt of Courts Act to take cognizance on the spot.

In **<u>High Court of Karnataka, Rep. by Registrar General Vs. Sri Jai Chaitanya Dasa @ Jayanarayana K. 2015 SCC OnLine Kar 549</u>** it is ruled as under;

***"72.** In the instance case, the contempt alleged against A. 1 is the words used in the affidavit filed in support of the application for recusal. As the said application was presented before the Court and that affidavit contained the words accusing bias of Hon'ble Mr. Justice K.L. Manjunath, it is alleged that it amounts to committing contempt in the face of the High Court. If the Judges on entertaining the said application felt as such, A. 1 should have been detained in custody and pending determination of*

the charges, he could have been released him on bail as provided in sub-Section (4) of Section 14 of the Act. Thereafter inform him in writing, of the contempt with which he is charged and afford him an opportunity to make his defence to the charge. Then they should have taken such evidence as may be necessary or as may be offered by A. 1. After hearing the matter, they could have decided whether the charge is proved or not and accordingly punished A. 1 or discharge him. Admittedly, the Court did not follow this procedure."

Since the Respondent was an advocate therefore it was not necessary to detain him. [**Suo Motu Vs. Adv. C.K. Mohana 2016 SCC OnLine Ker 21105**]

But other procedure under Section 14 of Contempt of Courts Act has to be followed strictly.

But if cognizance is not taken on the spot, then passing an order after 20 days and taking Suo-Moto cognizance is barred. The only remedy for the Judge is to make request to Chief Justice for taking cognizance under section 15 of the Act. The Judge at his own cannot take cognizance under section 15 of Contempt of Court's Act.

In **Smt. Manisha Mukherjee Vs. Asoke Chatterjee , 1985 CRI. L. J. 1224**, Division Bench observed as under;

*"**Contempt of Courts Act (70 of 1971), S.14, S.15 – Request for recusal/ transfer -** Two different procedures have been prescribed for conduct amounting to contempt indulged in two broadly different circumstances. - S.15 excludes from its ambit the cases covered by S.14 - two sections are mutually exclusive and apply to two different types of cases, otherwise there was no necessity for prescribing two different procedures for two different types of cases under the Act.*

*As per procedure of Sec. 14, **allegation is to be made soon after the conduct has been indulged in before the offender has left the***

precincts of the Court.

But if the offender had left the precincts of the Court and away from the Court then allegations may be made under S.15 of the Act within a reasonable time after the impugned conduct was indulged in; and at the time of making the allegation the offender may be away from the Court for which he is to be personally served with notice under S.17 of the Act

Contemner alleging no confidence in Division Bench *in the presence and hearing of the High Court the court has to follow the procedure laid down in S.14 where* ***the person to be proceeded against is required to be detained in custody, informed of the charge, and he is to take his defence immediately. The implication of the above is that the allegation is to be made soon after the conduct has been indulged in before the offender has left the precincts of the Court. But allegations may be made under S.15 of the Act within a reasonable time after the impugned conduct was indulged in; and at the time of making the allegation the offender may be away from the Court for which he is to be personally served with notice under S.17 of the Act.***

Two different procedures have been prescribed for conduct amounting to contempt indulged in two broadly different circumstances. When the offending conduct has been indulged in the presence or hearing of the Supreme Court or High Court, the court will follow the procedure laid down in S.14. In all other cases, that is to say, when offending conduct was resorted to at places outside the presence or hearing of the Supreme Court or High court, the procedure prescribed by S.15 is to be followed. S.14 occurs first and S.15 coming subsequently expressly mentions "In cases of

criminal contempt, other than criminal contempt referred to in S.14". S.15 thus excludes from its ambit the cases covered by S.14. So the conclusion is unavoidable that the two sections are mutually exclusive and apply to two different types of cases, otherwise there was no necessity for prescribing two different procedures for two different types of cases under the Act."

12. # CHARGE 7 # VIOLATION OF CIONSTITUTIONAL SAFEGUARD:-

12.1. As per rule 4 of the Bombay High Court the cases under section 14 of the Contempt has to be heard by the same Judge before whom the contempt is committed.

In **Suo Motu (Court on it own Motion Vs. Satish Uke 2018 SCC Online Bom 16540** it is ruled as under;

"3. *Provisions of Rule 5 are very clear and unambiguous and the course provided by Rule 5 will have to be adopted in case of the contempt of Court other than the contempt referred to in sub rule (1) of Rule 4 of the Rules to Regulate Proceedings for Contempt under Article 215 of the Constitution of India and the Contempt of Courts Act, 1971 under Chapter XXXIV of the Bombay High Court Appellate Side Rules, 1960. Rule 4(1) reads as follows:*

"4 (1) Where Contempt of Court is committed in view or presence or hearing of Court, the contemnor may be punished by the Court before which contempt is committed either forthwith or on such date as may be appointed by the Court in that behalf."

4. *As, according to us, the acts which prima-facie constitute criminal contempt, are committed during the hearing of Contempt Petition No. 7 of 2016 before this Court, cognizance of Contempt Petition No. 6 of 2018 will have to be taken by this Bench."*

12.2. Hon'ble Supreme Court in a similar case in the matter between **Mohd. Zahir Khan Vs. Vijay Singh & Ors. AIR 1992 SC 642** had made it clear that, **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;

> ***"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."*

12.3 If the Contempt is committed before a single Judge then the case should be transferred to another Single Judge.

This can be done by placing the matter before Chief Justice of the Hon'ble High Court.

In **Fadiah Saad Al-Abduyllah Al-Sabah Vs. Sanjay Mishrimal Punamiya 2015 (1) BomCR 842** it is observed as under;

> ***"6.*** *The advocate of defendant No. 1/contemnor No. 1 has also tendered a separate affidavit claiming to be tried by another judge of this Court under Section 14(2) of the Contempt of Courts Act.*
>
> ***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."

In this case the matter was transferred from Justice Roshan Dalvi to Single Judge (Justice Gautam Patel).

12.4. But Justice B.P. Collabawalla adopted a different procedure unknown to Contempt of Court's Act. He directed Registry at his own. Relevant para reads as under;

> ***"11.*** *Considering that both the aforesaid noticees have prima facie committed criminal contempt, the Registry, after issuance of the aforesaid Notices, shall place the same before the Bench hearing Criminal Contempt Matters as per the Regular Assignment for further orders and directions."*

12.5. This is highly illegal. Judge cannot draw any such jurisdiction which is not conferred by the statute.

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

> ***"Defective Notice –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.*** *The learned Senior counsel has relied upon* ***Chandra Kishore Jha vs. Mahavir Prasad and Others*** *reported in* ***(1999) 8 SCC 266****, to contend 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. In* ***Chimanlal Vs. Mishrilal,*** *reported in* ***(1985) 1 SCC 14****, it was pointed out that Hon'ble Supreme Court has held that 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. 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."*

12.6. Even Chief Justice cannot assign any case to any Judge against High Court rules:-

Hon'ble Supreme Court in the case of **Pandurang 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"***

In **Sudakshina Ghosh Vs. Arunangshu Chakraborty (Uday) 2008 SCC OnLine Cal 34** that, even Chief Justice cannot act against the rules framed by the Court.

It is ruled as under;

> ***"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."***

12.7. The order passed by Justice B.P. Collabawalla is also illegal on the ground that it curtails the right of appeal to Division Bench as mentioned in Section 19 of the Contempt of Court's Act, 1971. That, if the matter was tried before another Single Judge then the alleged contemnor will get the right to challenge any order before Division Bench. Section 19 of Contempt of Court's Act, 1971 reads as under;

> *"**19.** Appeals.—*
>
> *(1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its*

jurisdiction to punish for contempt— —(1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt—"

(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court: Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court."

But Justice Collabawalla either deliberately or out of lack of knowledge or due to his incapacity to understand the provisions of law directed registry to place the matter before Bench hearing Criminal Contempt matters and the registry placed the matter before Division Bench.

Due to such act of wrongly placing the matter before Division Bench instead of placing before a Single Judge, one forum of Appeal available to Adv. Vijay Kurle is lost. If it was placed before a Single Judge then Adv. Kurle is having one appellate forum before Division Bench of Bombay High Court and another remedy of appeal before Hon'ble Supreme Court. [**Satyabrata Biswas and Ors. Vs. Kalyan Kumar Kisku and Ors. (1994) 2 SCC 266**] This is violation of Article 14 and 21 of the Constitution.

In a similar case in **A.R. Antulay vs R.S. Nayak & Anr (1988) 2 SCC 602** Hon'ble Supreme Court (7 - Judge Bench) ruled as under;

"Constitution of India – Articles 134, 136 and 137 – Directions of a Bench (of five Judges) of Supreme Court given suo motu in violation of fundamental rights and principles of natural justice and per incuriam were without jurisdiction and nullity- Because of such wrong order deprived the appellant certain rights of Appeal and revision – Such directions even if subsequently questioned in another appeal instead of in a review petition under Article 137, can be set aside by another Bench(of seven judges in this case) of the Court ex

debito justitiae in excise of its inherent power(Per majority, Venkatachaliah and Ranganathan, JJ. Contra)

Court gave a further direction [dated February 16, 1984: (1984) 2 SCC 183 at 243] withdrawing the special cases against the appellant pending in the Court of Special Judge and transferring the same to the High Court of Bombay with a request to the Chief Justice to assign the cases to a sitting Judge of the High Court for holding the trial from day to day.

The appellant challenged the order by filing a special leave petition (No. 2519 of 1986) before the Supreme Court wherein he questioned the High Court's jurisdiction to try the case in violation of Article 14 and 21 and the provision of Act 46 of 1952.

Allowing the present appeal by a majority of 5:2 to the effect that all proceedings in the matter subsequent to the directions of the Supreme Court on February 16, 1984 be set aside and quashed and that the trial proceed in accordance with law i.e under the Criminal Law Amendment Act, 1952 (see para 242),the Supreme Court."

The directions dated February 16, 1984 were void being in deprival of constitutional rights of the appellant and contrary to the express provisions of the Act of 1952, in violation of the principles of natural justice and without precedent in the background of the Act of 1952. ***The directions definitely deprived the appellant of certain rights of appeal and revision and his rights under the Constitution.***

"78. *The directions were in deprival of Constitutional rights and contrary to the express provisions of the Act of 1952. The directions were given in violation of the principles of natural justice.*

The directions were without precedent in the background of the Act of 1952. The directions definitely deprived the appellant of certain rights of appeal and revision and his rights under the Constitution."

12.8. In **Ramesh Maharaj Vs. The Attorney General (1978) 2 WLR 902** it is ruled that if any prejudice is caused due to wrong order by a Judge then state should pay compensation to the victim.

13. This is not a first time when Justice B.P. Colabawalla misused his power. **On earlier occasion also Justice Colabawalla committed serious criminal offences against administration of justice and he was also involved in extortion. We are having all documentary proofs, sting operation etc.**

A Criminal Writ Petition No. 4767/2014 with proofs and affidavits was filed by Adv. Nilesh C. Ojha for prosecution of Justice Colabawalla with prayer to commit him to custody. Which was withdrawn due to compromise arrived between them. But withdrawal of said Writ Petition does not mean that the offences with proofs mentioned in writ petition are not committed by Justice Colabawalla.

14. Now the serious question arises as to whether such person i.e. Justice B.P. Colabawalla who is not having basic knowledge of law and involved in serious criminal offences should be allowed to sit on the post of Judge of Highest Court in the state.

15. The corrupt practices of Justice Colabawalla are writ large in the case of **Surendra Mishra N.M. 44 of 2018 in Suit No 929 of 2013.**

In the abovesaid case the plaintiff Sanjay Patel of Khandelwal Engineering Company was found to have involved in filing bogus suit in the High Court to grab property worth Rs. 500 crores.

The enquiry report conducted by District & Sessions Judge, City Civil Court, Police& Tahsildar proved dishonesty of Sanjay Patel. But Justice Colabawalla in order to help the accused deliberately delayed the hearing of the case against accused. Even if the parties sought urgent hearing on the liberty granted by Hon'ble Supreme Court in

S.L.P. No.25211/2019 then also he (B.P. Collabawalla) avoided the hearing. This was done without any reason.

After many adjournment when matter came for hearing on 16.08.2019 Mr. B.P.Collabawalla deliberately and in utter disregard defiance of law laid down by Constitution Bench of Hon'ble Supreme Court adjourned the matter without mentioning the reason for adjournment in the order. The order dated 16.08.2019 in NOM No.44 of 2019 reads as under;

"Stand over to 29/08/2019"

This is not the true happening in the Court on the said date. In fact the records of the case was manipulated by Justice Collabawalla to help the accused. Earlier it was mentioned in the order that the matter will be kept on "High on Board". Later said part was removed from order. But the communication dated 16.08.2019 between advocate for parties proved the fraud played by Justice Collabawalla.

Furthermore, the case was adjourned on the request of junior of Adv. S.U.Kamdar who was representing accused and he wanted adjournment, though the Counsel for accused have no right to participate.

Hon'ble Bombay High Court in **Madangopal Jalan Vs. Partha Sarthy Sarkar 2018 SCC OnLine 3525** it is ruled as under;

> ***"A] The accused does not have any say in the process of accepting the application u/s 340 of Cr.P.C or directing the preliminary inquiry.***
> ***The legal position is settled by Supreme Court in Pritesh Vs. State of Maharashtra AIR 2002 SC 236 The said legal position is undisputed.***
> ***B] When falsity of allegation / submissions made by accused is investigated and report is submitted in any proceedings before Court and thereafter if the accused continues to repeat the same false and misleading version in different proceeding in the Court then the Court before whom the false statement is repeated has no option but to take cognizance of the application u/s. 340 of Cr.P.C made by***

the aggrieved person.

Law laid down in the case of <u>Fareed Qureshi Vs. State of Maharashtra 2018 SCC online Bom 960 followed.”</u>

That, Constitution Bench of Hon’ble Supreme Court in **<u>Iqbal Singh Marwah Vs. Meenakshi Marwah (2005) 4 SCC 370</u>** had ruled that,the application under section 340 of Cr.P.C. has to be decided with urgency and Civil Suit be decided after that.

15.1. In **<u>Harish Milani Vs. Union of India 2018 SCC OnLine Bom 2080</u>** it is ruled as under;

“Civil Application for taking action against the petitioner under Section 340 Cr.P.C. should be decided first and the writ petition can be decided on the basis of result of the enquiry under Section 340 Cr.P.C. –

Held, Apex Court in various cases and in the cases of i] Dalip Singh v. State of Uttar Pradesh [MANU/SC/1886/2009 : (2010} 2 SCC 114], ii] Rameshwari Devi v. Nirmala Devi [MANU/SC/0714/2011 : (2011) 8 SCC 249, and iii] Kishore Samrite v. State of Uttar Pradesh[MANU/SC/0892/2012 : (2013) 2 SCC 398], ruled that, a person whose case is based on falsehood has no right to approach the Court and he is not entitled to be heard on merits and he can be thrown out at any stage of the litigation. Therefore it would be just and proper to hear C.A. No. 2939 of 2017 filed by respondent under Section 340 Cr.P.C. before deciding the Writ Petition.”

But Justice B.P.Collabawalla put all the case laws to wind and acted in deliberate disregard and definance of the law laid down by Hon’ble Supreme Court & Hon’ble Bombay High Court to help accused and therefore he is liable for prosecution under section 218,219 Etc. of IPC.

15.2. Hon’ble Bombay High Court in the case of **<u>Anverkhan Mahamad khan Vs. Emperor 1921 SCC OnLineBom 126</u>** 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."

15.3. Hon'ble Supreme Court in **Govind Mehta Vs. State AIR 1971 SC 1708** had ruled that when any Judge do any interpolation in the order then said Judge is liable for prosecution.

It is ruled as under**;**

"Criminal P.C. (5 of 1898), S.195- I.P.C. 167, 465, 466, 471 - A Judge was alleged to have made some interpolation in the order sheet of a case in after sanction under section 197 by the state Govt. a complaint was filed in a competent court of Magistrate against the said Judge. Action is legal. The jurisdiction of the court, under S. 190, to take cognisance of a complaint, filed by the Public Prosecutor against a magistrate under S. 197, for offences under Ss. 167, 465, 466 and 471. Penal Code, for having interpolated in the order sheet, after an application for transfer of a case has been made, certain orders, containing the remark that the District magistrate was interfering with the proceeding in the case before him. in order to make it appear that they had been passed much earlier, and sending the order sheet as the true report in the case to the court dealing with the transfer application, is not barred by S. 195 or S. 476 of the Code.

The offences under Ss. 167 and 466 are not covered by S. 194 (1) (b) or (c) and therefore the power of the Court to take cognizance of the

offences is not barred on the ground of absence of a complaint against the accused by the court to which he was subordinate.

Even as regards the offence under S. 471, Penal Code the jurisdiction of the magistrate to take cognisance is not barred by S. 195 (1) (c) as although that offence is taken in by that section its essential requirement that the offence should have been committed by a party to any proceeding in court is not satisfied. The accused had no personal interest in the transfer applications and the mere fact that certain allegations had been made against the accused in the transfer application would not make him party to the proceeding before the court dealing with that application.

Section 476 of the Code also would not apply to the case in view of the fact that cls (b) and (c) of S.195 (1) do not apply. The fact that an application was also made by the complainant for filing a complaint under Sections 471 and 467, Penal Code would not attract the application of the section when the court gave its finding that the accused had committed forgery and interpolation in the order sheets only for the purpose of transferring the case and merely sent its order to the Government for taking action against the accused if it desired.

It is true that S. 465, Penal Code was mentioned in the complaint and since it deals with punishment for offence under S. 463, Penal Code which is taken in by Cl. (c) of S. 195 (1) of the Code, it may also be said to be covered by that clause. Even then that clause cannot operate in the case because the offence cannot be said to have been committed by the accused "as a party to any proceeding" in a court.”

15.4. Hon'ble Supreme Court in **Rabindra Nath SinghVs. Rajesh Ranjan @ Pappu Yadav (2010) 6 SCC 417** it is ruled that, the High Court Judge passing order against Supreme Court then such Judge is guilty of Contempt. It is ruled as under;

> ***"Contempt of Supreme Court by High Court – High Court passed order of bail in breach of Supreme Court direction – It is Contempt of Order of Supreme Court by the High Court."***

15.5. In **K. Ram Reddy Vs. State 1998 (3) ALD 305,** it is ruled as under;

> *"False information in application filed before Court -- Sections 195, 197, 340, 341 and 343 of Criminal Procedure Code, 1973- Sections 120-B, 193, 466, 468 and 471 of Indian Penal Code, 1860 – Accused A1 and A2 who are advocates, are legally bound to state the truth, but they intentionally gave false information in a judicial proceeding viz., bail application, knowing fully well that their statements are false and they thereby fabricated false evidence in a judicial proceeding. The 1-Addl. Sessions Judge who was in charge of the District and Sessions Court and a party to the conspiracy, made over the bail application to the II-Addl. Sessions Court- all the accused and Sri P. Thirupathi Reddy, the then II-Addl. Sessions Judge entered into a criminal conspiracy to do all sorts of illegal acts in order to get their bail application made over to the II-Addl. Sessions Court with a view to get favourable orders- - The then II-Addl. Sessions Judge and A3 (appellant in Crl. Appeal No. 385/97) helped the other accused by willfully and intentionally ignoring the false Cr.M.P.No. 1626/96, which has no connection either with A4 and A5 or the Crime in which they are involved. The II-Addl. Sessions Judge, who is a party to the conspiracy, allowed the petition for amendment on 13-8-1996 and granted*

bail to A4 and A5. The II-Addl. Sessions Judge is being proceeded with departmentally and is now under suspension - The advocate and B.Prabhakar very well knew that amount of Rs.2,24,904-73 Ps. lying in the Court docs not belong to his fake client and that they are not entitled to receive it. Yet, they fabricated false documents with the forged signatures of B.Gangaram and affixed the photo of B.Prabhakar on the affidavit to make the Court believe that the photo belongs to B.Gangaram and filed the fabricated and forged documents...."

The decision of a learned single Judge of Delhi High Court in Ranbir Singh v. State MANU/DE/0362/1990 is instructive. There also a complaint was made under Section 340 of the Code against an advocate regarding forging of Judicial record - I am satisfied that there has been proper application of mind by the Sessions Judge in each of these matters in making the orders and preferring the complaints under Section 340 of the Code.

The action taken by the Sessions Court under Section 340(1) of the Code in making the orders in question was suomotu and not on applications made to it in that behalf. How the Sessions Court moved itself in that regard for making these orders is stated that On verification of the bail petitions, Court Registers and the Police Case Diaries Etc., he found some of the bail applications which were made over to the Additional Sessions Courts, were tampered with.

The District and Sessions Judge held a preliminary enquiry into the tampering of the bail applications and recorded the statements of the concerned staff."

It is also stated that provisions of Section 197 of the Code were not attracted because entering into a criminal conspiracy to tamper the records of a judicial proceeding with a view to secure the release

of an accused on bail was no part of official duty and as such no sanction to prosecute the Additional Public Prosecutor was necessary. Thereafter, the facts relating to the case are mentioned and it is stated that the District and Sessions Judge came to the conclusion that there were sufficient, valid and justifiable grounds that offences punishable under Sections 120B, 193, 466, 468, and 471 IPC referred to in Clause (b) of subsection (1) of Section 195 of the Code appeared to have been committed by the accused mentioned in relation to the proceedings and in respect of the documents produced and given in evidence in a proceeding in the Court" and that "he is satisfied that it is expedient in the interests of justice to launch Prosecution against the above individuals". It is then ordered that a complaint be filed before the Chief Judicial Magistrate, Karimnagar under Section 340(1)(b) of the Code against the accused for the offences mentioned. Pursuant to that order, complaint was filed under Section 340(1)(b) of the Code, and it was taken on file as C.C.No. 1/1997. The other C.Cs. were also based on complaints filed on similar orders of the learned District and Sessions Judge at Karimnagar.

Some of the Advocates have resorted to certain types of malpractices to get their bail applications made over to any of the Additional District Courts of their choice.

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."

15.6. This is also a corruption as per law laid down 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."

16. 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.

17. In **Official Liquidator Vs. Dayananad & Ors., (2008) 10 SCC 1** it is 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.

We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass root will

not be able to decide as to which of the judgment lay down the correct law and which one should be followed.

We may add that in our constitutional set up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the Constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. 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 rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

"If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of

opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court."

***In Lala Shri Bhagwan vs. Ram Chandra** [AIR 1965 SC 1767], Gajendragadkar, C.J. observed :*

"It is hardly necessary to emphasize that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger bench to examine the question. That is the proper and traditional way to deal with such mattes and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned Single Judge departed from this traditional way in the present case and chose to examine the question himself."

***In Union of India vs. Raghubir Singh** [1989 (2) SCC 754], R.S. Pathak, C.J. while recognizing need for constant development of law and jurisprudence emphasized the necessity of abiding by the earlier precedents*

in following words :

"The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of law, besides providing assurance to the individual as to the consequence of transaction forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court."

In Sundarjas Kanyalal Bhatija and others vs. Collector, Thane [1989 (3) SCC 396], a two-Judges Bench observed as under :

"In our system of judicial review which is a part of our constitutional scheme, we hold it to be the duty of judges of superior courts and tribunals to make the law more predictable. The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective as a guide to behaviour. It must be determined with reasons which carry convictions within the courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients. Sub-ordinate courts would find themselves in an embarrassing position to choose between the conflicting opinion. The general public would be in dilemma to obey or not to obey such law and it ultimately falls into disrepute."

18. CONTEMPT OF DIVISION BENCH ORDER:-

That, it is settled law and more particularly as per law laid down by Full Bench of Hon'ble Supreme Court in **S. Abdul Rashid Vs M. K. Prakash AIR (1976) SCC 975** whenever any application is pending before higher authority then the prudent course to be adopted is to wait for the decision by higher authority. If any Judge shows undue

haste without any urgency then such Judge is liable for action under Contempt.

The above law is followed by almost all Judges in many cases.

Some examples are;

i) <u>Dr. Santosh Shetty Vs. Mrs. Ameeta Santosh Shetty 2017 SCC OnLine Bom 9938</u> it is ruled as under ;

> ***2****……there is a transfer application signed and affirmed by the appellant - husband in which there is a prayer that the Family Court Appeal along with interim applications therein should be placed before any other appropriate Bench other than the Bench headed by one of us (A.S. Oka, J.). In fact, in the application, the contention is that a Bench consisting of one of us (A.S. Oka, J.) should not hear the Family Court Appeal and the Applications therein in view of various allegations made therein.*
>
> ***3.*** *When the submissions were heard on the earlier date, it was not pointed out to us that such transfer application has been filed. We did not notice the same as the same was in the second part.*
>
> ***4.*** *The transfer application has not been numbered and it is affirmed by the appellant - husband on 1st March, 2017. It appears that the said transfer application was never placed before the Hon'ble the Chief Justice.*
>
> ***5.*** *So long as the said application is pending, it will not be appropriate for this Bench to hear and decide the Civil Application No. 71 of 2017 and Civil Application No. 72 of 2017 which have been assigned to this Bench.*
>
> ***6.*** *We direct the Registry to place the transfer application before the Hon'ble the Chief Justice. There is a remark put on the index of*

the said application that the transfer application is presented before the Administrative Side.

ii) <u>Chandrashekhar Jagannath Acharya Vs. Rohini ChandrashekharAcharya2019 SCC OnLine Bom 104</u>

iii) <u>Mohinder Kumar Vs. State & Anr. (2001) 10 SCC 605</u>

Needless to mention here that in the case of **<u>Chandrashekhar Jagannath Acharya Vs. Rohini ChandrashekharAcharya</u>** the Bench was of Justice K. K. Tated & B. P. Colabawalla.

That, even the practice of the Court is the law of the Court.**[Vide:- <u>The CIT Bombay City Vs. R.H.Pandi (1974) 2 SCC 627</u>]**

But surprisingly Justice B.P. Collabawalla acted against the said law which he himself has followed in other cases while sitting in Division Bench.

19. In the case of **<u>Official Liquidator Vs. Dayananad (2008) 10 SCC 1</u>** 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."

20. In **<u>Nand Lal Misra Vs. Kanhaiya Lal Misra, AIR 1960 SC 882</u>** it is ruled as under;

"Judge - Double standard and biased conduct of Judge- In the courts of law, there cannot be a double-standard - one for the highly placed and another for the rest: the Magistrate has no concern with personalities who are parties to the case before him but only with its merits.

The record discloses that presumably the Magistrate was oppressed by the high status of the respondent, and instead of making a sincere attempt to ascertain the truth proceeded to

adopt a procedure which is not warranted by the Code of Criminal Procedure, and to make an unjudicial approach to the case of the appellant. Thereafter, the Magistrate considered the evidence and delivered a judgment holding that the paternity of the appellant had not been established. While there was uncontradicted evidence sufficient for the Magistrate to give notice to the respondent, he recorded a finding against the appellant before the entire evidence was placed before him. While accepting the contention of the appellant that the procedure under Ss. 200 to 203 of the Code did not apply, in fact he followed that procedure and converted the preliminary enquiry into a trial for the determination of the question raised. Indeed, he took upon himself the role of a cross-examining counsel engaged by the respondent.

Though ordinarily, the Supreme Court would not interfere in such a case under Art. 136, considering the special circumstance of the case, the Supreme Court interfered and set aside the orders of Magistrate on ground of illegal procedure followed by him."

21. 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-<u>those impersonal convictions that make a society a civilized community, and not the victims of personal rule.</u>

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:*

<u>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</u>

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.***

22. 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."

23. UNDUE HESTE BY JUSTICE B.P.COLLABAWALLA

In **Noida Vs Noida (2011) 6 SCC 527** it is 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"*

In **Shanti Devi Vs. State (2008) 14 SCC 220** it is ruled as under**;**

" Constitution of India – Art. 215-Undue haste by a High Court Judge –It proves gross abuse of process of law – Proceedings are liable to be quashed – 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."

24. 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 2006.Cri.L.J.1694*** *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."

25. Already a serious complaint is filed by Adv. Vijay Kurle against Justice Collabawalla being **Case No. PRSEC/E/2019/01530**

26. Hence it is necessary that, his all judicial work of Justice **B.P. Collabawalla** should be withdrawn as per **"In - House - Procedure"** and C.B.I. be directed to prosecute him.

27. PRAYERS :-

It is therefore humbly prayed for;

1. Direction to CBI to investigate the serious charges under Section 192, 167, 166, 201, 218, 219, 469, 466, 471, 474 r/w 120(B) & 34 of Indian Penal Code (I.P.C.) against Justice B.P.Collabwalla.

2. Direction for enquiry as per "In- House- Procedure" for withdrawing all judicial work from Justice B.P.Collabawalla.

3. Direction to appropriate authority for initiating contempt Proceedings against B.P.Collabawalla by treating this Complaint as

a petition in view of law laid down in Re: <u>Justice C.S. Karnan (2017) 7 SCC 1.</u>

Adv.Ishwarlal Agarwal
Working President
National Co-ordination Committee
INDIAN BAR ASSOCIATION