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Grievance No. PRSEC/E/2019/07392

Date:16.04.2019

To,

Hon'ble Chief Justice Of India

Supreme Court of India

New Delhi

Sub:-1. Taking suo moto cognizance of the damage caused to thousands of labours and their family members caused due to unlawful order passed by Shri. Justice Rohinton Fali Nariman and Vineet Saran in the case of **Bharat Heavy Electricals Ltd. Vs. Mahendra Prasad Jakhmola and Others (2019) SCC Online SC 382** containing 64 labours with other 122 appeals each containing various labours issue as to bread and butter and passing the judgment by ignorance of law laid down by Constitution Bench in **Basti Sugar Mills Ltd. vs Ram Ujagar And Others (1964) 2 SCR 838.**

2. Unreasoned order dated 2nd February, 2018 in **Vineet Malik Vs. Ekta Parksville Homes Private Limited & Anr.** In Trasfer petition (Civil) No. 1572 of 2017.

Ref. i) Judgment dated 20th February, 2019, **Bharat Heavy Electricals Ltd. v. Mahendra Prasad Jakhmola and Others , 2019 SCC Online SC 382.**

ii) My Complaint dated 20.03.2019 and 23.03.2019 for action and prosecution against Justice Rohinton Fali Nariman and Vineet Saran

iii) Complaint filed by Human Rights Security Council through its National Secretary on 19.03.2019

Hon'ble Sir,

1. I came to know about the judgment passed in **Bharat Heavy Electricals Ltd. Vs. Mahendra Prasad Jakhmola and Others (2019) SCC Online SC 382** where the order passed in favour of

thousand of labour by labour court and order of Hon'ble High Court was set aside by Bench of Shri. Justice Rohinton Fali Nariman and Vineet Saran.

2. That the Ld. Judges while passing said order refused to rely on the law laid down by Five Judge Constitutional Bench in **Basti Sugar Mills Ltd. vs Ram Ujagar And Others (1964) 2 SCR 838.**

3. Ld. Judges in their order dated 20th February 2019 in para 15 had made following observation;

> "***15*** *A look at this provision together with the judgment in 'Basti Sugar Mills Ltd. v. Ram Ujagar and Ors.' [MANU/SC/0145/1963 : (1964) (2) SCR 838) relied upon by Ms. Jain, would show that in order that Section 2(i)(iv) apply, evidence must be led to show that the work performed by contract labour is a work which is ordinarily part of the industry of BHEL. We find, on the facts of the present case, that no such evidence has, in fact, been led. Consequently, this finding is also a finding directly applying a provision of law without any factual foundation for the same.***"**

But in fact the ratio laid down in **Basti Sugar Mills Ltd. vs Ram Ujagar And Others (1964) 2 SCR 838** (*Supra) reads as under*

> " ***12.*** *We have therefore come the conclusion that the words "employed by a factory" are wide enough to include workmen employed by the contractors of factory also.*
>
> ***10.*** *On the ordinary grammatical sense of the Words ",employed by a factory" they include, in our opinion, every person who is employed to do the work of the factory. The use of the word "by" has nothing to do with th question as to who makes the Appointment. The reason why "by" was used instead of "'in" appears to be to ensure that if a person has been employed to do the work of the industry, whether the work is done inside the factory or outside the factory, he will get the benefit of the Standing Orders.*
>
> ***11.*** *We can also see no reason why the Government in making the Standing Orders would think of denying to some of the persons who fall within the definition of*

workmen under the Act, the benefit of the Standing Orders. The Standing Orders were made under s. 3 (b) of the Act under which the State Government may make provision "for requiring employers, workmen or both to observe for such period as may be specified in the order such terms and conditions of employment as may be determined in accordance with the order." The purpose of the order was thus clearly to require employers to observe certain terms and conditions of employment of their workmen as defined in the Act. It is unthinkable that in doing so the Government would want to exclude from its benefits-particulary, that of the minimum wage -a class of workmen who would otherwise get the benefit under the definitions of workmen and employer in the Act itself. No reason has been suggested and we cannot think of any.

***8**. The second point, viz., that 'this definition contravenes the appellant's fundamental rights under Art. 19 (l) (g) is equally devoid of substance. Assuming that the result of this definition of employer in sub-cl. (iv) of s. 2 (i) is the imposition of some restrictions on the appellant's right to carry on trade or business, it cannot be doubted for a moment that the imposition of such restrictions is in the insterest of the general public. For, the interests of the general public require that the device of the engagement of a contractor for doing work which is ordinarily part of the industry should not be allowed to be availed of by owners of industry for evading the provisions of the Industrial Disputes Act. That these provisions are in the interests of the general public cannot be and has not been disputed. That being the position, the impugned definition which gives the benefit of the provision of the Act to the workmen engaged under a contract in doing work which is ordinarily part of the industry cannot but be held to be also in the interests of the general public."*

But nowhere the interpretation given by Ld. Judge Rohinton Fali Nariman and Vineet Saran found place in the law laid by

Constitutional Bench.

4. Here it would not be out of relevance to mention the law laid down by

Full Bench in **Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd. and Another AIR 1997 SC 2477**

> ***"****It is duty of the court to apply the correct law even if not raised by the party. If any order against settled law is to be passed then it can be done only by a reasoned order. Containing a discussion after noticing the relevant law settled.*
>
> *16. It is the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex-parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order.*
>
> *18. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. and Anr. MANU/SC/0639/1997 : 1997 (6) SCC 450, observing:*
>
> *32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."*

Needless to state that by relying on above said law in **Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd. and Another AIR 1997 SC 2477** the Ld. Judge Rohinton Fali Nariman in the case of **Authorized Officer, State Bank of Travancore and Ors. Vs. Mathew K.C. 2018 (3) SCC 85,** had 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.*
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> *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.*
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5. That in **Anil Kumar Dubey Vs. Pradeep Shukla (Full Bench) 2017 SCC OnLine Chh 95** had ruled as under;

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

6. In In **Dattani and Co. Vs.Income Tax Officer 2013 SCC OnLine Guj 8841** It is ruled as under;

> **"*Precedents - Applicabilty of case Law -*** *Held, whenever any decision has been relied upon and/or cited by any party, the authority/tribunal is bound to consider and/or deal with the same and opine whether in the facts and circumstances of the particular case, the same will be applicable or not.*
>
> *In the instant case, the tribunal has failed to consider and/or deal with the aforesaid decision cited and relied upon by the assessee. Under the circumstances, all these appeals are required to be remanded to the tribunal***."**

7. In **The Bank of Rajasthan Ltd. Vs. Shyam Sunder Taparia, Akai Impex Ltd. and Ors. 2006 ALLMR (Cri.) 2269,** where it ruled as under ;

> **"*CASE LAW SHOULD BE GIVEN PROPER WEIGHTAGE:-***

The Judge Should recorded short reasons demonstrating how the case law is applicable to the case. The conduct of judge about passing of cryptic orders even without mentioning full title of the judgement and citation thereof is illegal. Courts are expected to exhibit from their conduct and their orders concern for justice and not casualness."

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

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

Misinterpretation of order of Supreme Court - Civil Judge of Senior Division erred in reading and understanding the Order of Supreme Court - Contempt proceedings initiated against the Judge - Judge tendered unconditional apology saying that with his limited understanding, he could not read the order correctly. While passing the Order, he inadvertently erred in reading and understanding the Order of Supreme Court - Supreme Court issued severe reprimand – Held, The officer is holding a responsible position of a Civil Judge of Senior Division. Even a new entrant to judicial service would not commit such mistake assuming it was a mistake - It cannot be ignored that the level of judicial officer's understanding can have serious impact on other litigants. There is no manner of doubt that the officer has acted in most negligent manner without any caution or care whatsoever- Without any further comment, we would leave this aspect to the disciplinary authority for appropriate action, if any, taking into consideration all relevant facts. We do not know whether present is an isolated case of such an understanding? We do not know what has been his past record? In this view, we direct that a copy of the order shall be sent forthwith to the Registrar General of the High Court. ".

9. That it is settled law that 'More the power Higher the responsibility' and therefore the Judges of Supreme Court is expected to act much much carefully because his every word is likely to make or destroy the life of not only the person before him but the said judgment of Supreme Court is being used as a binding precedent and bad judgment will bring the majesty and dignity of the Supreme Court into disrepute.

10. That it was the case based on undisputed fact but for the sake of assumption it is accepted that any part of evidence is not led then the proper course to be adopted on the principle of natural justice was to remand back the matter and ask the parties to lead the evidence by allowing other party to cross–examine it or counter it.

But it is never expected from any Court and specifically by Apex Court which is final authority, to pass such order which will destroy whole aspect of the poor family.

11. In the case of **Canara Bank Vs. V.K. Awasthy (2005) 6 SCC 321** it is ruled as under ;

> "***The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.***
>
> ***sIn the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic***

document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "advocate interrogate and adjudicate". In the celebrated case of <u>Cooper</u> v. <u>Wandsworth Board of Works</u> (1963 (143) ER 414), the principle was thus stated:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat".

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond."

12. That as per **<u>In Nidhi Kaim and Ors. Vs. State of Madhya Pradesh and Ors (2017) 4 SCC 1</u>** It is ruled that the judgment of larger bench are binding upon the Supreme Court. It is read as under;

"Article 142, 141 of the Constitution - Supreme Court cannot disregard statutory provisions, and/or a declared pronouncement of law Under Article 141 of the Constitution, even in exceptional circumstances.

We are bound, by the declaration of the Constitution Bench , in Supreme Court Bar Association v. Union of India (1998) 4 SCC 409. It is, not possible for us to ignore the decision of a Constitution Bench of this Court- In terms of the above judgment, with which we express our unequivocal concurrence, it is not possible to accept, that the words "complete justice" used in Article 142 of the Constitution, would include the power, to disregard even statutory provisions, and/or a declared pronouncement of law Under Article 141 of the Constitution, even in exceptional circumstances. - In our considered view, the hypothesis-that the Supreme Court can do justice as

it perceives, even when contrary to statute (and, declared pronouncement of law), should never as a rule, be entertained by any Court/Judge, however high or noble. Can it be overlooked, that legislation is enacted, only with the object of societal good, and only in support of societal causes? Legislation, always flows from reason and logic. Debates and deliberations in Parliament, leading to a valid legislation, represent the will of the majority. That will and determination, must be equally "trusted", as much as the "trust" which is reposed in a Court. Any legislation, which does not satisfy the above parameters, would per se be arbitrary, and would be open to being declared as constitutionally invalid. In such a situation, the legislation itself would be struck down.

The argument advanced by Mr. Nariman, that this Court can pass order against statute is indeed heartening and reassuring. But if such preposition is accepted then, Mr. Nariman, and a number of other outstanding legal practitioners like him, undeniably have the brilliance to mould the best of minds. And thereby, to persuade a Court, to accept their sense of reasoning, so as to override statutory law and/or a declared pronouncement of law.It is this, which every Court, should consciously keep out of its reach. At the cost of repetition, we would reiterate, that such a situation, as is contemplated by Mr. Nariman, does not seem to be possible."

13. In **Balwant Raj Saluja (2014) 9 SCC 407** it is ruled that the judgment of co-ordinate courts are also binding on Supreme Court.

But Learned Justice Rohinton Fali Nariman and Justice Vineet Saran are not following the binding precedents and passing whimsical orders by arbitrary exercise of power and thereby destroying the life of not only around 10,000 family members of that poor labors, but creating a bad precedent for millions of other labors causing serious threat to their jobs and therefore such orders is liable to be set- aside fore with by constituting a larger bench.

14. That Justice Rohinton Fali Nariman and Justice Vineet Saran in the case of **Vineet Malik vs. Ekta P. Homes Pvt. Ltd** vide order dated 2nd April, 2018 allowed the transfer petition without assigning/giving any reason.

The said order reads as under ;

> *"We have heard learned counsel appearing for the parties.*
>
> *For the grounds stated in the Transfer Petition, we are satisfied that the prayer made on behalf of the petitioner for transfer of Special Civil Suit No. 36 of 2017 titled as Ekta Parksville Homes Private Limited Vs. Vineet Malik and Anr. pending before the Joint Civil Judge, Senior Division at Vasai, District Thane, Maharashtra is justified and is fit to be allowed.*
>
> *We, accordingly, direct transfer of Special Civil Suit No. 36 of 2017 titled as Ekta Parksville Homes Private Limited Vs. Vineet Malik and Anr. pending before the Joint Civil Judge, Senior Division at Vasai, District Thane, Maharashtra to the appropriate Civil Court, Gurgaon, Haryana.*
> *Let the records of the case be transferred without delay.*
>
> *The transfer petition is allowed in theafore-stated terms."*

No ground, submissions of advocates are mentioned in the order. It is contempt of Supreme Court own judgment and against the minimum standard expected from any Court.

15. That any Judge passing order is duty bound to give reasons.

15.1 In state of **State of Orissa Vs. Chandra Nandi 2019 SCC Online SC 448** it is ruled as under;

> *9. The need to remand the case to the High Court has occasioned because from the perusal of the impugned order, we find that it is an unreasoned order. In other words, the High Court neither discussed the issues arising in the case, nor dealt with any of the submissions urged by the parties and nor assigned any reason as to why it has allowed the writ petition and granted the reliefs to the writ petitioner which were declined by the Tribunal.*
>
> *10. This Court has consistently laid down that every judicial or/and quasi-judicial order passed by the Court/Tribunal/Authority concerned, which decides the lis between the parties, must be supported with the reasons in support of its conclusion. The parties to the*

lis and so also the appellate/revisionary Court while examining the correctness of the order are entitled to know as to on which basis, a particular conclusion is arrived at in the order. In the absence of any discussion, the reasons and the findings on the submissions urged, it is not possible to know as to what led the Court/Tribunal/Authority for reaching to such conclusion. (See - State of Maharashtra v. Vithal Rao Pritirao Chawan, (1981) 4 SCC 129, Jawahar Lal Singhv. Naresh Singh, (1987) 2 SCC 222, State of U.P. v. Battan, (2001) 10 SCC 607, Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519and State of Orissa v. Dhaniram Luhar, (2004) 5 SCC 568).

11. The order impugned in this appeal suffers from aforesaid error, because the High Court while passing the impugned order had only issued the writ of mandamus by giving direction to the State to give some reliefs to the writ petitioner (respondent) without recording any reason.

12. We are, therefore, of the view that such order is not legally sustainable and hence deserves to be set aside.

15.2 In **Dhanuben Lallubhai Patel Vs. Oil And Natural Gas Corporation Of India 2014 SCC Online Guj 15949 i**t is ruled as under;

*"**A] The Court cannot lose sight of the fact that a losing litigant has a cause to plead and a right to challenge the order if it is adverse to him. Opinion of the Court alone can explain the cause which led to passing of the final order. Whether an argument was rejected validly or otherwise, reasoning of the order alone can show. To evaluate the submissions is obligation of the Court and to know the reasons for rejection of its contention is a legitimate expectation on the part of the litigant. Another facet of providing reasoning is to give it a value of precedent which can help in reduction of frivolous litigation.***

B] "The giving of reasons is one of the fundamentals of good administration." In

Alexander Machinery (Dudley) Ltd. v. Crabtree it was observed: "Failure to give reasons amounts to denial of justice." "Reasons are live links between the mind of the decision- taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it C/LPA/1190/2013 ORDER virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

"56... "Reason" is a ground or motive for a belief or a course of action, a statement in justification or explanation of belief or action.

The contractual stipulation of reasons means, as held in Poyser and Mills' Arbitration in Re, `proper adequate reasons'. Such reasons shall not only be intelligible but shall be a reason connected with the case which the Court can see is proper. Contradictory reasons are equal to lack of reasons. ..."

where providing reasons for proposed supersession were essential, then it could not be held to be a valid reason that the concerned officer's record was not such as to justify his

selection was not contemplated and thus was not legal.

"18.... "Reasons" are the links between the materials on which certain conclusions are based and the actual conclusions.

The requirement of recording reasons is applicable with greater rigor to the judicial proceedings. The orders of the Court must reflect what weighed with the Court in granting or declining the relief claimed by the applicant. In this regard we may refer to certain judgments of this Court.

Absence of reasoning did not find favour with the Supreme Court. The Supreme Court also stated the principle that powers of the High Court were circumscribed by limitations discussed and declared by judicial decision and it cannot transgress the limits on the basis of whims or subjective opinion varying from Judge to Judge.

That even when the petition under Article 226 is dismissed in limini, it is expected of the High Court to pass a speaking order,may be briefly.

"reason is the heartbeat of every conclusion, and without the same it becomes lifeless."

18. Providing of reasons in orders is of essence in judicial proceedings. Every litigant who approaches the Court with a prayer is entitled to know the reasons for acceptance or rejection of such request. Either of the parties to the lis has a right of appeal and, therefore, it is essential for them to know the considered opinion of C/LPA/1190/2013 ORDER the Court to make the remedy of appeal meaningful. It is the reasoning which ultimately culminates into final decision which may be subject to examination of the appellate or other higher Courts. It is not only

desirable but, in view of the consistent position of law, mandatory for the Court to pass orders while recording reasons in support thereof, however, brief they may be. Brevity in reasoning cannot be understood in legal parlance as absence of reasons. While no reasoning in support of judicial orders is impermissible, the brief reasoning would suffice to meet the ends of justice at least at the interlocutory stages and would render the remedy of appeal purposeful and meaningful. It is a settled canon of legal jurisprudence that the Courts are vested with discretionary powers but such powers are to be exercised judiciously, equitably and in consonance with the settled principles of law. Whether or not, such judicial discretion has been exercised in accordance with the accepted norms, can only be reflected by the reasons recorded in the order impugned before the higher Court. Often it is said that absence of reasoning may ipso facto indicate whimsical exercise of judicial discretion. Patricia Wald, Chief Justice of the D.C. Circuit Court of Appeals in the Article, Blackrobed Bureaucracy Or Collegiality Under Challenge, (42 MD.L. REV. 766, 782 (1983), observed as under:-

"My own guiding principle is that virtually every appellate decision C/LPA/1190/2013 ORDER requires some statement of reasons. The discipline of writing even a few sentences or paragraphs explaining the basis for the judgment insures a level of thought and scrutiny by the Court that a bare signal of affirmance, dismissal, or reversal does not."

19. ***The Court cannot lose sight of the fact that a losing litigant has a cause to plead and a right to challenge the order if it is adverse to him. Opinion of the Court alone can explain the cause which led to passing of the final order. Whether an argument was rejected validly or otherwise, reasoning of the order alone can show. To evaluate the submissions is obligation of the***

Court and to know the reasons for rejection of its contention is a legitimate expectation on the part of the litigant. Another facet of providing reasoning is to give it a value of precedent which can help in reduction of frivolous litigation.Paul D. Carrington, Daniel J Meador and Maurice Rosenburg, Justice on Appeal 10 (West 1976), observed as under:-

"When reasons are announced and can be weighed, the public can have assurance that the correcting process is working. Announcing reasons can also provide public understanding of how the numerous decisions of the system are integrated. In a busy Court, the reasons are an essential demonstration that the Court did in fact fix its mind on the case at hand. An unreasoned decision has very little claim to acceptance by the defeated party, and is difficult or impossible to accept as an act reflecting systematic application of legal principles. Moreover, the necessity of stating reasons not infrequently changes the results by forcing the judges to come to grips with nettlesome facts or issues which their normal instincts would otherwise cause them to avoid."

20. The reasoning in the opinion of the Court, thus, can effectively be analysed or scrutinized by the Appellate Court. The reasons indicated by the Court could be accepted by the Appellate Court without presuming what weighed with the Court while coming to the impugned decision. The cause of expeditious and effective disposal would be furthered by such an approach. A right of appeal could be created by a special statute or under the provisions of the Code governing the procedure. In either of them, absence of reasoning may have the effect of negating the purpose or right of appeal and, thus, may not achieve the ends of justice.

21. It will be useful to refer words of Justice Roslyn Atkinson, Supreme Court of Queensland, at AIJA Conference at Brisbane on September 13, 2002 in relation to Judgment Writing. Describing that some judgment could be complex, in distinction to routine judgments, where one requires deeper thoughts, and the other could be disposed of easily but in either cases, reasonsC/LPA/1190/2013 ORDER they must have. While speaking about purpose of the judgment, he said, "The first matter to consider is the purpose of the judgment. To my mind there are four purposes for any judgment that is written: -

(1) to clarify your own thoughts; (2) to explain your decision to the parties;

(3) to communicate the reasons for the decision to the public; and (4) to provide reasons for an appeal Court to consider."

22. Clarity of thought leads to proper reasoning and proper reasoning is the foundation of a just and fair decision. In Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 ICR 120, the Court went to the extent of observing that "Failure to give reasons amounts to denial of justice". Reasons are really linchpin to administration of justice. They are link between the mind of the decision taker and the controversy in question. To justify our conclusion, reasons are essential. Absence of reasoning would render the judicial order liable to interference by the higher Court. Reasons are the soul of the decision and its absence would render the order open to judicial chastism. The consistent judicial opinion is that every order determining rights of the parties in a Court of law ought not to be recorded without supportive reasons. Issuing reasoned order is not only beneficial to the higher Courts but is even of great utility for C/LPA/1190/2013 ORDER providing public understanding of law and imposing self- discipline in the Judge as their discretion is controlled by well

established norms. The contention raised before us that absence of reasoning in the impugned order would render the order liable to be set aside, particularly, in face of the fact that the learned Judge found merit in the writ petition and issued rule, therefore, needs to be accepted. We have already noticed that orders even at interlocutory stages may not be as detailed as judgments but should be supported by reason howsoever briefly stated.

Absence of reasoning is impermissible in judicial pronouncement. It cannot be disputed that the order in question substantially affect the rights of the parties. There is an award in favour of the workmen and the management had prayed for stay of the operation of the award. The Court has to consider such a plea keeping in view the provisions of Section 17-B of the Industrial Disputes Act, where such a prayer is neither impermissible nor improper. The contentions raised by the parties in support of their respective claims are expected to be dealt with by reasoned orders. We are not intentionally expressing any opinion on the merits of the contentions alleged to have been raised by respective parties before the learned single Judge. Suffice it to note that the impugned order is silent in this regard. According to the learned Counsel appearing for the appellant, various contentionsC/LPA/1190/2013 ORDER were raised in support of the reliefs claimed but all apparently, have found no favour with the learned Judge and that too for no reasons, as is demonstrated from the order impugned in the present appeals."

5. The Apex Court in another decision in the case of "U.P. STATE ROAD TRANSPORT CORPORATION V. SURESH CHAND SHARMA", (2010) 6 SCC 555 has observed as under in paragraph-20:-

"20. Therefore, the law on the issue can be summarized to the effect that, while deciding the case, court is under an obligation to record reasons,

however, brief, the same may be as it is a requirement of principles of natural justice. Nonobservance of the said principle would vitiate the judicial order. Thus, in view of the above, the judgment and order of the High Court impugned herein is liable to be set aside."

6. The Apex Court in the case of "EAST COAST RAILWAY AND ANOTHER V. MAHADEV APPA RAO AND OTHERS", (2010) 7 SCC 678, wherein in paragraph 9, the Apex Court observed as under :-

"9. There is no quarrel with the well- settled proposition of law that an order passed by a public authority exercising administrative/executive or statutory powers must be judged by the reasons stated in the order or any record or file contemporaneously maintained. It follows that the infirmity arising out C/LPA/1190/2013 ORDER of the absence of reasons cannot be cured by the authority passing the order stating such reasons in an affidavit filed before the Court where the validity of any such order is under challenge. The legal position in this regard is settled by the decisions of this Court in Commissioner of Police, Bombay v. Gordhandas Bhanji (AIR 1952 SC16) wherein this Court observed :

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. "

7. The Apex Court in the case of "MAYA DEVI (DEAD) THROUGH LRS. V. RAJ KUMARI BATRA (DEAD) THROUGH LRS. AND OTHERS", (2010) 9 SCC 486, held in paragraphs 22 to 27 and 30 as under :-

"22. The juristic basis underlying the requirement that Courts and indeed all such authorities, as exercise the power to determine the rights and obligations of individuals must give reasons in support of their orders has been examined in a long line of decisions rendered by this Court. In Hindustan Times Limited v. Union of India & Ors.C/LPA/1190/2013 ORDER 1998 (2) SCC 242 the need to give reasons has been held to arise out of the need to minimize chances of arbitrariness and induce clarity.

23. In Arun s/o Mahadeorao Damka v. Addl. Inspector General of Police & Anr. 1986 (3) SCC 696 the recording of reasons in support of the order passed by the High Court has been held to inspire public confidence in administration of justice, and help the Apex Court to dispose of appeals filed against such orders.

24. In Union of India & Ors. v. Jai Prakash Singh & Anr. 2007 (10) SCC 712, reasons were held to be live links between the mind of the decision maker and the controversy in question as also the decision or conclusion arrived at.

25. In Secretary and Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity & Ors. 2010 (3) SCC 732, reasons were held to be the heartbeat of every conclusion, apart from being an essential feature of the principles of natural justice, that ensure transparency and fairness, in the decision making process.

26. In Ram Phal v. State of Haryana & Ors. 2009 (3) SCC 258, giving of satisfactory reasons was held to be a requirement arising out of an ordinary man's sense of justice and a healthy discipline for all those who exercise power over others.

27. In Director, Horticulture Punjab & Ors. v. Jagjivan Parshad 2008 (5) SCC 539, the recording of reasons was held to be indicative of application of mind

specially when the order is amenable to further avenues of challenge."

15.3 In **Union of India Vs. Ibrahim Uddin (2012) 8 SCC 148** it was ruled as under ;

" ***RESONED ORDER :It is a settled legal proposition that not only administrative order, but also judicial order must be supported by reasons, recorded in it. The person who is adversely affected must know why his application has been rejected.***

Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice delivery system, to make it known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of the principles of natural justice. The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected. (Vide: State of Orissa v. Dhaniram Luhar MANU/SC/0082/2004 : AIR 2004 SC 1794; State of Uttaranchal and Anr. v. Sunil Kumar Singh Negi MANU/SC/7315/2008 : AIR

2008 SC 2026; The Secretary & Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity and Ors. MANU/SC/0155/2010 : AIR 2010 SC 1285; and Sant Lal Gupta and Ors. v. Modern Cooperative Group Housing Society Limited and Ors. MANU/SC/0859/2010 : (2010) 13 SCC 336).″

15.4 In **Ku. Shaima Jafri Vs. Irphan @ Gulfam and Ors. (2013) 14 SCC 348** it is ruled as under ;

*"**ORDER SHOULD BE A REASONED ONE - order without cogent reasons is nullified - without reasons conclusion becomes lifeless - the judgment is set aside. - the deliberation by the High Court has to be reflective of due cogitation and requisite rumination. It must reflect application of mind, consideration of facts in proper perspective and appropriate ratiocination either for affirmation or reversal of the judgment. The reasons ascribed may not be lengthy but it should be cogent, germane and reflective. It is to be borne in mind, to quote from Wharton's Law Lexicon: - "The very life of law, for when the reason of a law once ceases, the law itself generally ceases, because reason is the foundation of all our laws -"reason" is the heart beat of every conclusion and without the same, it becomes lifeless. It is dangerous to forget that reason is the essential foundation on which a conclusion can be based. Giving reasons for an order is the sacrosanct requirement of law which is the aim of every civilized society. And intellect respects it. It would not be out of place to state here that the reasons in criminal jurisprudence must flow from the material on record and in this regard, a line from Bossuet is worth reproducing: - "The heart has reasons that reason does not understand."We have said so as a Judge should not be guided by any kind of emotion, prejudice or passion while giving his reasons.″***

This proves that Justice Rohinton Fali Nariman and Justice Vineet Saran are not having respect for law.

16. That any wrong order by 2- Judge of Supreme Court can be corrected by larger benches **(Supreme Court Bar Association Vs. Union of India & Anr. (1998) 4 SCC 409, M. S. Ahlawat Vs. State of Haryana and another (2000) 1 SCC 278, Rupa Ashok Hurra Vs. Ashok Hurra and Ors. (2001) 4 SCC 388)**

17. That in my complaint dated 23rd March, 2019 I had made a complaint against these two Judges. My prayer in the said complaint reads as under ;

> *"I) Action be taken under Section 218, 201, 219, 220, 191, 192, 193, 466, 471, 474 read with 120 (b) and 34 of Indian Penal Code against Justice Rohinton Fali Nariman And Justice Vineet Saran For passing order by wilful disregard , disobedience and misinterpretation of law laid down by the Constitution Bench of Hon'ble Supreme Court with intention to terrorize advocates.*
>
> *II) Immediate direction be passed for withdrawal of all works from Justice Rohinton Fali Nariman And Justice Vineet Saran as per 'In- House – Procedure'*
>
> *III) Directions be given to Justice Rohinton Fali Nariman & Justice Vineet Saran to resign forthwith by following the direction of Constitution Bench in K. Veeraswami Vs. Union of India (UOI) and Ors.1991 (3) SCC 655 as the incapacity, fraud on power and offences against administration of Justice are ex-facie proved.*
>
> *OR*
>
> *IV) Applicant be accorded sanction to prosecute Justice Rohinton Fali Nariman under Section 218, 201, 219, 191, 192, 193, 466, 471, 474 read with 120 (b) and 34 of Indian Penal Code.*
>
> *V) Direction be given for Suo Motu action under Contempt of Courts act as per law laid down in Re: C.S. Karnan's Case (2017) 7 SCC 1, Justice Markandey Katju's case & in Rabindranath Singh Vs.*

Rajesh Ranjan (2010) 6 SCC 417 for wilful disregard of law laid down by Hon'ble Supreme Court in :-

a) Vinay Chandra Mishra's case AIR 1995 SC 2348(Full Bench)

b) Dr. L.P. Mishra Vs. State (1998) 7 SCC 379(Full Bench)

c) Leila David Vs. State (2009) 10 SCC 337

d) Nidhi Keim & Ors. Vs. State of Madhya Pradesh and Ors. (2017) 4 SCC 1

e) Dwarikesh Sugar Industries Ltd. AIR 1997 SC 2477.

f) Sukhdev Singh Sodhi VS. Chief Justice S. Teja Singh, 1954 SCR 454

g) Mohd Zahir Khan Vs. Vijai Singh & Others AIR 1992 SC 642.

h) National Human Rights Commission Vs. State MANU/2009/ SC/0713

vii) Committee appointed under 'In- House – Procedure' be directed to make enquiry of Justice Rohinton Fali Nariman and Justice Vineet Saran on following Charges;

CHARGE 1 # *CONTEMPT OF FULL BENCH OF HON'BLE SUPREME COURT in* ***Vinay Chandra Mishra's case AIR 1995 SC 2348, Dr. L.P. Mishra's case (1998) 7 SCCC 379*** *which mandates to follow procedure of Contempt in cases against advocates and further mandates to frame charges and allow the Respondent (alleged Contemnor) to produce defence evidence if he disputes the charges against him.*

CHARGE 2 # *Lack of basic knowledge to interpret the ratio decidendi of any case law.*

i) Misquoted the Judgment of Hon'ble Supreme Court in ***Sukhdev Singh Sodhi VS. Chief Justice S. Teja Singh, 1954 SCR 454*** *to support his stand that as per said law the Judge who is attacked personally has to deal the case himself. In fact the said case law laid down the exact contrary ratio that such Judge should not hear the case.*

*ii) Misinterpreted the ratio laid down in the case of **Leila David Vs. State (2009) 10 SCC 337** and tried to apply the ratio of a case related with the litigant throwing footwear at Judge with that of, the case of inappropriate arguments by an advocate. Also failed to follow the undisputed binding precedent of Justice Ganguly regarding procedure to be followed in all other cases.*

CHARGE 3 # *Don't know the basic law of criminal jurisprudence and basic law of evidence and acted in denial of whole basis of Indian Constitution.*

*As per constitutional mandate any person accused of criminal case is entitled to a 'presumption of innocence till proven guilty'. This protection is available to Respondent in contempt proceedings as ruled in **R. S Sherawat Vs. Rajeev Malhotra and Ors. 2018 SCC OnLine SC 1347**. But Justice Nariman & Justice Saran relied upon the show cause notice in contempt by Hon'ble High Court which is still subjudice, as a basis for drawing guilt of Adv. Nedumpara. This is also against provisions of sections 40, 41, 42, 43, 44 of the Indian Evidence Act.*

*Similar illegality is committed in the case of other litigants in order dated 26th February, 2019 passed in another Criminal Appeal No. 387 of 2019 Aarish Asgar Qureshi's case by holding that police report is not having evidentiary value and cannot be relied upon by the Court which is against Section 35 of Evidence Act and law laid down by Full Bench of Hon'ble Supreme Court in **P.C. Reddiar's case (1972) 1 SCC 9** and followed in various judgments.*

CHARGE 4 # *Lack of basic knowledge about principles of judicial systems that the Judge is not allowed to use his personal knowledge without disclosing source and without examining himself as a witness and without notifying it to the concerned parties by allowing them to put their views/ submission. Even case laws cannot be relied by the*

Judges at their own without notifying the same to the parties concerned. It is Contempt of Hon'ble Supreme Court judgment in ***AIR 1956 Supreme Court 415, AIR 1964 SC 703, (1994) 2 SCC 266, (2008) 3 SCC 574****.*

CHARGE 5 # *Passing adverse remarks against an advocate without hearing him on the said remarks. Violation of principles of rule* ***'audi alteram partem'.*** *Violation of Article 21 of the Indian Constitution and against law laid down by Constitution Bench of Hon'ble Supreme Court in* ***Sarwan Singh Lamba's case AIR 1995 Supreme Court 1792*** *& other catena of judgments.*

CHARGE 6 # *Trying a case where he is disqualified due to personal bias. Contempt of Hon'ble Supreme Court Judgment in* ***Davinder Pal Singh Bhullar's Case (2011) 14 SCC 770***

CHARGE 7 # *Proved to be non conducive and counter productive to the administration of Justice and to Hon'be Supreme Court. Does not have basic qualities of observance of constitutional values, respect for independence of bar, mutual reverence. Does not believe that lawyers fearlessness in court, independence, uprightness, honesty, equality, are the virtues which cannot be sacrificed.*

Does not have faith in our police machinery and trying to lower evidentiary value attached to their official duties and thereby trying to lead to lawlessness like his father's mission who tried to instigate people to lower the respect for Indian Army to.

CHARGE 8 # *Does not observe and maintain restraint, sobriety, moderation, and reserve in the proceedings before him. And fall pray to temptation of ruining the career of an advocate and for helping accused by putting all laws, case laws to wind.*

CHARGE 9 # *Misuse of jurisdiction of Supreme Court to pass an order contrary to law with ulterior motive to help close judge S.J.Kathawala for saving him from serious criminal charges. Offence u.sec 218,*

219,120(B), & 34 of Indian Penal Code.

CHARGE 10 # *Liable to pay compensation to respondent advocate for violation of the Article 21 of the Constitution as the advocate was convicted without framing any charge as mandated by full Bench in* ***Vinay Chandra Mishra case AIR 1995 SC 2348.***

Compensation should be paid as per law laid down in Privy Council appeal No. 21 of 1977 between ***Ramesh Maharaj Vs. The Attoryney General (1978) 2 WLR 902, Walmik Bobde Vs. State 2001 ALL MR (Cri.) 1731 & in Mehmood Nayyar Azam (2012) 8 SCC 1,& S. Nambi Narayan Vs. Siby Mathews (2018) 10 SCC 804****.*

CHARGE 11 # *FRAUD ON POWER:-*

Acting against material on record and taking extraneous materials into consideration proves fraud on power on the part of said Judge as ruled by full Bench in ***Vijay Shekar's case 2004 (3) Crimes SC (33), Prof. Ramesh Chandra Vs. State of Uttar Pradesh MANU /UP/0708/2007****.*

CHARGE 12 # *Abuse of Process of Court Acting with undue haste without any urgency.* ***[Prof. Ramesh Chandra Vs. State MANU/UP/0708/2007, Noida Entrepreneur Association Vs. Noida (2011) 6 SCC 508]***

CHARGE 13 # *Unjust exercise of discretion to deprive the party from their legitimate rights.*

When case law is clear then there was no discretion available to a Judge. ***[Sundarjas Kanyalal Bhathija and others. Vs. The Collector, Thane. AIR 1990 SC 261, Anurag Kumar Singh Vs. State AIR 2016 SC 4542].*** *Supreme Court cannot pass an order against the statute and against Higher Benches of Supreme Court.* ***[Nidhi Keim Vs. State (2017) 4 SCC 1]***

CHARGE 14 # *Guilty of Contempt of Hon'ble Supreme Court and liable for action* ***Re:Justice C.S.Karan (2017) 7 SCC 1, Rabindra Nath Singh Vs. Rajesh Ranjan (2010) 6 SCC 417, M/s.***

Spencer & Co. Ltd. Vs. M/s Vishwadarshan Distributors (1995) 1 SCC 259, In Re : Markandeya Katju Suo Moto Contempt Petition (Criminal) No. 5 of 2016

CHARGE 15 # *Acted against section 14 (2) of Contempt of Courts Acts and law laid down in* ***Mohd. Zahir Khan Vs. Vijai Singh & Others AIR 1992 SC 642****, which casts a duty upon Judge of Supreme Court hearing Contempt proceeding under section 14 of the Act to ask alleged contemnor that, whether he wants transfer of his contempt case to be tried by another Judge or Bench.*

CHARGE 16 # *Violation of direction of Hon'ble Supreme Court in* ***Indian Performing rights Society Ltd Vs. Sanjay Dalia & Anr. (2015) 10 SCC 161*** *where it is ruled that Court should take care that hard cases should not make the bad law and it is duty to avoid mischief, injustice, absurdity and anomaly while selecting out of different interpretation."*

18. It is therefore humbly requested that the matter be dealt with urgency for protection of dignity and majesty of the Supreme Court.

19. In **Madhav Hayawadanrao Hoskot Vs. State of Maharashtra; (1978) 3 SCC 544**", Justice Shri V.R. Krishna Iyer reproduced the well-known words of Mr. Justice William J. Brennan, Jr. and held as under:

> **"16. Nothing rankles** *(cause annoyance)* ***more in the human heart than a brooding sense*** *(fear / anxiety)****of injustice.***
>
> ***...Democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness.***
>
> ***The social service which the Judges render to the community is the removal of a sense / fear of injustice from the hearts of people, which unfortunately is not being done, and the people (victims & dejected litigants) have been left***

abandoned to suffer and bear their existing painful conditions, and absolutely on the mercy of GOD."

20. In **Raghbir (Ranbir) Vs. State of Haryana AIR 1980 SC 1087**, the Supreme Court has observed as under;

*"We conclude with the disconcerting note sounded by Abraham Lincoln: "**If you once forfeit the confidence of your fellow citizens you can never regain their respect and esteem. It is true that you can fool all the people some of the time, and some of the people all the time, but you cannot fool all the people all the time**."*

21. In **State of Rajasthan Vs. Prakash Chand (1998) 1 SCC 1,** it is ruled as under;

*"Erosion of credibility of the Judiciary, in the public mind, for whatever reasons, is greatest threat to the independence of the Judiciary. It must be remembered that **IT IS THE DUTY OF EVERY MEMBER OF THE LEGAL FRATERNITY TO ENSURE THAT THE IMAGE OF THE JUDICIARY IS NOT TARNISHED AND ITS RESPECTABILITY ERODED.***

… Judicial authoritarianism is what the proceedings in the instant case smack of. It cannot be permitted under any guise. … It needs no emphasis to say that all actions of a Judge must be Judicious in character. Erosion of credibility of the judiciary, in the public mind, for whatever reasons, is greatest threat to the independence of the Judiciary. Eternal vigilance by the Judges to guard against any such latent internal danger is, therefore, necessary, lest we "suffer from self-inflicted mortal wounds". We must remember that the Constitution does not give unlimited powers to any one including the Judge of all levels. The societal perception of Judges as being detached and impartial referees is the greatest strength of the Judiciary and every member of the Judiciary must ensure that this perception does not receive a setback consciously or unconsciously. Authenticity of the Judicial process rests on public confidence and public confidence rests

on legitimacy of judicial process. Sources of legitimacy are in the impersonal application by the Judge of recognised objective principles which owe their existence to a system as distinguished from subjective moods, predilections, emotions and prejudices."

22. That when I made a Complaint against these two Judges then these two Judges, who are accused in my complaint had taken the cognizance of said case related with themselves and even when the case not assigned to them they passed order against the complainant in utter disregard of the fundamental principle of law that no one can be Judge in his own case or any case where he is directly or indirectly related.

IN RE: C.S. Karnan (2017) 7 SCC 1 [7-Judge Constitution Bench] of this Hon'ble Court while convicting Justice C. S. Karnan had observed as under

"*43(8). The contemnor who claims to have knowledge of the various alleged misdeeds of the judges of the Madras High Court at best can be a complainant or informant. If an appropriate enquiry is initiated into any one or all of the allegations made by the contemnor, 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."

23. That the Respondent No. 3 in his reply affidavit to said show cause notice had made following prayers ;

Prayers :-

a) *To consider this Preliminary Objection/submission of the Respondent No. 3, and decide all the issues independently & separately in view of law and ratio laid down by this Hon'ble Court in* ***Ashok Kumar Aggarwal Vs. Neeraj Kumar & Anr. (2014) 3 SCC 602, Amicus Curiae Vs. Prashant Bhushan 2010 SCC OnLine SC 47, Amicus Curiae Vs. Adv. Prashant Bhushan (2010) 7 SCC 592(Full Bench).***

b) *To appreciate all the case laws relied by me in view of Art. 141 of the Constitution and guidelines given by Full Bench of this Hon'ble Court in* ***Dwarikesh Sugar Industries Ltd's case AIR 1997 SC 2477, Union of India and Ors. Vs. Dhanwati Devi and Ors (1996) 6 SCC 44,Sundarjas Kanyalal Bhathija and Ors. Vs. The Collector, Thane, Maharashtra & Ors. AIR 1990 SC 261, Nidhi Kaim and Ors. Vs. State of Madhya Pradesh and Ors. (2017) 4 SCC 1, Dattani and Co. Vs. Income Tax Officer 2013 SCC OnLine Guj 8841, Mr. Roy Joseph Creado & Ors. Vs. Sk. Tamisuddin S/o Late Sk. Nazir Ahmed & Ors. 2008 ALL MR (Cri.) 751, Pradip J. Mehta Vs. Commissioner of Income-tax, Ahmedabad AIR 2008 SC (supp) 1788, Sundeep Kumar Bafna Vs. State of Maharashtra 2014 ALL MR (Cri.) 4113, The Bank of Rajasthan Ltd. Vs. Shyam Sunder Taparia Akai Impex Ltd. & Anr. 2006 ALL MR (Cri.)2269 , New Delhi Municipal Council Vs. M/S Prominent Hotels Limited 2015 SCC OnLine Del 11910, Medical Council of India Vs. G.C.R.G. Memorial Trust and Ors. (2018) 12 SCC 564.***

c) To decide all the issues based on principle laid down in **Sundarjas Kanyalal Bhathija and Ors. Vs. The Collector, Thane, Maharashtra & Ors. AIR 1990 SC 261**, where it is ruled that the question of law arising in the case should not be dealt with apologetic approaches.

d) *In view of principle of natural justice and as per the procedure laid down by this Hon'ble Court pleased to point out the Respondent/his Counsel about any case law which this Hon'ble Court wants to rely and which are not cited at the bar, so that the Respondent/his Counsel be able to put their views/say and if possible may give the another case law in support of their stand to resolve the controversy if any. As the case laws/citations are legal evidence.*

[Vide: Som Mittal Vs. State of Karnataka (2008) 3 SCC 574, Satyabrata Biswas & Ors. Vs. Kalyan Kumar Kisku & Ors. (1994) 2 SCC 266, Pritam Singh & Anr. Vs. State of Punjab AIR 1956 SC 415, State of U. P Vs. Mohammad Naim AIR 1964 SC 703]

e) *To record a finding that as per law laid down by Constitution Bench of this Hon'ble Court and further explained by Full Bench in **Asok Pande Vs. Suprme Court of India (2018) 5 SCC 341**, **Shanti Bhushan Vs. Supreme Court of India (2018) 8 SCC 396**, **A.V.Amarnathan Vs. The Registrar, High Court of Karnataka AIR 1999 Kant 404**, that the power to allocate/assign any case, letter, petition telegram vests only in the Chief Justice of India and any other Judge (s) of Hon'ble Supreme Court cannot entertain or take cognizance of any letter unless and until assigned to them by Hon'ble Chief Justice. And if any such cognizance is taken and if any order is passed on the basis of such letter then it is null & void, vitiated and non-est and cannot be acted upon as being passed without jurisdiction as has been made clear in the case of **Hasham Abbas (2007) 2 SCC 355, H. Modi (2005) 7 SCC 791.***

Therefore the cognizance of letter dated 23rd March, 2019 by Justice Rohinton Fali Nariman & Justice Vineet Saran without assignment of said letter by Hon'ble Chief Justice of India to them is illegal and order dated 27th March, 2019 issuing show-cause notice is nullity and cannot be acted upon and therefore liable to be discharged.

f) *Record a finding that, since the letter dated 19th & 20th March, 2019 were regarding the prayer for sanction to prosecute to Justice Rohinton Fali Nariman & Justice Vineet Saran and in fact addressed to Hon'ble Chief Justice of India & Hon'ble President of India, therefore Justice Rohinton Fali Nariman &*

*Justice Vineet Saran were disqualified to pass any order on the basis of fundamental principle that "**No one can be Judge of his own case**" and a person disqualified & precluded from acting as a Judge if he is having any interest in the subject matter because he cannot act as Judge and at the same time be a party as ruled by Constitution Bench of 7 - Judges in Re: **C.S.Karnan (2017) 4 SCC 1, Deepak Kumar Prahladka Vs.Cheif Justice Prabha Shankar Mishra (2004) 5 SCC 217.** and therefore the order dated 27th March, 2019 is vitiated, non-est, null & void on the ground of judicial bias as ruled in the case of **Justice P.D. Dinakaran v. Hon'ble Judges Inquiry Committee (2011) 8 SCC 380, State of Punjab Vs. Davinder Pal Singh Bhullar & Ors (2011) 14 SCC 770, Sukhdev Singh Sodhi VS. Chief Justice S. Teja Singh, 1954 SCR 454, Canara Bank Vs. V.K.Awasthy (2005) 6 SCC 321.***

g) *To record a finding that the Judge against whom allegations of corruption or any other serious allegations are made then said Judge should follow the abovesaid law that he cannot be a Judge of his own case and not to sign any order especially of Contempt notice as has been followed by Former Chief Justice of India Shri. S.H.Kapadia in the case of, **T.N.Godavaram Vs Union of India (UOI) 2009 SCC OnLine SC 31, Amicus Curiae Vs. Adv. Prashant Bhushan (2010) 7 SCC 592.***

The present show-cause notice against abovesaid rule is illegal and vitiated.

h) *To record a finding that whenever any court takes cognizance of contempt and issues notice then as per Section 15(3) of the Contempt of Courts Act and as per rules made for Contempt by Hon'ble Supreme Court and as per law laid down and followed in **i) J.R. Parashar Vs. Prashant Bhushan AIR 2001 SC 3395 ii) Sahdev Vs. State 2010 iii) Arun Shourie AIR 2014 SC 3020 iv) R.S.Sherawat Vs. Rajeev Malhotra and Ors. 2018 SCC Online SC 1347 v) Nagar Mahapalika of City of Kanpur Vs. Mohan Singh , Cr. AP No. 27 of 1964, Order Dated 31.01.1966 (**approved in* **C. K. Daphtary & Ors Vs. O. P. Gupta AIR 1971 SC 1132*), vi) D.D.Samudra, Judge, Court of Small Causes Vs. Vaziralli Pvt. Ltd., vii) 2006 Cri.L.J. 2326, viii) Dr.D.C.Saxena Vs. Hon'ble Chief Justice of India (1996) 5 SCC 216** it is mandatory to :*

(i) *mention the exact charge with which the person is made answerable including the section of Contempt of Courts Act, 1971 such as section 14, section 15, etc.*

(ii) *Mention the exact paras of the pleading in the Complaint, letter, petition & news published, which in the opinion of the Court is scandalous.*

(iii) *The circumstances under which the allegations are made.*

(iv) *reason for taking cognizance as to why the cognizance is required.*

But the order dated 27th March, 2019 is not in conformity with the above principles is therefore illegal and therefore proceedings are vitiated.

i) *To record a finding that whenever any show-cause notice is ordered to be issued then such notice should be in* ***"FORM-I"*** *and should contain a brief charge and also accompany with the document with all annexures relied by the court while taking suo-motu cognizance, and if charge is defective then the Respondent entitled to discharge and cannot be punished for the charge which is not mentioned in the notice as ruled and followed by this Hon'ble Court in* ***J.R. Parashar Vs. Prashant Bhushan AIR 2001 SC 3395 & Sahdev Vs. State (2010) 3 SCC 705, Suo Motu v. Nandlal Thakkar, Advocate (2013) Cri. LJ 3391., In Re: C.S Karanan (2017) 7 SCC 1 , Vinay Chandra Mishra AIR 1995 SC 2348.***

Therefore the notice served upon respondent without exact charge against Respondent No. 3 and without accompanying the annexures to the letter dated 23.03.2019 relied by the Court at the time of taking cognizance on 27th March 2019 are therefore vitiated and fatal to the proceeding and therefore notice is liable to be discharged in view of law and ratio laid down in ***Suo Motu v. Nandlal Thakkar, Advocate 2013 CRI. L. J. 3391.***

If this Hon'ble Court did not discharge the notice then as per Section 15 of the Contempt of Courts Act the respondent be given the opportunity to prove his defense by producing evidence and cross examining Mr. Milind Sathe, Mr. Kaiwan Kalyaniwalla, etc. including Justice Rohinton Fali Nariman and Justice Vineet Saran in view of law laid down in ***i) Vinay Chandra Mishra's case AIR***

1995 SC 2348 (Full Bench)**, ii) **R. S Sherawat Vs Rajeev Malhotra 2018 SCC OnLine Sc 1347**, iii) **Anil Kumar Dubey Vs. Pradeep Shukla (Full Bench) 2017 SpCC OnLine Chh 95, iv) R.K.Anand vs Registrar Delhi High Court (2009) 8 SCC 106.

j) To record a finding that the respondent is entitled to all protection available to accused in a criminal case including right to silence and not to disclose his defense till end of the trial in view of Article 20(3) of the Constitution of India and it is the law that one who assests has to prove the charges of Contempt as ruled in ***Clough Engg. Ltd. Australia Vs. Oil Natural Gas Corporation Mumbai 2009 CR.L.J. 2017***

k) *To record a finding that* as per law laid down by Full Bench in **R. K. Anand (2009) 8 SCC 106** and in **Vinod Surha Vs. State 2017 SCC ONLINE DEL 9037** the contempt jurisdiction can never be used to call reply from the alleged contemnor to answer that whether he is involved or have committed the contempt as alleged in the petition. Notice under contempt can never be issued so as to coax information whether he has committed the contempt as alleged in petition/letter. It would be hazardous to initiate proceedings on probabilities and it casts a shadow on the bonafides of the informant. If such request is made by person well versed with the law then it needs severe action against such informant.The request for issuance of Contempt notice based on ambivalent and doubtful pleadings doubts does not even a worth for issuance of notice and should be rejected at threshold.

l)** To record a finding that Court cannot issue notice of Contempt on unverified allegations not supported by legal proof and any such show cause notice is liable to be discharged as per law laid down in **S.A. Khan Vs. Ch. Bhajan Lal AIR 1993 SC 1348

*Honble Supreme Court in the case of **Attu Vs. Seema Sharma 2014 SCC OnLine MP 8703,** where it is ruled as under;*

***4.** Except for making a vague allegation that the respondents have not complied with the directions, nothing has been brought to the notice of this Court on the basis of which action for*

contempt can be taken. Action for contempt can be taken only if specific averments are made to show as to who were the officers responsible for committing breach of this Court's order. Merely on the basis of vague and unspecified allegations, no action for contempt can be initiated against the officers.

m) To record a finding that the complaint dated 15th and 20th March, 2019 were sent for preserving the majesty and dignity of the Court and for preventing the disrespect to settled Law by larger and co-ordinate benches of Hon'ble Supreme Court and therefore the Complainant Rashid Khan Pathan and Adv. Vijay Kurle of Indian Bar Association by making complaint performed their pious duty as citizen as enshrigned under Article 51 (A) (h) of the Constitution as ruled in **Indirect Tax Practitioners Association Vs. R.K. Jain (2010) 8 SCC 281** and also the duty of an advocate as per Bar Council of India Rules (vide **O. P. Sharma Vs. High Court of Punjab & Haryana (2011) 6 SCC 86** and **R. Muthukrishnan Vs. Registrar General of the High Court of Judicature at Madras 2019 SCC OnLine SC 105)**
And therefore initiation of Contempt proceeding against them is highly illegal and grossest abuse of the process of Court.

n) *To record a finding that as per law laid down in Re: **S. Mulgaonkar AIR 1978 SC 727**, the respondent i.e. alleged contemnor is having presumption of innocence and having right to demolish the case against him even without exposing himself for cross-examination. And if there is any doubt then benefit of doubt should and should be given generously against Judge. Further Judge is not expected to be hypersensitive. The law ruled is;*

"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. The third principle is to avoid confusion between personal protection of a libelled judge and prevention of obstruction of public justice and the community's confidence in

that great process. The former is not contempt, the latter is, although overlapping spaces abound. The last guideline for the judges to observe in this jurisdiction is not to become hypersensitive even where distortions and criticisms overstep the limits, but to deflate vulgar denunciation by dignified bearing, condescending indifference and repudiation by judicial rectitude. The law of contempt must adjust competing values, be modified, in its application by the requirements of a free society and by shifting emphasis on paramount public interest in a given situation. Ultimately, he concluded by saying that freedom is what Freedom does and Justice fails when Judges quail and for sure his plea is not for judicial pachydermy, but for dignified detachment which ignores ill-informed criticism in its tolerant stride, but strikes when offensive excesses are established."

o) *To record a finding that in the complaint dated 19th March 2019 given by Shri. Rashid Khan Pathan in para 43 there is specific reference of the case of sedition under Section 124-A , 120(B) etc of Indian Penal Code and Contempt filed again Adv. Fali Nariman on 19th Feb, 2019, who is father of Justice Rohinton Fali Nariman and the said case was represented by Adv. Nilesh Ojha and therefore it was mentioned that Justice Rohinton Fali Nariman should have recused himself from hearing any case related with Adv. Nilesh Ojha. But instead of doing this Justice Nariman on 27th March 2019 issued show cause notice of Contempt and this have eroded the fact of rule of law in view of law laid down in* ***P.K. Ghosh Vs. J.G. Rajput AIR 1996 SC 513,*** *where it is ruled that;*

Request for recusal by Judge - Constitution of Bench - Objection as to hearing of Contempt petition by a particular Judge - Failure to recuse himself is highly illegal - order vitiated - Learned Chief Justice of India apprised B. J. Shethna, J. of this allegation to elicit his comments - 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.

Hence the order dated 27th March, 2019 is vitiated.

p) *To record a finding that the informant Bombay Bar Association (BBA) have committed Contempt of various laws settled by this Hon'ble Court more particularly (i)* ***J.R. Parashar Vs. Prashant Bhushan (2001) 6 SCC 735 (ii) Bar Council of Maharashtra Vs. State 2011 SCC OnLine Bom 1103*** *and law clarified by Hon'ble Shri. Justice Pinaki Chandra Ghose in the case of* ***Hindustan Unilever Ltd.Vs. Procter & Gamble Home Product Ltd. MANU/WB/1335/2011*** *,* ***Quantum Securities Pvt Ltd And Ors vs New Delhi Television Ltd AIR 2015 SC 3699,*** *where it is ruled that the disputed question of fact and the subjudice & pending cases cannot be taken in to consideration in the proceedings concerned with contempt of Court*

q) *To record a finding that the access to Justice is a Fundamental Right of citizen as guaranteed under Article 14, 19 & 21 of the Constitution the Constitution as explained by Constitution Bench of hon'ble Supreme Court in* ***Anita Khushwha & Ors.Vs. Pushap Sudan And Ors. (2016) 8 SCC 509*** *and the obstruction by Bombay Bar Association (BBA) & Bombay Incorporated Law Society (BILS) in these fundamental right makes the members of executive committee of Bombay Bar Association (BBA) and Bombay Incorporated Law Society (BILS) is ex – facie Contempt and they to be debarred to enter the Court premises until they purge themselves of Contempt to the satisfaction of the Chief Justice based on appropriate undertaking as ruled by Hon'ble Supreme Court in the case of* ***Krishnakant Tamrakar Vs State MANU/SC/0310/2018.***

r) *To record a finding that the bodies of Bombay Bar Association (BBA) & Bombay Incorporated Law Society (BILS) are liable to be disaffiliated from Hon'ble Bombay High Court and Bar Council of Maharashtra & Goa for acting against the constitutional laws and Bar Council of India rules and thereby bringing the name of the noble profession in to disrepute for their attempt to make the Baer too sycophant, servile and extra subservient which will be never allowed to happen as declared prohibited by this Hon'ble*

Court in ***R.Muthukrishan case 2019 SCC OnLine SC 105***

s) *To record a finding that the private communication by the Bombay Bar Association (BBA) & Bombay Incorporated Law Society (BILS) to the Court during pendency of the case, with allegation against the party concerned is gross Contempt as ruled in* ***Radha Govind Das case 1953 Cri.L.J 1906.***

t) *To record a finding that whenever any Complaint against a puisne Judge of that Court is received by the Hon'ble Chief Justice of India and Chief Justice of India had not taken any cognizance of Contempt and the Judge against whom the complaint is made receives the said complaint then the course left open to the said Judge is only to give his response/remark and forward it to Hon'ble Chief Justice of India and the said Judge cannot initiate Contempt proceeding against the complaint as per ratio laid down in* ***Court on its Own Motion Vs. DSP Jayant kashmiri 2017 SCC OnLine Del 7387,****where it is ruled as under;*

All that the letter written by Shri Chhabra to the learned Sessions Judge purports, broadly speaking, to do is to request the superior Court to see and verify as to what is the real situation on the facts and circumstances as disclosed in the letter. It is noteworthy that the learned Sessions Judge did not consider anything objectionable in the letter addressed to him and took no action on the lines on which the learned Magistrate has proceeded.

This important aspect seems to have been ignored by the learned Magistrate. The present application by him to this Court direct, may suggest that he is anxious to discourageapproach to his superior Courts with request to scrutinise the proceedings of cases pending and dealt with by his Court, which, if true, seems to us to be somewhat difficult to commend or encourage. An impression of this kind should have been avoided at all costs by the learned Magistrate in the larger interests of our judicial process. The learned Magistrate has perhaps, in his official zeal, adopted too doctrinaire an approach to the matter ignoring the essential and basic purpose of the law of contempt. He seems to have been led away by excessive sensativeness and he did not deal with the problem in a cool manner behoving experienced judicial officers. Assuming Shri

Chhabra, who is a very senior I.A.S. Officer of Haryana, had done something improper in approaching the learned Sessions Judge by means of a letter, it was by no means a fit case for starting contempt of Court proceedings on its peculiar facts and circumstances.

If the learned Magistrate had, instead of approaching this Court for contempt of Court proceedings,looked at the record of the proceedings before him and tried to set right whatever was found wrong or unjust with those proceedings. .."

*"**45**. We may usefully also refer to a pronouncement of Division Bench of this court reported at ILR (1968) Del 493, A.N. Jindal v. P.L. Chhabra on this aspect. In this case, Shri A.N. Jindal,* ***Magistrate First Class, Delhi made a reference under Section 3 of Contempt of Courts Act*** *for taking action against Shri P.L. Chhabra, Provincial Transport Controller, Haryana Government, at Chandigarh* ***on the basis of a D.O. letter dated 4th April 1968 written by him to Shri*** *C.G. Suri, District & Sessions Judge, Delhi requesting the superior court to see and verify as to what is the real position on the facts and circumstances disclosed in the letter. The ld. Sessions Judge did not consider anything objectionable in the letter addressed to him and took no action against the author of the letter. Instead, the letter was forwarded to the District Magistrate in due course so that this officer may go into the matter. The officer Incharge (Judicial) acting on behalf of the District Magistrate, Delhi, on 25 th April, 1968, forwarded it to Shri A.N. Jindal, Magistrate First Class with a request to seek his comments thereon immediately. Instead of offering his comments thereon to the District Magistrate, Shri Jindal forwarded to the Registry of this court an application dated 31 st May, 1968 under Section 3 of Contempt of Courts Act with a covering letter dated 3rd June, 1968 suggesting action to be taken against Shri P.L. Chhabra for having written the letter.* ***The observations of the court on the issue as to whether writing of the letter was contumacious shed valuable light on the present consideration and are extracted hereunder :***

"Contempt of Court can be said to be constituted by any conduct

that tends to bring the authority and the administration of law into disrespect and disregard, or to interfere with or prejudices parties, litigants or their witnesses during the litigation. Proceedings by way of contempt being summary, and the Court being both the accuser and the Judge of the accusation, such proceedings have to be initiated in exceptional cases where there is a serious interference with the proceedings of the Court. The jurisdiction for committing for contempt being practically arbitrary and unlimited, must be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the Judges. We are confining ourselves to the category of contempt of Court which unduly interferes with the judicial process because we are only concerned with such category in the case in hand. ***Administration of justice by an impartial and independent judiciary, which is trained to administer justice objectively, is the basis of our system of jurisprudence, as it is the basis of the jurisprudence of all the civilised societies.*** *Any undue interference with pending proceeding is, therefore, looked at with disfavour and is treated as contempt of the Court. But at the same time, the concept of contempt does not imply that Courts should get unduly touchy and take action in respect of anything that may appear as ignoring their authority. Judicial function is no doubt one of the most ancient and most persistent functions of Government and the methods employed to fulfil these functions are of central importance in any political system. In our system, there is hierarchy of Courts of law and justice and they are enjoined to function in accordance with and under the law. Illegalities and errors of judgment are subject to supervision by the higher Courts. In certain cases, in the larger interests of justice, the superior Courts can also act suo motu in exercise of the power of superintendence and revision to see that the subordinate Courts keep themselves within the bounds of law. It is in this background that we propose to examine the present problem facing the Court. In the case in hand,* ***all that the letter written by Shri Chhabra to the learned Sessions Judge purports, broadly speaking, to do is to request the superior Court to see and verify as to what is the real situation on the facts and circumstances as disclosed in the letter. It is noteworthy that the learned Sessions Judge did not consider anything***

objectionable in the letter addressed to him and took no action on the lines on which the learned Magistrate has proceeded. *The letter was forwarded to the District Magistrate in due course so that the latter officer may go into it. The learned District Magistrate also, it is worth-noting did not consider that the letter amounted to any interference with the judicial duties of the learned Magistrate. He urgently asked for comments from the learned Magistrate as he was fully empowered to do. In these circumstances, one would have expected the learned Magistrate to forward his comments to the learned District Magistrate and leave it to that officer or to the learned Sessions Judge to take whatever steps they considered proper and necessary for the purpose of maintaining and preserving the dignity of the Courts of justice subordinate to them.* ***This important aspect seems to have been ignored by the learned Magistrate. The present application by him to this Court direct, may suggest that he is anxious to discourageapproach to his superior Courts with request to scrutinise the proceedings of cases pending and dealt with by his Court, which, if true, seems to us to be somewhat difficult to commend or encourage. An impression of this kind should have been avoided at all costs by the learned Magistrate in the larger interests of our judicial process. The learned Magistrate has perhaps, in his official zeal, adopted too doctrinaire an approach to the matter ignoring the essential and basic purpose of the law of contempt. He seems to have been led away by excessive sensativeness and he did not deal with the problem in a cool manner behoving experienced judicial officers. Assuming Shri Chhabra, who is a very senior I.A.S. Officer of Haryana, had done something improper in approaching the learned Sessions Judge by means of a letter, it was by no means a fit case for starting contempt of Court proceedings on its peculiar facts and circumstances.*** *The Court in contempt proceedings, has to act with great circumspection, making all allowances for errors of judgment, keeping in view the recognised and known difficulties arising from inveterate practices in Courts, particularly in traffic cases. The facts of the various cases, as disclosed on the record, quite clearly justify the anxiety felt by Shri Chhabra in the interest of proper functioning of his department in approaching the*

learned Sessions Judge, though it would have been better if the matter had been brought to the notice of the learned Sessions Judge by a formal judicial application. There was, quite clearly, no contumacious conduct on the part of Shri Chhabra, nor could it be said that he tried unduly to interfere with the normal course of judicial process which called for invoking the drastic machinery of proceedings for contempt of Court. It would have been a matter of great satisfaction to us ***if the learned Magistrate had, instead of approaching this Court for contempt of Court proceedings,looked at the record of the proceedings before him and tried to set right whatever was found wrong or unjust with those proceedings. .."***

u) *To record a finding that Justice Nariman & Vineet Saran by taking letter dated 23.03.2019 on record without disclosing its source acted illegally and committed offence against administration of justice as ruled by Hon'ble Division Bench in* ***State Of Maharashtra Vs. Kamlakar Nandram Bhawsar 2003 ALLMR (CRI) 2640,*** *where it is ruled as under;*

I.P.C. Sec. 193, 196, 466, 471, 474, r/w 09 – Criminal Procedure code, 1978, Sec. 344 – Summary trail for fabricating false evidence against Judicial Magistrate ,P.P., Police Officer, and others– Trial court passing order on basis of forged dying declaration not produced by the prosecution – Trial Judge without clarifying anywhere as to who produced the dying declaration directly taking it on record – Held Acquittal set aside – High Court issued show cause notice to Advocate for accused, Additional public Prosecutor for State, PSI, Special, Judicial Magistrate calling explanation as to why they should not be tried summarily for giving false evidence or fabricating false evidence or

Why action under Section 344 of the Criminal Procedure Code should not be taken against them and they should not be summarily tried for knowingly and willfully giving false evidence or fabricating false evidence with an intention that such evidence should be used in Trial Court. Or in the alternative why they should not be prosecuted for offences under Sections 193, 196, 466, 471 and 474 read with 109 of Indian Penal Code. Show cause notice returnable on 12.12.2002 before the regular Division

Bench.

All the papers of the Trial Court and the papers produced by the Medical Officer of Nashik should be kept in seal in the custody of the Registrar of this Court.

As per law ruled in **Praduman Bhist Vs. Union of India (2017) 4 Crimes 283 (S.C.)** nothing happenes private in the Courts and the source of that letter should have disclosed because Court are the open Courts. Also ruled in **Baboolal andOthers Vs. Nathmal and Another AIR 1956 Raj 123**

v) *To record a finding that if any Judge acts illegally and without jurisdiction in the case affecting rights of the party then such Judge is liable to pay damages to the said person and he is not protected by Judges (Protection) Act, 1985 in view of law & ratio laid down in* ***Sailajanand Pande Vs. Suresh Chandra Gupta, 1968 SCC OnLine Pat 49,*** *where it is ruled as under;*

" Action against Judicial Officer causing illegal arrest

– Magistrate acting illegally and without jurisdiction in the matter of arrest is not protected – Magistrate has no absolute protection regard to his act of illegal arrest.

First class Magistrate issued letter to appear and directed to show cause against prosecution on the petition filed by another person – When petitioner appeared he was detained to custody – The bail bond furnished by the petitioner were rejected by the Magistrate deliberately – Petitioner claimed that due to such illegal, unauthorized and malafide conduct of the Magistrate in arresting him, he has lowered in the estimation of the public and claimed for the damage – The action of the Magistrate by putting the petitioner under arrest for realinsing the certificate dues by adopting questionable and unlawful method is highly deplorable – It was unbecoming of a Magistrate – It is relevant to investigate to find out the motive, the propriety and the legality of the action of the Magistrate in arresting the petitioner – It is not a judicial act although exercised during the Judicial proceedings – The Magistrate exercised its power with the ulterior object of coercing the petitioner.

At page 178 of the 14th Edition of Salmond on Torts it is said -

"The wrong of false imprisonment consists in the act of arresting or imprisoning any person without lawful justification, or

otherwise ***preventing him without lawful justification from exercising his right of leaving the place in which he is."***

In my opinion, defendant No. 1 has committed the wrong of false imprisonment in this case.

But - "Wherever protection of the exercise of judicial powers applies, it is so absolute that no allegation that the acts or words complained of were done or spoken mala fide, maliciously, corruptly, or without reasonable or probable cause suffices to found an action." Further it has been pointed out under the title "Liability of Magistrates" at page 160 of Volume 25 of Halsbury's Laws of England, 3rd Edition, that -

"Protection is afforded by common law and by statute to justices in respect of acts done in the execution of their duty as such; but this protection does not extend to cases where they have acted either maliciously and without reasonable and probable cause, or without or in excess of their jurisdiction, and in such cases they are liable to an action for damages at the suit of the party "aggrieved,"

A similar passage occurs at page 768 of Volume 38 of the Halsbury's Laws of England, 3rd Edition -

A Magistrate or other person acting In a judicial capacity is not liable for acts done within his jurisdiction, but he is liable to an action for false imprisonment If he unlawfully commits a person to prison in a matter in which he has no jurisdiction, provided that he has knowledge, or the means of knowledge of the facts which show that he has no jurisdiction.".

w) *To record a finding that as per law laid down in the case between* ***Quantum Securitues Pvt. Ltd. Vs. New Delhi AIR 2015 SC 3699.*** *The Court cannot enter into issues related with subjudice matters.*

" When the issue on merits is seized of by the original court in civil suit/proceedings and rights of the parties are still not decided on merits then it is not proper for this Court to probe into the facts and record any finding on any of the issues arising out of collateral proceedings such as the one here else our observation may cause prejudice to

the parties while prosecuting their case before the original court on merits. *we are inclined to stay the contempt proceedings out of which these appeals arise. After the disposal of the Notice of Motion, the contempt proceedings may be decided in accordance with law including its maintainability etc.*

In our considered opinion, there is no justification on the part of parties (without blaming any one) to keep the main Notice of Motion pending and prosecute its off-shoot proceedings in preference to the main case such as the one out of which these appeals arise.

We also make it clear that all the issues which were argued in these appeals including the issue as to whether the remedy of the appellants lie in filing statutory appeal under Section 19 of the Contempt of Courts Act against the impugned orders etc. are kept open for being decided at the appropriate stage, if occasion arises.It is for these reasons, we do not consider it necessary to discuss in detail the submissions urged by both the learned senior counsel nor we consider it apposite to deal with several case laws cited at the bar.

20) In our view, once the Notice of Motion is finally decided on merits in accordance with law one way or the other then the parties to the Lis can always work out their rights by taking recourse to legal remedies available to them for pursuing their grievance to higher fora either in appeal or revision, as the case may be, and may also prosecute the contempt proceedings arising out of the main case, if need arises.

21) In our considered opinion, It is always in the larger interest of the parties to the Lis to get the main case (Lis) decided first on its merits as far as possible rather than to pursue their off-shoot proceedings on merits by keeping the main case undecided. It is more so when any decision rendered in the main case has a bearing over the pending off-shoot proceedings.

25) Needless to say, since we have refrained from giving finding on merits on any of the issues and hence the concerned Courts, which are seized of the civil suit/proceedings in question, would decide the matter on merits strictly in accordance with law without being influenced by our observations made herein."

x) *To record a finding that as per law laid down by this Hon'ble Court in* ***Indirect Tax Practitioners Association Vs. R.K. Jain , (2010) 8 SCC 281,*** **Anirudha Bahal Vs. State 2010 (119) DRJ 104** *it is duty of every citizen under Article 51 (A) (h) to expose corruption in judiciary and as per Constitution Bench judgment in* ***Barthana Reddy's Case AIR 1954 SC 149,*** *when anyone has proof against malpractices of a Judge then it will be for public good that it should be brought to light and as per law laid down in* ***R. Muthukrishnan Vs.The Registrar General of the High Court of Judicature at Madras AIR 2019 SC 849****, it is duty of every advocate to make complaint against Judges if the said advocate feels that he had a reasonable ground that the said Judge is wrong. Further, as per the law laid down by Constitution Bench in* ***K. Veeraswami Vs. Union of India (UOI) and Ors.1991 (3) SCC 655****,* ***Raman Lal Vs.State 2001 Cr. L. J. 800*** ***Re: C. S. Karnan*** ***(2017) 7 SCC 1****,* ***Smt. Justice Nirmal Yadav vs. C.B.I. 2011 (4) RCR (Criminal) 809, Shameet Mukherjee vs. C.B.I. 2003 SCC Online Del 821, Govind Mehta Vs. State AIR 1971 SC 1708, Superintendent of Central excise Vs. Somabhai Patel AIR 2001 SC 1975, Re: M.P. Dwivedi AIR 1996 SC 2299,*** **Smt. Prabha Sharma Vs. Sunil Goyal and Ors.(2017) 11 SCC 77, R. R. Parekh Vs. High Court Of Gujarat & Anr. (2016) 14 SCC 1, Umesh Chandra Vs. State of Uttar Pradesh & Ors. 2006 (5) AWC 4519 ALL, Jagat Jagdishchandra Patel Vs. State of Gujarat and Ors. 2016 SCC OnLine Guj 4517, Vijay Shekhar Vs. Union of India 2004 (3) Crimes 22 (S.C.), Raman Lal Vs. State of Rajasthan 2000 SCC OnLine Raj 226, B.S. Sambhu Vs. T.S. Krishnaswamy AIR 1983 SC. 64** *are the cases where Judges were prosecuted for passing order contrary to law. Also the provisions of section 219, 218 etc. for meant punishment to Judges passing order contrary to law and therefore the attempt of Adv. Milind Sathe and executive members of Bombay Bar Association (BBA), Mr. Kaiwan Kalyaniwalla and executive members of Bombay Incorporated Law Society (BILS) in para 4 their letter dated 23rd March, 2019 stating that no complaint can be filed against Judge for passing any wrost order contrary to law is a gross Contempt of all the settled law and more particularly law laid down in* ***C. Ravichandran Iyer Vs. Justice A. M. Bhattacharjee and Ors.*** ***(1995) 5 SCC 457*** *, which is given in*

the case of Bombay Bar Association(BBA) and based on that principle action taken against Justice Shukla of Allahabad High Court for passing wrong orders, this proves that Bombay Bar Association (BBA) & Bombay Incorporated Law Society (BILS) are having no respect for the law laid down by Hon'ble Supreme Court and for the constitution of India and they are having audacity to make such Contemptuous and anti – Constitutional submission before Hon'ble Chief Justice of India is gross Contempt, and therefore their affiliation to Bombay High Court is liable to be cancelled and Contempt proceedings are liable to be initiated against him.

y) *To record a finding that any order passed in the proceeding Contempt of Courts Act are made appealable as per section 19 of the Act, but under Section 19 of the Contempt of Courts Act there is no mention of Supreme Court therefore the respondent is entitled to file Writ Petition against any order including framing of charges and larger Bench of this Hon'ble Court can set aside of the said order as done in* ***M.S. Ahlawat Vs. State of Haryana (2000) 1 SCC 278, 2000 CRI. L. J. 388 (Full Bench), Supreme Court Bar Association (1998) 4 SCC 409 (Constitution Bench).,R.S. Nayak Vs. A.R. Antulay 1984 (3) SCC 86.***

And the order framing charges under Contempt of Court of Act is appealable in view of Full Bench Judgment in ***Anil Kumar Dubey Vs. Pradeep Shukla (Full Bench) 2017 SCC Online Chh 95, 2009 Cri.L.J. 2177*** *and till the appeal period the respondent is entitled for appropriate relief from this Hon'ble Bench as ruled by Full Bench of this Hon'ble Court in* ***Hari Nath Sharma vs. Jaipur Devlopment Authority (1995) 4 SCC 251.***

z) *To record a finding that due to defective charge and due to the cognizance without any lawful basis and without jurisdiction the fundamental rights of the Respondent No. 3 are violated and he is prejudiced in making his defence and therefore he is entitled to interim compensation of Rs. 5 Crores in view of law laid down by Five Judge Bench of Hon'ble Privy Council in* ***Ramesh Maharaj Vs. Attorney General (1978) 2 WLR 902 , Walimik Bobde Vs. State 2001 ALL MR (Cri) 1731, Dr. Mehmood Nayyar Azam (2012) 8 SCC 1. S. Nambi Narayanan Vs. Siby Mathews & Ors. (2018) 10 SCC 804***

aa) *To record a finding that the ground taken in the Complaint filled by Respondent No.1 Vijay Kurle & Respondent No. 2 Shri. Rashid khan Pathan with allegations for sanction to prosecute Justice Rohinton Fali Narinam & Justice Vineet Saran if are well founded and substantiated as required by the law laid down by Hon'ble Chief Justice of India Shri Ranjan Gogoi in the case of* ***Re: Lalit Kalitha 2008 (1) GLT 800, Re: C.S. Karnan (2017) 7 SCC 1*** *then no case of contempt is made out.*

bb) *To record a finding that the Respondent No. 1 - Adv. Vijay Kurle, acted lawfully when he made complaint against Shri. Justice Rohinton F. Nariman & Justice Vineet Saran by relying on the judgment of Hon'ble Supreme Court in:*

I) R. MuthukrishnanVs.The Registrar General of the High Court of Judicature at Madras AIR 2019 SC 849

II) C. Ravichandran Iyer Vs. Justice A. M. Bhattacharjee and Ors. (1995) 5 SCC 457

III) Indirect Tax Practitioners Association Vs.R.K. Jain (2010) 8 SCC 281

IV) Anirudha Bahal Vs. State 2010 SCC OnLine Del 3365

V) K.Veeraswami Vs.Union of India (1991) 3 SCC 655

cc) *To record that the Advocate is having duty to make complaint against Judges as per the Bar Council of India rules explained in* ***O. P. Sharma Vs. High Court of Punjab & Haryana (2011) 6 SCC 86;*** *where it is ruled that;*

"Section *- I of Chapter-II, part VI title "standards of professional conduct and etiquette"* ***of the Bar Council India rules specifies the duties of an advocate that 'he shall not be servile and whenever there is proper ground for serious complaint against Judicial officer, it shall be his right and duty to submit his grievance to proper authorities'."***

dd) *To record a finding that the Complaint filed by Respondent No. 1 State President of Indian Bar Association against Shri. Justice Rohinton Fali Nariman and Shri. Justice Vineet Saran even if taken on its face value and accepted in entirety is covered by the law laid down by Constitution Bench judgment of Hon'ble Supreme Court in* ***Bramha Prakash Sharma's case (AIR 1954 SC 10)*** *and by Full Bench in* ***State Vs. Bodh Raj AIR 1958 J & K 19*** *where it is ruled that;*

"Contempt of Courts Act (32 of 1952), S.3- Complaint by

litigant to High Court against subordinate Courts criticising the orders - Use of impolite language - the language used in criticising the orders was not proper and polite yet it would not constitute the offence of contempt of Court. We discharge the rule issued against the respondent."

The Complaint by Bar Association to authorities supported by proof and substantive material as to incompetency, and attributing other illegalities of the Judge does not amount to Contempt.

ee) *To record a finding that the Respondent is entitled for interim compensation of Rs. 10 Cores from informant Mr. Milind Sathe, Mr. Kaiwan Kalyaniwala & other executive members of Bombay Bar Association (BBA) Bombay Incorporated Law Society (BILS) in the view of law laid down in* ***Indirect Tax Practitioners Association Vs. R.K. Jain (2010) 8 SCC 281*** *for sending letter containing false, misleading, incorrect version with twisting, dishonest concealment and suppression of material fact, with the malafide intention to refrain Respondent from discharging their pious constitutional duty as enshrigned under Article 51(A) (h) of the Constitution and also the duty cast upon a Lawyer as per Bar Council of India rules and as per law laid down by Hon'ble Supreme Court in* ***R. Muthukrishnan Vs. The Registrar General of the High Court AIR 2019 SC 849.***

ff) *To record a finding that Mr. Milind Sathe , Mr. Kaiwan Kalyaniwalla and executive members of respective bodies are guilty of misusing the said association i.e. Bombay Bar Association (BBA) & Bombay Incorporated Law Society (BILS) for threatening the informant and their witnesses and thereby creating hindrance, disturbance, interference in the constitutional rights of Respondent to their access to justice as mandated under Article 14, 19, 21 etc. of Constitution of India and as ruled by Constitution Bench of Hon'ble Supreme Court in* ***Anita Khushwha & Ors.Vs. Pushap Sudan And Ors. (2016) 8 SCC 509,*** *and they are liable for action under Contempt as per* ***H. Syama Sundara Rao Vs. Union of India (UOI) and Ors. 2006 SCC OnLine Del 1392***

gg) *To record a finding that as proved from the records it is clear that Respondent No. 3 (Adv. Nilesh Ojha) has been falsely implicated by Smt. Justice Roshan Dalvi in 2014, then by Shri.*

Justice A.K. Menon in 2016 and the abovesaid proceedings were misused by the informant (BBA) to mislead this Hon'ble Court and it is falsely & without any proof mentioned that the Respondent No. 3 is in tandem with Respondent No. 4 and this Hon'ble Court (Coram : Shri. Justice Rohinton Fali Nariman & Shri. Justice Vineet Saran) by order dated 27th March 2019 issued notice to the respondent No. 3, based on the distorted false and misleading version put up by the Bombay Bar Association (BBA) & Bombay Incorporated Law Society (BILS) in their letter dated 23rd March 2019 and therefore Respondent No. 3 Adv. Nilesh Ojha is entitled for ad-interim Compensation of 10 Crores from the Bombay Bar Association (BBA) & Bombay Incorporated Law Society (BILS).

hh) *To record a finding that the Contempt of Court Act is not for protection of individual Judge for any wrongful act done by the Judge but for protection of Justice as laid down in* ***Re: C.S. Karnan's Case (2017) 7 SCC 1, Prospective Publication Vs. State AIR 1971 SC 221, Govind Ram Vs. State AIR 1972 SC 989, High Court of Karnataka Vs. Jai Chaitanya dasa & Others 2015 (3) AKR 627 (D.B)***

ii) *To record a finding the Contempt of Court Act is meant for preservation of justice and not made to protect the Judge for any wrong committed by him and his family members.*

The key word is "Justice", not "Judge"; the key-note thought is unobstructed public justice, not the self defence of a Judge.

In the ***United States, the Supreme Court in Craig v. Harney, 331 US 367 (1947)****, observed that;*

"the law of contempt is not made for the protection of Judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate."

That being said, it may be noted that the Supreme Court made a distinction between a mere libel or defamation of a Judge and a Contempt of Court or 'scandalising of a Judge in relation his office', and laid down a test of "whether the wrong is done to the judge personally or it is done to the public." ***Perspective Publications (Pvt.) Ltd., AIR 1971 SC 221****. Expounding on it further,in* ***Shri Baradakanta Mishra v. The Registrar of Orissa High Court & Anr., AIR 1974 SC 710****, the Court observed;*

"…the key word is "justice", not "judge"; the key-note thought is unobstructed public justice, not the selfdefence of a judge; 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."

The law laid down in ***Phanraj kashyap Vs. S.R. Ramkrishna 2011(3) Kar.L.J. 572*** *it is ruled as under;*

"*40. Only because name of son of a Judge is taken does not amount to contempt. Judge should not be embarrassed by them. Contempt proceedings are not enacted to protect a Judge personally. If in anyway the Judge is aggrieved, he can file defamation case in personal capacity against the said person."*

42. One has to avoid confusion between personal protection of a libelled Judge and prevention of obstruction of public justice and the community's confidence in that great process. The former is not contempt, the latter is, although overlapping spaces abound. Any personal attack upon a Judge in connection with the office he holds is dealt with under law of libel or slander. He must resort to action for libel or criminal intimidation. The position therefore is that a defamatory attack on a Judge may be a libel so far as the Judge is concerned and it would be open to him to proceed against the libellor in a proper action, if he so chooses. One is a wrong done to the Judge personally while the other is a wrong done to the public. A distinction must be made between a mere libel or defamation of a Judge and what amounts to a contempt of the Court. The test in each case would be whether the impugned publication is a mere defamatory attack on the Judge or whether it is calculated to interfere with the due course of justice or the proper administration of law by the Court. Alternatively the test will be whether the wrong is done to the Judge personally or it is done to the public. The object of contempt proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individuals; it is intended to be a protection to the public whose interests would be very much affected, if by the act or conduct of any party, the authority of the Court is lowered and the sense of confidence which people have in

the administration of justice is weakened. It is not to be used for the vindication of a Judge as a person.

43. Criticism of the Judges would attract greater attention than others and such criticism sometime interferes with the administration of justice and that must be judged by the yardstick, whether it brings the administration of justice into a ridicule or hampers administration of justice. The punishment for contempt, therefore, is intended to protect the public who are subject to the jurisdiction of the Court and to prevent undue interference with the administration of justice.

44. The Court has to consider the nature of the imputations, the occasion of making the imputations and whether the contemnor foresees the possibility of his act and whether he was reckless as to either the result or had foresight like any other fact in issue to be inferred from the facts and circumstances emerging in the case. The jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice. The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice. The Court is willing to ignore, by a majestic liberalism trifling and venial offences. The Court will not be prompted to act as a result of an easy irritability. The Judges should not be hypersensitive, even when distortions and criticisms overstep the limits. They should deflate vulgar denunciation by dignified bearing, condescending indifference and repudiation by judicial rectitude. Therefore, dignified detachment, ignoring ill-informed criticism in its tolerant stride, should be the underlining principle:

The dogs may bark, the caravan will pass.

45. The best way to sustain the dignity and respect for the office of Judge is to deserve respect from the public at large by fearlessness and objectivity of the approach to the issues arising for decision, quality of the judgment, restraint, dignity and decorum a Judge observes in judicial conduct off and on the Bench and rectitude. It has been well-said that if Judges decay, the contempt power will not save them and so the other side of

the coin is that Judges, like Caesar's wife must be above suspicion. We must turn the search light inward.

46. The attack is on the authorities and its functionaries in not discharging its duties in accordance with law. The attack is at the same time to fight the tendency to bend the rules. ***As we could see from the entire report, the intention was not to attack any Judge of this Court or the institution as such. There is no intention to undermine the Majesty of law or its institution.*** *Incidentally one of the persons to whom the preference is given contrary to the rules happens to be a son of Judge of this Court, a fact which is not denied and cannot be disputed.* ***Merely because there is a reference to a High Court Judge in the said report, it cannot be construed as an attack on a Judge of this Court or the institution. Assuming it is an attack on that particular Judge, at the worst it may amount to defamation. The law on the point is well-settled. He has a remedy to agitate before the Civil Court. Contempt is not the remedy,***

47. Contempt of Courts Act is not enacted to protect Judges when they are attacked in their personal matters. Only when they are discharging their official functions, to enable them to discharge the functions fearlessly, without being afraid of the consequences, this legislation is enacted. This law has to be used sparingly. The wisdom lies in invoking these provisions economically, in rarest of rare cases. It cannot be used to stifle the freedom of expression. The press has a fundamental right to bring to the notice of the public the way these autonomous authorities are functioning, how the innocent students are made to suffer whatever they have written is interest. They are agitating a public cause. There is no intention on their part to attack any Judge of this Court or Judges of this Court or the institution as such, as sought to be made out. *In fact the entire allegation in the petition read as a whole refers only to the student involved in revaluation. If the student feels that he is defamed by the said article, he cannot have the remedy of Contempt of Court. His remedy is elsewhere.*

49. From the facts of this case, we are satisfied that the allegation

read as a whole is not calculated to interfere with the administration of justice. The wrong done to the Judge personally, if at all amounts to defamatory attack on a Judge and it may be a libel and it is open to the Judge to proceed against the libellor in an appropriate action, if he so chooses. It would not constitute a wrong done to the public or injury to the public or it tends to create an apprehension in the minds of the public in regard to integrity or fairness of a Judge or it in no way deter the actual and prospective litigant from placing complete reliance upon the Court's administration of justice. In that view of the matter, we do not find any merit in this contempt petition. Accordingly, we drop the proceedings and discharge the accused.

jj) *To record a finding that Advocate Milind Sathe and other executive members of Bombay Bar Association committed a Contempt of law laid down and direction given by Hon'ble Supreme Court in Justice* ***C. Ravichandran Iyer Vs. Justice A. M. Bhattacharjee and Ors. (1995) 5 SCC 457****, case given in their own in case related to Bombay Bar Association (BBA) and Advocates' Association of Western India (AAWI) where it is ruled that the advocates should make complaint against any fraud or mistake committed by any Judge to Hon'ble Chief Justice Of India and if such Complaint given then the bar body should wait till the response is given by Hon'ble Chief Justice Of India but Bombay Bar Association (BBA) in their letter dated 23rd March,2019 had made submission against above law that no one can file Complaint against any Judge even if he commits any offences. Secondly, they have not waited for the response being given by Hon'ble Chief Justice of India on the letter given by "Indian Bar Association", on 20th March and the letter given by "Human Rights Security Counsel (NGO)",on 19th March, 2019 and the letter given by themselves Bombay Bar Association (BBA) on 23rd March, 2019 and even before any response is given by Hon'ble Chief Justice Of India, they (BBA) sent a copy of their letter to Justice Rohinton Nariman .*

Hence they acted in utter disregard and defiance of the law laid down by Hon'ble Supreme Court in their own case and also in the case of ***Additional District and Sessions Judge 'X' Vs. Registrar General, High Court of Madhya Pradesh (2015) 1***

SCC (LS) 799,

It is also Contempt of In case of ***R. Muthukrishnan Vs Registrar General Of High Court at Madras, 2019 SCC Online SC 105*** *and law laid down in* ***Justice Nirmal Yadav Vs. C.B.I. 2011 (4) RCR (Criminal) 809)*** **&** *in* ***Shameet Mukherjee Vs. C.B.I. 2003 SCC OnLine Del 821, C.S.Karnan (2017) 7 SCC 1*** *where Judge were prosecuted for passing unlawful order.*

kk) *To record a finding that the law declared by Full Bench of High Court in* ***State Vs. Bodhraj Munawari AIR 1958 J&K 19****, ruling that the complaint to higher authority against Judge criticizing judicial orders does not constitute contempt is a sound rule for proper functioning of the Court and squarely applicable to the case in hand.*

ll) To record a finding that the Bombay Bar Association (BBA) & Bombay Incorporated Law Society (BILS) sent letter with false, misleading and unconstitutional prayers. Even if their dishonesty, illegality is brought to their notice by the respondent No. 3 before Hon'ble Bombay High Court in Contenpt Petition (Cri.) No. 03 of 2017 then Bombay Bar Association (BBA) instead of tendering apology and withdrawing their dishonest, illegal, unconstitutional and contemptuous submissions and refraining from it they again stand by the same, thereby posing themselves to be above the law, above Hon'ble High Court and Hon'ble Supreme Court and therefore as per **'Second Rule'** as has been laid down by Hon'ble Supreme Court in **Re: Mulgaonkar's case (1999) 8 SCC 308**, it is must to punish the committee members of BBA & AAWI along with their counsels to send a message that **the Supremacy is the rule of law over pugnacious, vicious, unrepentant and malignant gang – up of vested interests and to show that be you ever so high, the law – the people's expression of justice – is above you.**

mm) To record a finding that as per democratic set-up and as per concept of welfare state, it is duty and obligation of the State and more particularly of the C.B.I. and Central Vigilance Commission(C.V.C.) to keep watch on the corruption or any illegal activities in High Courts and Supreme Court and not to wait for the complaints by the parties as the prosecution of offender is obligation on the state, as done in Justice Smt. Nirmal Yadav's

case.

nn) To give proper directions to C.B.I. & CVC to form a time bound procedure to deal with the complaints against Judges of Hon'ble Supreme Court & Hon'ble High Court.

oo) To record a finding that as per law laid down by Constitution Bench of Hon'ble Supreme Court in Arun Shourie's case **AIR 2014 SC 3020**when any news/interview is published about the unlawful conduct of the Judge then if the said allegations are based on truth and fact, then it does not come under the purview of the Contempt even through the imputations are such as to deprive the court or Judge of public confidence.

pp) To record finding that whenever there are allegations against the Judge then the Court while taking cognizance of Contempt is bound to see the surrounding circumstances under which the imputations are made and the order issuing notice should reflect the application of judicial mind by the concerned court issuing notice, as has been ruled in **MANU/DE/0609/2017, AIR 2014 SC 3020 ,(2010) 9 SCC 368, (2013) 1 Cal L.T. 65, MANU/KE /0152/1983**.

qq) To record a finding that in view of material placed on the record and in view of the affidavit of Respondent No. 3 accepted by Division Bench of Hon'ble Bombay High Court in Suo-moto Contempt Petition No. 01 of 2014 in order dated 5th Feb. 2015, makes it clear that Respondent No. 3 Shri. Nilesh Ojha was falsely implicated by Smt. Justice Roshan Dalvi and the said affidavit cum apology was only for using harsh language and therefore the reliance on the said order of Smt. Justice Roshan Dalvi dated 7th May 2014 was used to misled this Hon'ble Court by the Bombay Bar Association (BBA) & Bombay Incorporated Law Society (BILS) for creating prejudice against the Respondent No. 3 and therefore they are guilty of committing perjury and also guilty of Contempt of Court.

rr) To record a finding that the reliance placed by the petitioner on order passed in Notice of Motion (L) No. 3457 of 2015 regarding Contempt notice to the Respondent No. 1 is illegal

on the Count that the same matter is still subjudice and the Respondent No. 3 is entitled to presumption of innocence as ruled in **R. S. Sherawat Vs. Rajeev Malhotra and Ors. 2018 SCC OnLine SC 1347** and therefore said proceeding cannot be used against the Respondent No.3 and secondly from the material available on record it is clear that the order passed by Shri, Justice A. K. Menon is based on the false and misleading statement of Mr. Aspi Chinoy that the suppression of Plaintiffs regarding the power of attorney had no relevance to the case but in fact the suit itself contains the prayer of declaring the said power of attorney as null and void and also the other various prayers of the suit are directly or indirectly related with the said power of attorney but Shri. Justice A.K. Menon passed the order against the material on record and the Respondent No. 3 had already filed reply affidavit before Hon'ble Bombay High Court claiming Rs. 5 crores compensation but this fact was suppressed, dishonestly concealed, twisted by Bombay Bar Association (BBA) & Bombay Incorporated Law Society (BILS) with ulterior motive and therefore they are liable to be prosecuted under Section 192, 193, 199, 200, 465, 466, 469, 471, 474, 500, 501 read with 120(B) of Indian Penal Code and also under Contempt of Courts Act, 1971 as per law laid down in **Samson Arthur Vs. Quinn Logistic India Pvt. Ltd. and Ors. 2015 SCC OnLine Hyd 403, Sciemed Overseas Inc. Vs. BOC India limited & Ors.(2016) 3 SCC 70.**

ss) As the prosecution of offender is an obligation of the state, and since it is ex-facie proved that the letter dated 23rd March, 2019 is false and sent with ulterior motive due to rivalry between two Bar Association therefore C.B.I. be directed to proceed further with the case by completing all the formalities of sanction as has been done in **AIR 1971 SC 1708**, Uma Shankar Sitani Vs Commissioner of Police Delhi **1995 Cri.L.J** 3612 it is ruled as under;

Criminal P.C. (2 of 1974), S.154, S.156- Investigation by C. B. I. - Registration of criminal case - Accused petitioner alleging false case against him on account of business rivalry - Documents supporting plea of accused that complaint was lodged at instance of business rival - Supreme Court hence, directed matter to be investigated by C. B. I.

tt) To record a finding that as per law laid down by Hon'ble High Court in **Justice Nirmal Yadav's case [2011 (4) RCR (Cri.) 809] and in Raman Lal Vs. State 2001 Cri.L.J. 800**, whenever any Judge is accused of offence, he cannot claim any special right or privilege than prescribed under law. He can be prosecuted like any other accused. Rule of law has to prevail and must prevail equally and uniformly.

uu) To pass appropriate order directing the Registrar of this Hon'ble High Court to make arrangement for video recording and live Telecast of the present proceeding in the interest of justice and equity. In view of law laid down by Full Bench of this Hon'ble Court in **Indira Jaisingh Vs. Secretary General and Others (2018) 10 SCC 639**

vv) To record a finding that the Petitioners made a categorical false statement in their letter that Shri. Justice Kathawala done no wrong. In fact whatever is shown in video/ sting operation and in the complaint filed make it clear that Shri. Justice Kathawala in order to help the accused had not recorded the deposition of the witness and the allegations are based on factual and legal positions but the Bombay Bar Association (BBA) & Bombay Incorporated Law Society (BILS) put a distorted version before this Hon'ble Court and obtained an order by misleading this Hon'ble Court.

ww) To record finding that the term Independence of Judiciary has its true meaning as explained by Hon'ble Supreme Court in the case between **C. Ravichandran Iyer Vs. Justice A.M. Bhattacharjee and Ors. (1995) 5 SCC 457** where it is ruled that the Judge should be free from any outside pressure including his prejudices and the guarantee of tenure and its protection by the Constitution would not accord sanctuary for corruption and misbehavior, and bad conduct or bad behavior of a Judge needs correction to prevent erosion of public confidence in the efficiency of judicial process or dignity of the institution or credibility to the judicial office held by the obstinate Judge.

xx) To record a finding that as per Supreme Court in **C.**

Ravichandran's case (1995) 5 SCC 457, it is duty of Judge to maintain high standard of conduct as Judicial office is a public trust. Society is entitled to except that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher standards of conduct and rectitude from a Judge. Unwritten code of conduct is writ large for judicial officers to emulate and imbibe high moral or ethical standards expected of a higher judicial functionary, as wholesome standard of conduct which would generate public confidence, accord dignity to the judicial office and enhance public image, not only of the Judge but the court itself. It is, therefore, a basic requirement that a Judge's, official and personal conduct be free from impropriety ; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than expected of a layman and also higher than expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society.

The holder of office of the judge of the Supreme Court or the High Court should, therefore, be above the conduct of ordinary mortals in the society. The standards of judicial behavior, both on and off the Bench, are normally high. The conduct that tends to undermine the public confidence in the character, integrity or impartiality of the Judge must be eschewed. It is expected of him to voluntarily set forth wholesome standards of conduct reaffirming fitness to higher responsibilities.

To keep the stream of justice clean and pure, the Judge must be endowed with sterling character, impeccable integrity and upright behaviour. Erosion thereof would undermine the efficacy of the rule of law and the working of the Constitution itself. The Judges of higher echelons, therefore, should not be mere men of clay with all the frailties and foibles, human failings and weak character which may be found in those in other walks of life. They should be men of fighting faith with tough fibre not susceptible to

any pressure, economic, political or any sort. The actual as well as the apparent independence of judiciary would be transparent only when the office holders endow those qualities which would operate as impregnable fortress against surreptitious attempts to undermine the independence of the judiciary. In short, the behavior of the Judge is the bastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law.

yy) To record a finding that the present Contempt Petition is with sole purpose to divert the attention from the main issue of the wrong done by Justice Rohinton Fali Nariman & Justice Vineet Saran & Ors.

zz) To record that as per law laid down in **R.K. Jain's case (2010) 8 SCC 841 the statement of a scandalous fact that is material to the issue is not a scandalous pleading,** and therefore for the purpose of demanding sanction under section 219 of Indin Penal Code the pleadings of ulterior motive and malafide intention of the Judge is necessary pleading. The matter alleged ,however, must not only be offensive but also irrelevant to the cause, for however offensive it be, if it is pertinent and material to the cause, party has right to plead it. It may often be necessary to charge false representations, fraud and immorality, and the pleading will not be open to the objection of scandal, if the facts justify the charge. **It is ruled as under;**

17. The word `scandalize' has not been defined in the Act. In Black's Law Dictionary, 8th Edition, page 1372, reference has been made to Eugene A Jones, Manual of Equity Pleading and Practice 50-51, wherein the word scandal has been described as under:

"scandal consists in the allegation of anything which is unbecoming the dignity of the court to hear, or is contrary to decency or good manners, or which charges some person with a crime not necessary to be shown in the cause, to which may be added that any unnecessary allegation, bearing cruelty upon the moral character of an individual, is also scandalous. **The matter alleged, however, must not only be offensive but also irrelevant to the cause, for however offensive it be, if it is pertinent and material to the cause, the party has right to plead it. It may often be necessary to charge false**

representations, fraud and immorality, and the pleading will not be open to the objection of scandal, if the facts justify the charge."

In Aiyer's Law Lexicon, Second Edition, page 1727, reference has been made to Millington v. Loring 50 LJQB 214 wherein it was held:

"A pleading is said to be `scandalous' if it alleges anything unbecoming the dignity of the court to hear or is contrary to good manners or which charges a crime immaterial to the issue. **But the statement of a scandalous fact that is material to the issue is not a scandalous pleading**."

aaa) To record a finding that since it is ex-facie clear that the cognizance of the Contempt is taken illegally and against the legal position settled and procedure always adopted by this Hon'ble Court therefore the whole proceedings are liable to be declared void ab-initio, null and void, vitiated and non-est as done by Full Bench of this Hon'ble Court in **M.S. Ahlawat Vs. State of Haryana (2000) 1 SCC 278,**where it is ruled that;

*"**Recall of Order.– To perpetuate error is no virtue but to correct it is compulsion od judicial conscience.***

Wrong order by Two Judge Bench of Supreme Court* convicting petitioner under Contempt and perjury are *corrected by Three Judge Bench.

***This Court has always adopted as done in Mohan Singh's case (1998) 6 SCC 686 procedure whenever it is noticed that proceedings before it have been tampered with by production of forged or false documents or any statement has been found to be false**. The order made by Court convicting the petitioner under S. 193, IPC is, therefore, one without jurisdiction and without following due procedure prescribed under law - We have not been able to appreciate as to why this procedure was given a go-bye in the present case. May be the provisions of Sections 195 and 340, Cr.P.C. were not brought to the notice of the learned Division Bench - To perpetuate an error is no virtue but to correct it is a compulsion of judicial conscience.*

bbb) To record a finding that the judgment passed by Full Bench

of this Hon'ble Court in **Dr. L.P. Mishra Vs. State (1998) 7 SCC 379** and in **Vinay Chandra Mishra AIR 1995 SC 2348,** case are of binding precedent for the cases under section 14 of the Contempt of Courts Act,1971 and the procedure of section 14 of the Act even if summary are mandatory to frame charge and to give the opportunity to defend to the alleged Contemnor.

ccc) To record a finding the law laid down in **Leila David Vs. State (2009) 10 SCC 337** is a per-incuriam judgment as passed in ignorance and against the earlier Full Bench judgment in **Dr. L.P. Mishra Vs. State (1998) 7 SCC 379,** and passed against the law laid down in Vinay Chandra's **AIR 1995 SC 2348** case*(supra*) where it is ruled that;

"***9****. …… **The learned Judge or the Bench could have itself taken action for the offence on the spot. Instead, the learned Judge probably thought that it would not be proper to be a prosecutor, a witness and the Judge himself in the matter and decided to report the incident to the learned Acting Chief Justice of his Court. (see Balogh v. Crown Court at St. Albans. (1975) QB 73 : (1974) 3 All ER 283. The criminal contempt of Court undoubtedly amounts to an offence but it is an offence sui generis and hence for such offence, the procedure adopted both under the common law and the statute law even in this country has always been summary. However, the fact that the process is summary does not mean that the procedural requirement, viz., that an opportunity of meeting the charge, is denied to the contemner.** This procedure does not offend against the principle of natural justice, viz., **So long as the contemner's interests are adequately safeguarded by giving him an opportunity of being heard in his defence, even summary procedure in the case of contempt in the face of the Court is commended and not faulted.***

10. In the present case, although the contempt is in the face of the Court, the procedure adopted is not only not summary but has adequately safeguarded the contemner's interests. The contemner was issued a notice intimating him the specific allegations against him. He was given an opportunity to counter the allegations by filing his counter affidavit and additional counter/supplementary affidavit as

per his request, and he has filed the same. He was also given an opportunity to file an affidavit of any other person that he chose or to produce any other material in his defence, which he has not done. ".

ddd) To record a finding that the ratio in **Leila David Vs. State (2009) 10 SCC 337,**case was based on the admission of the alleged Contemnor about the said incident of throwing footwear at the Ld. Judge of this Hon'ble Court and will not be a binding precedent in the cases where the alleged Contemnor disputes the charge against him.

eee) To record a finding that the judgment dated 12th March, 2019 and 27th March, 2019 passed by this Hon'ble Court convicting a Lawyer under section 14 of the Contempt of Courts Act without following the procedure under section 14 as ruled in **Dr. L.P. Mishra Vs. State (1998) 7 SCC 379** is per-incuriam and the further proceeding under Contempt based on the said unlawful judgment is vitiated in view of law laid down in **Kanwar Singh Saini vs High Court Of Delhi (2012) 4 SCC 307,** where it is ruled that;

"Contempt of Courts Act:-

39. In view of the above, as the application under Order XXXIX Rule 2A CPC itself was not maintainable all subsequent proceedings remained inconsequential. Legal maxim ***"sublato fundamento cadit opus"*** *which means foundation being removed structure falls is attracted."*

In **Kalabharati Advertising Vs Hemant Vimalnath Narichania And Ors. (2010) 9 SCC 43,** it is ruled as under;

"Once the basis of a proceeding is gone, all consequential acts, action, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders. Court-cannot be used only for interim relief".

fff) To record a finding that the provisions of section 14 cannot be evoked if the action is not taken by the Ld. Judge on the spot when the incident happened within the knowledge of the Court, as ruled by Division Bench in **Smt. Manisha Mukherjee Vs. Asoke Chatterjee, 1985 Cri. L. J. 1224,** and in any other cases if Court allowed the alleged Contemnor to go and decided to take later on then the procedure under section 15 has to be invoked as

ruled in **High Court of Karnataka Vs. Jai Chaitanya dasa & Others 2015 (3) AKR 627 (D.B).**

ggg). To record a finding that as per law laid down in **Balogh Vs. Crown Courts (1975) QB 73,** which is followed by Full Bench of this Hon'ble Court in **Vinay Chandra Mishra's case AIR 1995 SC 2348,** it is declared the court taking cognizance of the Contempt should not try the case and at his own direct the matter be heard by any other Judge(s) / Bench / Court etc.

Further as ruled in Balogh (supra) the court should act of his own motion (Suo-Motu) only when it is urgent and imperative to act immediately and in all other case he should not take upon himself to move and leave it to the Attorney General or party aggrieved to take a motion.

hhh). To record a finding that the Judge taking cognizance of the Contempt under section 15 is disqualified to try the Contempt proceeding on the principle that he will to find ways in support of his act and it is not permissible in view of law laid down in

(i) Mohan Lal Vs. State 2018 SCC OnLine SC 974

(ii) State Vs. Rajangam (2010) 15 SCC 369

(iii) Vinay Chandra Mishra AIR 1995 SC 2348

(iv) Balogh Vs St. Albans Crown Court [1975] 1 QB 73

(V) In the case of **R.V. Lee, (1882) 9 QBD 394** Field, J., observed:

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

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

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

(vii) Also there is observation of Lord Esher in **Allinson Vs. General Council of Medical Education and Registration, (1894) 1 QB 750 at p. 758)** which is set out below;

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

iii) To record a finding that if immediate action is to be taken under section 14 of the Contempt of Courts Act, then the order should be like the order passed in**K.K. Jha 'Kamal' And Anr. And Vs. Shri Pankaj Kumar AIR 2007 Jhar 67** ,where it is observed as;

" I am constrained to initiate proceedings for contempt against Mr. K.K. Jha 'Kamal', Advocate, to protect the majesty of law and dignity of the Court. Slave this action amounts to Criminal Contempt, I direct the Registry to place this matter also before Hon'ble the Chief Justice for consideration by an appropriate Larger Bench. Proceedings against Mr. Jha will be placed as a separate contempt proceedings. ***I feel that personal appearance of Mr. Jha is necessary before the Bench. He is directed to furnish bail bond to the tune of Rs. 20,000/- (Rupees Twenty Thousand) before the Jt. Registrar (Judicial) of this Court with an undertaking to appear before the appropriate Bench when the matter is listed. The Registrar will communicate to Mr. Jha the date of listing of the matter before the appropriate Larger Bench after obtaining instructions from Hon'ble the Chief Justice. "***

jjj) To record a finding that whenever show-cause notice is issued then it should be a order 'Issue Notice' notice asking ***"Why proceeding under Contempt be not initiated against you".*** as followed in (i) **Vinay Chandra Mishra AIR 1995 SC 2348** (ii) **Re: Justice C.S.Karnan. (2017) 7**

SCC 1 (iii) **Subramanian Swamy Vs. Arun Shourie AIR 2014 SC 3020.**

And not the word ***"Why you should not be punished under Contempt***" should be used being against the presumption of innocence as mandated by Constitution and in the case of **S. Mulgaokar AIR 1978 SC 727** , **R. S. Sherawat Vs. Rajeev Malhotra and Ors. 2018 SCC OnLine SC 1347, Sahdeo Alias Sahdeo Singh Versus State of Uttar Pradesh and Others (2010) 3 SCC 705, Mrityunjoy Das & Anr vs Sayed Hasibur Rahaman & Ors (2001) 3 SCC 739, Deepak Kumar Prahlaka Vs. Chief Justice Prabha Shankar Mishra (2004) 5 SCC 217.**

kkk) To record a finding that in the Contempt proceeding the person called to answer the charge should be termed as a **'Respondent'** and not a Contemnor as observed in **Bombay High Court on its Own Motion Vs. Ketan Tirodkar 2018 SCC OnLine Bom 3162.**

lll) To record a finding that as per provisions of section 6 of Contempt of Courts Act no person cannot be prosecuted under Contempt for making complaint against any Judge to concerned authorities for any statement made in the complaint and the said section 6 of Contempt of Courts Act apply proprio vigore to the complaints made by anyone against Supreme Court Judge to respective authorities as per the ratio followed by Constitution Bench of this Hon'ble Court in **Asok Pande Vs. Suprme Court of India (2018) 5 SCC 341** by making judgment for Chief Justice of High Court applicable proprio vigore to Chief Justice of High Court. Similar ratio is laid down in **R. Muthukrishnan Vs. Registrar General of the High Court of Judicature at Madras 2019 SCC OnLine SC 105**

mmm) To record a finding that the observations in the order dated 12th March, 2019 that filing of Writ against a Judge for any order and claiming compensation is Contempt of Court are per incuriam and against the law laid down in **(i) C. S. Karnan's Case(2017) 7 SCC 1**, where it is ruled that;

"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."

(ii) **Ramesh Maharaj Vs. Attorney General (1978) 2 WLR 902**

(iii) Walmik s/o Deorao Bobde Vs. State of Maharashtra

2001 ALL MR (Cri.) 1703.

nnn) To record a finding that the law laid down by this Hon'ble Court in **State of Punjab Vs. Ravinder Singh & Anr. 2008 Cri. L. J. 801** regarding the improper language used in the draft,petition, submission is a sound law where it is ruled that;

"7. *……..* ***Normally the Courts should not be oversensitive and should not take very serious note of any loose expressions in the application.Contempt jurisdiction is to be sparingly exercised in very exceptional cases, as one of us (Markandey Katju, J.) has observed in an article 'Contempt of Court : The Need for a Fresh Look' published in the Journal Section of A.I.R. 2007 (March Part), and we agree with the views expressed therein.*** *However, the applicant should use proper language and state correct facts in his application. Although it is not contempt, proper decorum should be maintained. Be that as it may, we are of the opinion that the learned Judge should not have issued contempt notice in the matter."*

Also the similar law laid down by Full Bench of Hon'ble Court in **State Vs. Bodhraj Munawari AIR 1958 J&K 19** is a sound law where it is ruled as under;

"Contempt of Courts Act (32 of 1952), S.3- Complaint by litigant to High Court against subordinate Courts criticising the orders - Use of impolite language - the language used in criticising the orders was not proper and polite yet it would not constitute the offence of contempt of Court. We discharge the rule issued against the respondent."

To record a finding that howsoever the glaring facts of Contemptuous conduct by the party in pleadings may be the alleged contemnor is entitled to a notice and opportunity to defend before holding him guilty of contempt as ruled in **Deepak Kumar Pralhadka's case (2004) 5 SCC 217**

ooo) To record a finding that as per law laid down in AIR 2003 SC 3039 in S.R. Ramraj's Case when any person files a reply in support of his submission in defence and even if that submissions are abuse of process of Court then no Contempt action should be taken against that person.

ppp) To record a finding that the law laid down in **Court on its**

Own Motion Vs. DSP Jayant kashmiri 2017 SCC OnLine Del 7387, is a sound rule where it is ruled as under;

Contempt Of Courts Act, 1971 - Contempt Of Courts Act, 1971 - Section Section 2(c), 15 – imputation of extraneous unjudicial motives to the Courts if said imputations can be so substantiated, then such a submission or pleading would not be amount to actionable contempt of Court - When the judicial impartiality and prestige of Courts has solid foundations in their traditional judicious objectivity and efficiency, as illustrated by their day-today functioning in the public gaze, the mere strong language in criticising their orders, cannot mar their image. Such Courts should not be hyper-sensitive in this matter.

- The administration of justice cannot be impaired by clothing the professional Advocate with the freedom to fairly and temperately criticise in good faith the impugned judgments and orders - The reflection on the conduct or character of a judge in reference to the discharge of his judicial duties, would not be contempt if such reflection is made in the exercise of the right of fair and reasonable criticism which every citizen possesses in respect of public acts done in the seat of justice. It is not by stifling criticism that confidence in courts can be created. "The path of criticism", is a public way ,said Lord Atkin [Ambard v. Attorney-General for Trinidad & Tobago, (1936) AC 322, at p. 335] ".

The fifth normative guideline for the Judges to observe in this jurisdiction as laid down in Mulgaokar case is not to be hypersensitive even where distortions and criticisms overstep the limits, but to deflate vulgar denunciation by dignified bearing, condescending indifference and repudiation by judicial rectitude.

Judgments are open to criticism. No criticism of a judgment, however vigorous, can amount to contempt of court - Fair and reasonable criticism of a judgment which is a public document or which is a public act of a judge concerned with administration of justice would not constitute contempt. Such a criticism may fairly assert that the judgment is incorrect or an error has been committed both with regard to law or established facts.

The power summarily to commit for contempt is considered necessary for the proper administration of justice. It is not to be used for the vindication of a Judge as a person - summary jurisdiction by way of contempt proceedings in such cases where the court itself was attacked, has to be exercised with scrupulous

care and only when the case is clear and beyond reasonable doubt. - If a Judge is defamed in such a way as not to affect the administration of justice, he has the ordinary remedies for defamation if he should feel impelled to use them.

"Scandalising the court means any hostile criticism of the Judge as Judge; any personal attack upon him, unconnected with the office he holds, is dealt with under the ordinary rules of slander and libel"

Similarly, Griffith, C.J. has said in the Australian case of Nicholls [(1911) 12 CLR 280, 285] that:

"In one sense, no doubt, every defamatory publication concerning a Judge may be said to bring him into contempt as that term is used in the law of libel, but it does not follow that everything said of a Judge calculated to bring him into contempt in that sense amounts to contempt of court".

In (1999) 8 SCC 308, Narmada Bachao Andolan v. Union of India & Ors.,

The observations by S.P. Bharucha, J. while recording disapproval of the statements complained of and not initiating action for contempt because "the Court's shoulders are broad enough to shrug off their comments", in fact reflects that hypersensitivity had no basis in fact or in law.

A happy balance has to be struck, the benefit of the doubt being given generously against the Judge, The Court need to adopt willing to ignore, by a majestic liberalism, trifling and venial offences - the dogs may bark, the caravan will pass. The Court will not be prompted to act as a result of an easy irritability. Much rather, it shall take a noetic look at the conspectus of features and be guided by a constellation of constitutional and other considerations when it chooses to use, or desist from using, its power of contempt.. Indeed, to criticise the Judge fairly, albeit fiercely, is no crime but a necessary right, twice blessed in a democracy For, it blesseth him that gives and him that takes. Where freedom of expression, fairly exercised, subserves public interest in reasonable measure, public justice cannot gag it or manacle it, constitutionally speaking A free people are the ultimate guarantors of fearless justice. Such is the cornerstone of our Constitution; such is the touchstone of our Contempt Power, oriented on the confluence of free speech and fair justice which is the scriptural essence of our Fundamental Law.

qqq) To record a finding that whenever any pleadings or submissions during course of hearing are found to be scandalous then the proper course is to ask the concerned person to delete that portion/para of the pleadings or withdrew submissions by giving simple notice and if the said instructions are not followed then only Contempt proceedings can be initiated as done by this Hon'ble Court in **Dr.D.C.Saxena Vs. Hon'ble Chief Justice of India (1996) 5 SCC 216** ,where it is ruled that;

"It is already noted that while dismissing the second writ petition, this Court has pointed out the scandalous nature of accusations which found place in the second writ petition and when the petitioner persisted for consideration of scandalous accusations to lay proceedings against the Chief Justice of India for prosecution and other reliefs referred to hereinbefore, he reiterated that he would stand by those accusations. Resultantly this Court was constrained to be into merits and dismissed the petition and initiated suomotu contempt proceedings and got the notice issued to him pointing out specifically 14 items which constituted scandalous and reckless litigations pleaded with irresponsibility."

Therefore the basic order dated 12th March, 2019 convicting Adv. Mathews Nedumpara by not giving any opportunity by issuing proper notice to withdraw his submission is against this procedure is illegal and out of judicial bias. The said order is also against the law laid down in the case of Deepak Kumar Pralhadka VS. Chief Justice Prabha Shankar (2004) 5 SCC 217 and where it is ruled that howsoever glaring the fact may be the alleged Contemnor is entitled to a notice and opportunity to defend before holding him guilty of Contempt.

rrr) To record a finding that the initiation of present proceedings under Contempt without any legal proof and basis and against the laws settled and procedure followed by Hon'ble Supreme Court in various judgements, is an offence under section 211, 220 r/w 120 (B) & 34 of Indian Penal Code in view of law laid down by Full Bench in **Hari Das & Another Vs State of West Bangal & others AIR 1964 SUPREME COURT 1773**, and this Hon'ble Court is duty bound to take action as per provisions of Section

340 of Criminal Procedure Code as ruled in **Perumal Vs. Janaki (2014) 5 SCC 377,** and this Hon'ble Court is having jurisdiction direct C.B.I. or Secretary General of Supreme Court to launch prosecution and there is no bar as per section 3 of Judges Protection Act,1985 as ruled by Division Bench of Hon'ble Bombay High Court in **Deelip Bhikaji Sonawane Vs. State 2003 (1)B.Cr.C. 727**, where it is ruled as under;

"***10.*** *So far as the respondent No. 2 is concerned, he is claiming protection under the provisions of the Judges (Protection) Act, 1985. The said Act is applicable to the Judges which includes a person who is empowered by law to give a judgment in any legal proceedings. Under Section 3(1) of the said Act it is provided that no Court can entertain a civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of acting or purporting to act in the discharge of his official or judicial duty or function.* ***However, Sub-section (2) of Section 3 empowers the respective Government or the Supreme Court or the High Court or any other authority to take such action whether by way of civil, criminal, or departmental proceedings or otherwise against any person who is or was a Judge.*** *As per the finding of the Sessions Court the petitioner was wrongfully and illegally confined for five days in Chapter Case No. 43 of 1994 which amounted to an offence under Section 342 of IPC. We are also of the view that the Respondent No. 2 was acted illegally without following the procedure under the provisions of Cr.P.C. before confining the petitioner to jail. In the circumstances, we direct the State Government to take appropriate action against the Respondent No. 2 for his wrongful and illegal act.*"

sss) To declare that even if any order passed by a Judge is appealable or liable to be challenged in the appropriate proceedings is no bar for the initiation of prosecution under section 218, 219, 191, 192, 193, 167, 465, 466, 471, 474, 109, 201,120(B), 34 etc. of Indian Penal Code, Prevention of Corruption Act, Contempt etc. against said Judge and action under **'In-House Enquiry'** is also maintainable being independent jurisdiction as ruled in:-

i) K.Veeraswami Vs.Union of India (1991) 3 SCC

655 (Constitution Bench)

ii) Re: C. S. Karnan (2017) 7 SCC 1 (7 – Judge Constitution Bench)

iii) Smt. Justice Nirmal Yadav vs. C.B.I. 2011 (4) RCR (Criminal) 809

iv) Shameet Mukherjee vs. C.B.I. 2003 SCC Online Del 821

v) K. Ram Reddy Vs State of A.P.1998 (3)ALD 305

vi) Deelip Bhikaji Sonawane Vs. State 2003 (1)B.Cr.C. 727

vii) S.A. Khan Vs. Ch. Bhajan Lal AIR 1993 SC 1348

viii) Govind Mehta Vs. State AIR 1971 SC 1708

ix) C. Ravichandran Iyer Vs. Justice A. M. Bhattacharjee and Ors. (1995) 5 SCC 457

x) Jagat Jagdishchandra Patel Vs. State of Gujarat and Ors. 2016 SCC OnLine Guj 4517

xi) Raman Lal Vs State 2001 Cr. L. J. 800

ttt) To record a finding that the order dated 27th March, 2019 by Shri. Justice Rohinton Fali Nariman & Justice Vineet Saran taking cognizance of the letter dated 23rd March, 2019 by Bombay Bar Association (BBA) & Bombay Incorporated Law Society (BILS) which were neither verified nor proved nor comes under the definition of proof under Evidence Act, is illegal and Ld. Judge should not have passed the order annexing the said letter to the order and should not have made the said judgement reportable and due to the said act of Shri. Justice Rohinton Fali Nariman & Justice Vineet Saran, a great prejudice is caused to Respondent No. 3 in his sub-judice matters which are in the nature of criminal proceeding and by issuing show cause notice and making the said order reportable and making Respondent No. 3 to answerable to all the known and unknown people to disclose his defence in pending cases has violated his fundamental rights under Article 20(3) of the Constitution as ruled in **Clough Engg. Ltd. Australia Vs. Oil Natural Gas Corporation Mumbai 2009 CR.L.J. 2017, S.Mulgaonkar's case AIR 1978 SC 727,** and summoning the Respondent No.3 in a case where Justice Rohinton Fali Nariman & Justice Vineet Saran are not having jurisdiction of taking the cognizance and using the word of "why should not be punished" on doubt and without proof, without opportunity to defend and without verifying the defence version which is against law laid down in **Deepak Kumar Praladka's**

case (2004) 5 SCC 217, ***Vinay Chandra Mishra AIR 1995 SC 2348,*** **C. Ravichandran Iyer Vs. Justice A. M. Bhattacharjee and Ors. (1995) 5 SCC 457, S.A. Khan Vs. Ch. Bhajan Lal AIR 1993 SC 1348** and thereby cause mental torture, annoyance, inconvenience, financial expenses, loss of reputation and great effect on the profession, business of the Respondent.

and therefore Ld. Judges Shri. Justice Rohinton Fali Nariman & Justice Vineet Saran are liable to pay Respondent No.3 interim compensation in view of law laid down in:

i) Ramesh Maharaj Vs. Attorney General (1978) 2 WLR 902

ii) Walmik s/o Deorao Bobde Vs. State 2001 ALL MR (Cri.)1731

iii) Sailajanand Pande Vs. Suresh Chandra Gupta, 1968 SCC OnLine Pat 49

iv) Dr. Mehmood Nayyar Azam Vs. State of Chattisgarh & Ors. (2012) 8 SCC 1

v) **Indirect Tax Practitioners Association Vs. R.K. Jain , (2010) 8 SCC 281**

vi) **S. Nambi Narayanan Vs. Siby Mathews & Ors. (2018) 10 SCC 804**

uuu) Further record a finding that Justice Rohinton Fali Nariman & Justice Vineet Saran are not protected by act done in good faith due to the reason of:

i) absence of due care and caution as per section 52 of Indian Penal Code **[Noor Mohamed @ Mohd. Shah R. Patel & Ors. Vs. Nadirshah Ismailshah Patel & Anr., 2004 ALL MR (CRI.) 42.]**

ii) Passing the order contrary to statutory provisions and binding precedents leads to conclusion as ruled in **R. R. Parekh Vs. High Court Of Gujarat & Anr. (2016) 14 SCC 1** that the concerned Judge passed the order either with oblique motive or with corrupt practice

iii) Defence of ignorance of law and case law of Supreme Court is not available to any Judge [**In Re: M. P. Dwivedi AIR 1996 SC 2297**].

iv) Passing an order with undue haste without any urgency to pass such orders dated 12th March, 2019 & 27th March, 2019 proves abuse and fraud on power as per law laid down in **Prof.**

Ramesh Chandra, Vice Chancellor Bundelkhand University Vs. State, MANU/UP/0708/2007 and as per law laid down in **Noida Vs Noida (2011) 6 SCC 527** the matter needs to be investigated by C.B.I where 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 – Fraud, Forgery, Malafides."*

In **Prof. Ramesh Chandra, Vice Chancellor Bundelkhand University Vs. State, MANU/UP/0708/2007** it is ruled as under;

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

v) Passing order drawing conclusion that the complaint is made to help Adv. Nedumpara and they are in tandem on the basis of doubt and by ignoring the material on record specifically ignoring para 11 of the complaint dated 20th March,2019 where the reason for making complaint was specifically mentioned that there is no concern with Adv. Nedumpara, makes it clear that the order is passed by ignoring material on record and by taking in to consideration the inadmissible materials and therefore the case comes under the caption of "Order passed by practicising "fraud on Power" or "Abuse of Power''. "Malice in Law & Fact", as ruled by Full Bench in:-

i) **Vijay Shekhar Vs. Union of India 2004 (3) Crimes 22 (S.C.)**

"A) FRAUD ON POWER BY JUDGE – MISUSE OF POWER BY THE JUGDE - The Judge issud process and baillable warrents on a fraud complaint - the complaint in question is a product of fraud and a total abuse of the process of court. there is also serious doubt whether the procedure required under the code of criminal procedure was really followed by the Judge at all while taking cognizance of the offence alleged. - the same is liable to be

quashed based on the legal principle that an act in fraud is ab initio void.- ***this principle applies to judicial acts also.***

B) 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. - ***when an authority misuses its power in breach of law, say, by taking into account, 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 party*** *- 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. - and any action proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative." - "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."*

C) "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 wilfully 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."

ii) **Prof. Ramesh Chandra, Vice Chancellor Bundelkhand University Vs. State, MANU/UP/0708/2007,** it is ruled as under;

"Abuse of Power - the expression 'abuse' to mean misuse, i.e. using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means.

Abuse of Power has to be considered in the context and setting in which it has been used and cannot mean the use of a power which may appear to be simply unreasonable or inappropriate. It implies a wilful abuse for an intentional wrong.

An honest though erroneous exercise of power or an indecision is not an abuse of power. A decision, action or instruction may be inconvenient or unpalatable but it would not be an abuse of power. Abuse of power must be in respect of such an incident which would render the office holder unworthy of holding the said post and it must entail adverse civil consequences, therefore, the word requires to be construed narrowly. It becomes duty of the authority holding an enquiry on such charge to apply its mind and also to consider the explanation furnished by the person proceeded against in this respect.

In M. Narayanan vs. State of Kerala [(1963) IILLJ 660 SC], *the Constitution ''Bench of the Hon'ble Supreme Court interpreted the expression 'abuse' to mean as misuse, i.e. using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means.*

Anything done in undue haste can also be termed as arbitrary and cannot be condoned in law for the reasons that in such a fact situation mala fide can be presumed. *Vide Dr. S.P. Kapoor v. State of Himachal Pradesh*

(AIR 1981 SC 281) ; Madhya Pradesh Hasta ShilpaVikas Nigam Ltd. v. Devendra Kumar Jain and Ors. [(1995) 1 SCC 638] and BahadursinhLakhubhaiGohil v. Jagdishbhai M. Kamalia and Ors (AIR 2004 SC 1159).”

iii) **State of West Bengal Electricity Board Vs. Dilip Kumar Ray (2007) 14 SCC 568**

“***Malice in law"*** *is however, quite different. Viscount Haldane described it in Shearer Shields, (1914) AC 808 as : "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.”*

iv) **Kalabharati Advertising Vs Hemant Vimalnath Narichania And Ors. (2010) 9 SCC 43** it is ruled that;

“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.*

15.Actus Curiae neminem gravabit ", which means that the act of the Court shall prejudice no-one*: No litigant can derive any benefit from the mere pendency of a case in a Court of Law, as the interim order always merges into the final order to be*

passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting an interim order and thereafter blame the Court. In such a situation the Court is under an obligation to undo the wrong done to a party by the act of the Court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the Court.

21. Once the basis of a proceeding is gone, all consequential acts, action, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders. Court-cannot be used only for interim relief."

vvv) To record a finding that if any Judge of the Supreme Court is not following the binding judgements of Hon'ble Supreme Court or passing any order, judgment in utter disregard and defiance of binding precedents then said Judge is liable for action under Contempt of Courts Act, 1971 as ruled in **Re: Justice C.S.Karnan's case (2017) 7 SCC 1, Rabindranath Singh Vs. Rajesh Ranjan (2010) 6 SCC 417 , M/s. Spencer & Co. Ltd. Vs. M/s Vishwadarshan Distributors & others (1995) 1 SCC 259** as done in Justice Markandey Katju's case.

And such Judge is also liable to be removed from Court as done in by withdrawing all his work as by Hon'ble Chief Justice of India asper "In–House-Procedure" as done in **Re: C.S.Karnan (2017) 7 SCC 1,** Justice Shukla of Allhabad High Court to protect the pure fountain of administration of justice and as per law & ratio laid down in **R. R. Parekh Vs. High Court Of Gujarat & Anr. (2016) 14 SCC 1, Smt. Prabha Sharma Vs. Sunil Goyal and Ors.(2017) 11 SCC 77, C. Ravichandran Iyer Vs. Justice A. M. Bhattacharjee and Ors.(1995) 5 SCC 457.** This is must to give message that no one is above law and rule of law shall prevail.

www) To record a finding that while taking cognizance of letter for initiating Contempt against Respondent No. 3 on doubt Justice Rohinton Fali Nariman & Justice Vineet Saran acted against their

own law in **Aarish Asgar Qureshi Vs. Fareed Ahmed Qureshi 2019 SCC OnLine SC 306,** where they ruled as under;

*" **10.** Both these judgments were referred to and relied upon with approval in R.S. Sujatha v. State of Karnataka, (2011) 5 SCC 689 (at paras 15 & 16). This Court, after setting down the law laid down in these two judgments concluded:*

*"**18.** Thus, from the above, it is evident that the **inquiry/contempt proceedings should be initiated by the court in exceptional circumstances where the court is of the opinion that perjury has been committed by a party deliberately to have some beneficial order from the court. There must be grounds of a nature higher than mere surmise or suspicion for initiating such proceedings. There must be distinct evidence of the commission of an offence by such a person as mere suspicion cannot bring home the charge of perjury. More so, the court has also to determine as on facts, whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed."***

***11.** It is clear therefore from a reading of these judgments that **there should be something deliberate - a statement should be made deliberately and consciously which is found to be false as a result of comparing it with unimpeachable evidence, documentary or otherwise. In the facts of the present case, it is clear that the statement made in the anticipatory bail application cannot be tested against unimpeachable evidence as evidence has not yet been led.** Moreover, the report dated 12.11.2011 being a report, which is in the nature of a preliminary investigation report by the investigating officer filed only two days after the F.I.R. is lodged, can in no circumstances be regarded as unimpeachable evidence contrary to the statements that have been made in the anticipatory bail application. Further, as has been correctly pointed out by learned counsel appearing on behalf of the appellant, that though the submission recorded by the High Court in para 3 of the order dated 30.11.2017 is from the aforesaid paragraph in the anticipatory bail application, yet, the High court made it clear that it was granting anticipatory bail principally because the F.I.R. annexed to the bail application does not show*

that there was sexual intercourse of the applicant with his wife during the course of their separation as a result of which it was not possible to assess whether the averment regarding the offence punishable under Section 377 of the I.P.C. is or is not substantiated. The High Court also recorded that considering that the husband and wife had resided together after marriage only for a very brief period, and that the husband was granted interim anticipatory bail, decided to grant final anticipatory bail on these grounds. ***It is clear, therefore, that both the grounds stated by the High Court would not suffice to initiate prosecution under Section 340 read with Section 195 (1)(b) of the Cr.P.C."***

This is violation of Article 14 of the Constitution and breach of the oath taken as a Judge of Supreme Court as ruled by this Hon'ble Supreme Court in **Indirect Tax Practitioners Association Vs. R. K. Jain (2010) 8 SCC 281** where it is ruled that;

"Judges have their accountability to the society and their accountability must be judged by their conscience and oath of their office, that is, to defend and uphold the Constitution and the laws without fear and favour. This the judges must do in the light given to them to determine what is right. And again as has been said in the famous speech of Abraham Lincoln in 1965: "With malice towards none, with charity for all, we must strive to do the right, in the light given to us to determine that right.

Power to punish for contempt for curbing the right of freedom of speech and expression, which is guaranteed under Article 19(1)(a) of the Constitution- intellectual advances made by our civilisation would have been impossible without freedom of speech and expression. At any rate, political democracy is based on the assumption that such freedom must be jealously guarded - ***Voltaire expressed a democrat's faith when he told, an adversary in arguments : "I do not agree with a word you say, but I will defend to the death your right to say it". Champions of human freedom of thought and expression throughout the ages, have realised that intellectual paralysis creeps over a society which denies, in however subtle a form, due freedom of thought and expression to its members.."***

Article 14 of the Constitution guarantees for equality before law

and equal protection of law. Equality of status and opportunity also mandates equal protection of procedural law **(AIR 1956 Bom 695).** The guarantee under Article 14 prohibits discrimination but here respondent No. 3 is discriminated due to cognizance on doubt and without any legal proof while other person was discharged by the same Ld. Judges i.e. Justice R.F. Nariman and Vineet Saran.

Therefore the Respondent No. 3 is liable to be discharged in view of law laid down in **Secretary Jaipur Development Authority vs Daulat Mal Jain (1997) 1 SCC 35,** where it is ruled as under**;**

"24.....Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational relationship and legal back-up are the foundations to invoke the doctrine of equality in case of persons similarly situated. … ""

xxx) To record a finding that when Complaint before Hon'ble President of India is pending consideration then passing any order with undue haste to create prejudice to the said cause and to frustrate rights of the concerned party makes such Judge liable for action under Contempt of Courts Act as ruled by Full Bench of this Hon'ble Supreme in the case of **S. Abdul Karim Vs. M. K. Prakash & Ors. (1976) 1 SCC 975.**

yyy) To record a finding that as per law laid down in **High Court of Karnataka Vs. Jai Chaitanya Dasa and Ors. 2015 (3) AKR 627** every Judge has to bear in mind that;

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.

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.

"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.

Advocates share with Judges the function that all controversies shall be settled in accordance with the law. 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.

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.

zzz) To record a finding that the observation in **Iyer's "Law on Contempt of Courts" 6th edition at page No. 1148** are proper

and legal and to be followed by all the Courts dealing with the Contempt proceedings against Advocates. It is mentioned at Page No. 1148 that;

"The role of a lawyer, he has often been misunderstood. He sometimes behaves in a manner which appears to be contempt of Court, but on close scrutiny, it is found thet he did not do so. Whatever the ultimate decision, it is seldom that acts in his own interest. He represents a third person whose case he puts before the Court and where it is he for whom he strives to get justice. The Advocate feels irrited and agitated when he finds any obstruction in his way of getting justice. It is then that he oversteps the limits and problems arise.

It is, therefore, emphasised now and then that facts should be carefully examined to find out whether there was any interference with the course of justice. The probe should start with the presumption that no contempt of Court was committed and none was even intended. After all, the advocates are part of the institution of "Court". Now canone limb of the body insult another branch when damage done to one part of damage done to the whole."

In **Prag Das Advocate Vs. P.G. Agarwal 1974 SCC OnLine ALL 182,** it is ruled as under;

"5. *It was submitted on behalf of the applicant that this Court should examine witnesses in order to find the truth there being oath against oath. We do not think it is a case of that gravity and seriousness that this Court should devote its further time. Steps in contempt should only be taken when there is real and grave danger which may result in the obstruction of justice or result in scandalising the court. Incidents of high temper giving rise to misunderstandings are not uncommon between the members of the Bar and the Bench. It behoves both the Bench and the Bar who are equal partners in the administration of justice to act with restraint and circumspection and bear with incidents which arise because of short senpor or misunderstanding. No man whether he be a lawyer or a Judge can be said to be ideally noble so as always to keep equanimity and patience under every kind of provocation. To us, it appears that there has been some misunderstanding between the lawyer applicant Sri Prag Das and the new entrant in service Sri P.C. Agarwal. We do not think a case is made out for taking action."*

In **Suo-Motu Vs. T.G. Babul 2018 SCC Online 4853,(D.B.)** where it is ruled as under;

"***28.*** *We are, therefore, of the considered view that the observations made by the learned Single Judge are totally contrary to the material placed on record. We may only observe that, while making such drastic observations, which have the effect of adversely affecting the career of the promising Lawyers, some sort of caution and circumspection ought to have been exercised by the learned Single Judge. Perusal of the order passed by the learned Single Judge itself would reveal, that the names of Lawyers who were appearing in the matters were known to the learned Single Judge, inasmuch as he had called for Vakalatnamas. The least that the learned Single Judge should have done was to give notice to these Lawyers before making any observation with regard to their conduct.*

29. *We find that such an exercise by the learned Single Judge was wholly unwarranted in the facts and circumstances of the case. Had the learned Single Judge called upon the Lawyers, they couId have assisted the Court. May be after perusing the record which we have perused, the learned Single Judge would have come to the some other conclusion and would not have passed such a drastic order. We are sure that the learned Singie Judge must not have intended to cause any harm to the Lawyers, but, in a spur of moment, on the basis of submission made before him, he might have passed the said order. We may gainfully refer to the observations of Lord Denning in the case of* ***Balogh v. Crown Court at St Albans, All England Law Reports, [1974] 3 ALL ER 283, which read thus:***

" ..... We always hear these appeals within a day or two. The present case is a good instance. The Judge acted with a firmness which became him. As it happened, ***he went too far. That is no reproach to him. It only shows the wisdom of having an appeal"***

30. We only wish to adopt the aforesaid observations, With only one change i.e. instead of word "appeal" – word "referance".

31. *We cannot undo the damage which is caused to the Lawyers concerned and the agony with which they were required to go through for no reason. The only thing that we can do is to express regret for the same. ".*

aaaa) To record a finding that when the cognizance of Contempt is taken by the court under Contempt of Courts Act then the order passed in said proceeding should be treated as an order passed in Criminal Proceeding **(Vide**: **Sahdeo Alias Sahdeo Singh Versus State of Uttar Pradesh and Others(2010) 3 SCC 705**) and order be in conformity with the definition of judgment explained in section 354 of Criminal Procedure Code.

And the order taking cognizance and show-cause notice, which is mandatory to contain brief charge should be in conformity with the law laid down in In **M.N. Ojha & Ors. v. Alok Kumar Srivastav & Anr. (2009) 9 SCC 682,** held that;

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. ***He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused.*** *The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.* ***The case on hand is a classic illustration of non-application of mind by the learned Magistrate. The learned Magistrate did not scrutinize even the contents of the complaint, leave aside the material documents available on record.*** *The learned Magistrate truly was a silent spectator at the time of recording of preliminary evidence before summoning the appellants."*

bbbb) To record a finding that the court hearing the case is entitled to consider the evidence and law applicable thereto and entitled to discharge the notice by passing strictures against the Judge taking cognizance as done in

(i) Bhajan Lal Vs. State 2001 Cri.L.J. 800

(ii) Suo-Motu Vs. T.G. Babul 2018 SCC Online 4863,(D.B.)

(iii) Phaniraj Kashyap Vs. S.R. Ramkrishna, 2011 (3) Kar L.J. 572

(iv) D.D. Samudra, Judge, Court of Small Causes Vs. Vaziralli Pvt. Ltd. and Vishwesh V. Desaihad

(v) Court on its own Motion Vs. DSP Jayant Kashmiri and Ors. MANU/DE/0609/2017

cccc). To record a finding that, Justice Rohinton Fali Nariman and Justice Vineet Saran acted in breach of law laid down various cases more particularly in **D.D. Samudra, Judge, Court of Small Causes Vs. Vaziralli Pvt. Ltd. and Vishwesh V. Desaihad** where it is ruled that use of Contempt proceeding in an unclear case undermines the majesty of the court. It is ruled as under;

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

dddd). To record a finding that the order dated 27th March,2019 taking cognizance of the letter without disclosing its source is illegal and against the fundamental principle that *"a Judge only knows what is judicially known to him and not otherwise'.*

Non refert quid notum sit judici si notum non sit in forma judicii is a fundamental principle of law, namely, that a Judge only knows what is judicially known to him and not otherwise — a key principle of Common Law's adversarial system.

Hon'ble High Court in the case of **Mulpuru Lakshmayya and Ors.Vs. Sri Rajah Varadaraja Apparow Bahadur Zemindar Garu MANU/TN/0473/1912**, ruled as under;

The Judge acted illegally in importing his own private knowledge in deciding the question. There is no doubt that a ***Judge is not entitled to rely on specific facts not proved by the evidence in the case but known to him personally or otherwise.*** *It is quite clear that a Judge may use, and cannot help using, his*

general knowledge and experience in determining the credibility of evidence adduced before him and applying it to the decision of the specific facts in dispute in the case.

It may be necessary to provide that ***when a fact is known to the Judge in this way, he should make a note of it in writing during the course of the trial and read it out to the parties so that the parties might be aware that the Court has knowledge of that fact and so that arguments and comments might be based and explanations offered by both sides on such fact so stated by the Judge as known to him before the Judge decides on the rights and liabilities of the parties.***

In **Murat Lal Vs. Emperor, MANU/BH/ 0305/1917** had ruled as under;

"A Judge cannot without giving evidence as a witness, import into a case,his knowledge of particular facts. He is disqualified to hear the case "

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 extreme penalty imposed 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.

In **Baboolal andOthers Vs. Nathmal and Another AIR 1956 Raj 123** it is held as under;

"The Ld. Civil Judge has certainly remarked that according to his information, a rocord was maintained and the formalities required by the law of registration were complied with. But he has not disclosed any source of his information and in the absence of any documentary evidence, we cannot place reliance on his personal knowledge whose ***source has not been disclosed*** *– We, therefore ,allow the plaintiff's appeal, set aside the decree of the Civil Judge and restore that of the trial Court. The appellants will receive their costs throughout."*

Hon'ble High Court in the matter of **Konda Sesha Reddy and others *Vs.* Muthyala China Pullaiah and another 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.*

Hon'ble Supreme Court in **Satyabrata Biswas and Ors. Vs. Kalyan Kumar Kisku and Ors. (1994) 2 SCC 266** hard ruled as under;

22*…..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.*

And therefore the order to annex the said letter unlawfully received and with unverified allegations, to the reportable judgment proves personal bias on the part of Justice Rohinton Fali Nariman.

eeee). To record a finding that Justice Rohinton Fali Nariman and Justice Vineet Saran while exercising discretion unjustly and against law settled by larger and co-ordinate benches erode the facet of rule of law laid down in **Medical Council of India Vs G.C.R.G. Memorial Trust & Others (2018) 12 SCC 564**, where it is ruled that;

"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"

And thereafter Hon'ble Chief Justice of India directed Chief Justice of all High Court as per para 7(ii) of "In-House-Procedure'' to withdraw all judicial work of Justice Shukla.

Hence, similar action is required to be taken in the present case as this is a case of larger serious import that despite knowing the illegality and violation of various case laws Justice Rohinton Fali Nariman and Justice Vineet Saran instead of correcting the mistake had again misused the Court proceeding by grossly abusing the process of court and issued show cause notice without jurisdiction and against fundamental legal principle that they cannot be Judge in their own case.

ffff) To record a finding the earlier judgment of this Hon'ble Court as in **C. K. Daphtary & Ors vs O. P. Gupta & Ors 1971 SCR 76** is per-incuriam in view of amendments in section 13 of Contempt of Courts Act and also in view of law laid down by larger Bench of 7- Judges in **Re: C. S. Karnan's case (2017) 7 SCC 1,** Constitution Bench judgment in **Subramanian Swamy Vs. Arun Shourie AIR 2014 SC 3020**

gggg) To record a finding that Justice Rohinton Fali Nariman &Justice Vineet Saran acted against law laid down in **Shanti Bhushan Vs. Supreme Court of India (2018) 8 SCC 396** where it is ruled as under**;**

34. *The Constitution makers, thus, reposed great trust in the judiciary by assigning it the powers of judicial review of not only the administrative acts of the Government/Executive but even the legislative acts of the Legislature. In the process, judiciary discharges one of the most important functions, namely, the administration of justice. It does so by upholding the rule of law and, in the process, protecting the Constitution and the democracy. Our Constitution guarantees free speech, fair trials, personal freedom, personal privacy, equal treatment under the law, human dignity and liberal democratic values. This bundle of non-negotiable rights and freedoms has to be protected by the judiciary. For this reason, independence of judiciary is treated as one of the basic features of the Constitution. Here, we may point out four major aspects of judicial status or performance, which are: independence; impartiality; fairness; and competence.*

91. *Before we close, we remind ourselves of following weighty words of **Venkataramiah, J.** in Judges' case:*

"1268. .....We are made to realize that we are all mortals with all the human frailties and that only a few know in this world the truth behind the following statement of Michel De Montaigne: "Were I not to follow the straight road for its straightness, I should follow it for having found by experience that in the end it is commonly the happiest and the most

useful track". .....But if the judiciary should be really independent something more is necessary and that we have to seek in the Judge himself and not outside. A Judge should be independent of himself. A Judge is a human being who is a bundle of passions and prejudices, likes and dislikes, affection and ill will, hatred and contempt and fear and recklessness. In order to be a successful Judge these elements should be curbed and kept under restraint and that is possible only by education, training, continued practice and cultivation of a sense of humility and dedication to duty. These curbs can neither be bought in the market nor injected into human system by the written or unwritten laws. If these things are there even if any of the protective measures provided by the Constitution and the laws go

the independence of the judiciary will not suffer. But with all these measures being there still a Judge may not be independent. It is the inner strength of Judges alone that can save the judiciary. The life of a Judge does not really call for great acts of self-sacrifice; but it does insist upon small acts of self-denial almost every day. The following sloka explains the true traits of men with discretion which all Judges should possess:

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[Let men trained in ethics or morality, insult or praise; let lakshmi (wealth) accumulate or vanish as she likes; let death come today itself or at the end of a yuga (millennium), men with discretion will not deflect from the path of rectitude.)"

21. This order is nothing but direct attack on the basic structure of social welfare state of our country.

It is the duty of the state authorities and more particularly of Hon'ble President of India and Hon'ble Chief Justice of India to see that the basic structure is not disturbed by anyone.

22. That Full Bench of Hon'ble Supreme Court in the case of **M.S. Ahlawat Vs. State of Haryana (2000) 1 SCC 278** had corrected the unlawful order passed by the two Judge Bench of Supreme Court.

In **Supreme Court Bar Association v. Union of India (1998) 4 SCC 409,** also Constitution Bench corrected the unlawful order of Hon'ble Supreme Court. It is observed in M.S. Ahlawat's case *(supra)* that;

"**Recall of Order.– To perpetuate error is no virtue but to correct it is compulsion od judicial conscience.**

Wrong order by Two Judge Bench of Supreme Court is corrected by Three Judge Bench.

Criminal P.C. (2 of 1974), S.195 - *Perjury - Fabricating false records before Court - Supreme Court itself cannot assume criminal jurisdiction and convict petitioner without trial - Statutory procedure provided under Ss. 195 and 340, Cr. P.C. ought to be followed.*

This Court has always adopted this procedure

<u>whenever it is noticed that proceedings before it have been tampered with by production of forged or false documents or any statement has been found to be false</u>*. <u>*The order made by Court convicting the petitioner under S. 193, IPC is, therefore, one without jurisdiction and without following due procedure prescribed under law - We have not been able to appreciate as to why this procedure was given a go-bye in the present case. May be the provisions of Sections 195 and 340, Cr.P.C. were not brought to the notice of the learned Division Bench - To perpetuate an error is no virtue but to correct it is a compulsion of judicial conscience - Court however not issuing any directions to the filing of a complaint in the competent Court as envisaged by S. 340, Cr.P.C. because the petitioner has already undergone the sentence imposed upon him for an offence under S. 193, IPC.”*</u>

Same action is expected here.

24. I expect that Hon’ble Chief Justice of India and Hon’ble President of India will take immediate and stern action and rule of law shall prevail.

Thanking You.

PLACE : MUMBAI
DATE:- 16/04/2019

ADV. VIJAY S. KURLE
STATE PRESIDENT
MAHARASHTRA & GOA
(INDIAN BAR ASSOCIATION)