INDIAN BAR ASSOCIATION

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Grievance No. PRSEC/E/2019/05351

Date :20.03.2019

To,

I. Hon'ble Chief justice of India

With Copy to;

I) All Judges of Hon'ble Supreme Court of India

III) All Judge of Hon'ble High Courts in India.

IV) All State Bar Councils & Bar Council of India.

V) All Law Colleges in India.

SUBJECT:- **i) Taking action 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 an order by wilful disregard , disobedience and misinterpretation of law laid down by the Constitution Bench of Hon'ble Supreme Court with an intention to terrorize advocates.**

ii) Immediate withdrawal of all works from Justice Rohinton Fali Nariman And Justice Vineet Saran as per 'In- House – Procedure'.

iii) Directions to Rohinton Fali Nariman And 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 their incapacity, fraud on power and offences against administration of Justice are ex- facie proved.

OR

iv) Granting Sanction to applicant to prosecute Justice Rohinton Fali Nariman And Justice Vineet Saran under Section 218, 201, 219, 191, 192, 193, 466, 471, 474 read with 120 (B) and 34 of Indian

Penal Code.

v) Taking 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

VI) Direction to Committee appointed under 'In-House – Procedure' 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, 54 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 (2001) 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.

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, 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. Judge cannot think in terms of 'what pleases the prince has the force of law' **[Sundarjas Kanyalal Bhathija and others. Vs. The Collector, Thane. AIR 1990 SC 261, Anurag Kumar Singh Vs.**

State AIR 2016 SC 4542], Medical Council's case (2018) 12 SCC 564. 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.

Ref : (i) Order dated 12th March,2019 passed in Writ Petition (C) No. 19 of 2019
(ii) Order Dated 26th February 2019 in Criminal Appeal No. 387/2018

1. Martin Luther King said ***"Injustice anywhere is threat to Justice everywhere". "Evil tolerated is evil propogated"***

2 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."***

"Justice", we do not tire of saying, must not only be done", but, 'must be seen to be done" and yet at times some Courts suffer from temporary amnesia and forget these words of wisdom. In the result, a Court occasionally adopts a procedure which does not meet the high standards set for itself by the judiciary. The present matter falls in that unfortunate category of cases". These are the observations of Hon'ble Supreme Court against a Judge who adopted the unfair procedure and Passed a wrong order consciously. **(Nirankar Nath Wahi and Others, Vs. Fifth Addl. District Judge, Moradabad and others, AIR 1984 SC 1268)**

3. Justice Krishna Iyer in **Raghbir Singh vs State Of Haryana 1980 SCR (3) 277** said :

> *4. 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."***

4. Hon'ble Supreme Court in the case of **R. MuthukrishnanVs.The Registrar General of the High Court of Judicature at MadrasAIR 2019 SC 849** ruled as under ;

<u>THERE CANNOT BE EXISTENCE OF A STRONG JUDICIAL SYSTEM WITHOUT AN INDEPENDENT BAR.</u>

The Bar is an integral part of the judicial administration. In order to ensure that judiciary remains an effective tool, it is absolutely necessary that Bar and Bench maintain dignity and decorum of each other. The mutual reverence is absolutely necessary. The Judges are to be respected by the Bar, they have in-turn equally to respect the Bar, observance of mutual dignity, decorum of both is necessary and above all they have to maintain self-respect too.

Independent Bar and independent Bench form the backbone of the democracy. In order to preserve the very independence, the observance of constitutional values, mutual reverence and self-respect are absolutely necessary. Bar and Bench are complementary to each other. Without active cooperation of the Bar and the Bench, it is not possible to preserve the Rule of law and its dignity. Equal and even-handed justice is the hallmark of the judicial system. The protection of the basic structure of the Constitution and of rights is possible by the firmness of Bar and Bench and by proper discharge of their duties and responsibilities. ***We cannot live in a jungle raj****.*

Making the Bar too sycophant and fearful which would not be conducive for fair administration of justice*. Fair criticism of judgment and its analysis is permissible. Lawyers' fearlessness in court, independence, uprightness, honesty, equality are the virtues which cannot be sacrificed. It is duty of the lawyer to lodge appropriate complaint to the concerned authorities as observed by this Court in Vinay Chandra Mishra (supra), which right cannot be totally curtailed.*

Constitution Bench of Hon'ble High Court in the case of **<u>Harish Chandra Mishra Vs. Justice Ali Ahmad 1986 (34) BLJR 63</u>** had observed as under;

16. *There cannot be two opinions that Judges of the Supreme Court and High Courts are expected to conduct*

the proceedings of the Court in dignified, objective and courteous manners and without fear of contradiction it can be said that by and large the proceedings of the higher courts have been in accordance with well settled norms. On rare occasions complaints have been made about some outrageous or undignified behaviour. It has always been impressed that the dignity and majesty of court can be maintained only when the members of the Bar and Judges maintain their self imposed restriction while advancing the cause of the clients and rejecting submissions of the counsel who appear for such cause. It is admitted on all counts that a counsel appearing before a court is entitled to press and pursue the cause of his client to the best of his ability while maintaining the dignity of the court. ***The Judge has also a reciprocal duty to perform and should not be discourteous to the counsel and has to maintain his respect in the eyes of clients and general public.*** *This is, in my view, very important because the system through which justice is being administered cannot be effectively administered unless the two limbs of the court act in a harmonious manner.* ***Oswald on Contempt of Court, 3rd Edition at page 54 remarked "an over subservient bar would have been one of the greatest misfortune that could happen to the administration of Justice."***

5. While delivering the 1st lecture on M.C. Setalvad Memorial Lecture Series on 22nd February, 2005, the Hon'ble Mr. Justice R.C. Lahoti (the then CJI),narrated the following story:

"A patient visited a doctor's clinic and asked the receptionist – I want to see a specialist of eyes and ears.

The receptionist said – There are doctors of ear, nose and throat and there are doctors of eyes. There is no specialist who treats both the eyes and the ears. But then why are you in need of such a doctor?

The patient replied – These days I do not see what I hear, and I do not hear what I see."

This is the reality as on date. Now-a-days, people do not see Judges following what have(has) clearly and unambiguously been laid down in the Constitution, Law-Books and other authorities (citations).In fact, now the citations are displayed only for the ornamental purposes in the Court-Rooms, Judges' Library and in the offices of High-Profile Advocates, which are rarely referred and the principles (as laid down therein) are rarely followed by the Judges except in some selected matters only.

6. **<u>In State of Rajasthan vs. Prakash Chand & Ors.; (1998) 1 SCC 1",</u>** it has been held as under;

> ***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.***

Indeed, as on date, personal opinions and inclinations of the Judges have taken the place of the law, and therefore, almost every day, most absurd, erroneous and conflicting decisions are being rendered by many Courts which have not only created a havoc and lawlessness everywhere, but also piled-up the mountain of old backlog of all appellate Courts to be ultimately cleared when – GOD only knows, as the Judges have no time to dispose off such old matters. In such a situation, the people (including authorities and Government) are confused and they do not know what is the real law and what principle they should follow; and the victims and dejected litigants do not know as to what should they do or where should they go further to get even bare-minimum reliefs as they are badly suffering on account of the gross errors committed by the Court? **It is needless to say that Judges cannot become the law unto themselves, nor can they expect others to obey such illegal orders which have been passed by them purely on their whims and fancies. However, this has become the regular practice and people are now expected to follow the judicial directions, not law.**

When a substantial question of law has been specifically settled, the judge has no power to use his discretion in contradiction to the settle law.) This principle has been particularly laid doen by Hon'ble Supreme Court in AIR 1990 SC 261 which reads as under;

> ***"Precedents - Constitution of India, Art.141 - Principles of - Judges are bound by precedents and procedure - They could use their discretion only when there is no declared principle to be found, no rule and no authority - The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective as a guide to behaviour. It must be determined with reasons which carry convictions within the Courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients. Sub-ordinate courts would find themselves in an embarrassing position to choose between the conflicting opinions. The general public would be in dilemma to obey or not to obey such law and it ultimately falls into disrepute.***
>
> ***The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the***

individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a Court.

It is needless to state that the judgment of superior Courts and Tribunals must be written only after deep travail and positive vein. One should never let a decision go until he is absolutely sure it is right. The law must be made clear, certain and consistent.

One must remember that pursuit of the law, however glamorous it is, has its own limitation on the Bench. In a multi judge court, the Judges are bound by precedents and procedure."

In **Anurag Kumar Singh's case AIR 2016 SC 4542** it is ruled that;

"Discretion assumes the freedom to choose among several lawful alternatives. Therefore, discretion does not exist when there is but one lawful option. In this situation, the judge is required to select that option and has no freedom of choice. No discretion is involved in the choice between a lawful act and an unlawful act. The judge must choose the lawful act, and he is precluded from choosing the unlawful act. Discretion, on the other hand, assumes the lack of an obligation to choose one particular possibility among several.[12] "

In *"Rajendra Sail vs. Madhya Pradesh High Court Bar Association; (2005) 6 SCC 109"*, the Apex Court has held thus:

"32. ..... It is also necessary to always bear in mind that the judiciary is the last resort of redressal for resolution of disputes between State and subject, and high and low. The confidence of people in the institute of judiciary is necessary to be preserved at any cost. That is its main asset. Loss of confidence in institution of judiciary would be end of Rule of law."

The judiciary will be judged by the people by what

the judiciary does. Nothing is more important to the proper functioning of the Constitution than a strong and effective judiciary which is respected and obeyed by the people and also the administration.

In *"Jennison v. Baker [1972 (1) ALL. E.R. 997[, at page 1006"*, it has been observed(which is approved by our Supreme Court) thus:

"THE LAW SHOULD NOT BE SEEN TO SIT BY LIMPLY, WHILE THOSE WHO DEFY IT GO FREE, AND THOSE WHO SEEK ITS PROTECTION LOSE HOPE."

Hon'ble High Court in the case of **Court on its own Motion Vs. DSP Jayant Kashmiri and Ors. MANU/DE/0609/2017** where it is ruled as under;

Contempt Of Courts Act, 1971 - Section Section 2(c), 15 – The administration of justice cannot be impaired by clothing the professional Advocate with the freedom to fairly and temperately criticise in good faith - 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] ".

imputation of extraneous unjudicial motives to the Courts is not contempt if said imputations can be so substantiated. If imputations are 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 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.

Again coming to **R. Muthukrishnan (supra) it is ruled that;**

It is basically the lawyers who bring the cause to the Court are supposed to protect the rights of individuals of equality and freedom as constitutionally envisaged and to ensure the country is governed by the Rule of law. Considering the significance of the Bar in maintaining the Rule of law, right to be treated equally and enforcement of various other fundamental rights, and to ensure that various institutions work within their parameters, its independence becomes imperative and cannot be compromised. The lawyers are supposed to be fearless and independent in the protection of rights of litigants. What lawyers are supposed to protect, is the legal system and procedure of law of deciding the cases.

Role of Bar in the legal system is significant. The bar is supposed to be the spokesperson for the judiciary as Judges do not speak. People listen to the great lawyers and people are inspired by their thoughts. They are remembered and quoted with reverence. It is the duty of the Bar to protect honest judges and not to ruin their reputation and at the same time to ensure that corrupt judges are not spared.

Contempt of court is a weapon which has to be used sparingly as more is power, same requires more responsibility but it does not mean that the court has fear of taking action and its repercussions. The hallmark of the court is to provide equal and even-handed justice and to give an opportunity to each of the system to ensure that it improves upon.

It cannot be gainsaid that lawyers have contributed in the struggle for independence of the

nation. They have helped in the framing of the Constitution of India and have helped the Courts in evolving jurisprudence by doing hard labor and research work. The nobility of the legal system is to be ensured at all costs so that the Constitution remains vibrant and to expand its interpretation so as to meet new challenges.

In order to improve the system, they have to take recourse to the legally available methods by lodging complaint against corrupt judges to the appropriate administrative authorities and not to level such allegation in the public. The corruption is intolerable in the judiciary.

It is the joint responsibility of the Bar and the Bench to ensure that equal justice is imparted to all and that nobody is deprived of justice due to economic reasons or social backwardness. The judgment rendered by a Judge is based upon the dint of hard work and quality of the arguments that are advanced before him by the lawyers. There is no room for arrogance either for a lawyer or for a Judge.

A lot of sacrifices are made to serve the judiciary for which one cannot regret as it is with a purpose and to serve judiciary is not less than call of military service.

7. Judges cannot be law unto themselves expecting others to obey the law**. [Vide :Nandini Sathpathy Vs. P.L.Dani & Others (1978) 2 SCC 424]**

8. Full Bench of Hon'ble Supreme Court in **Nidhi Keim & Ors. Vs. State of Madhya Pradesh and Ors. (2017) 4 SCC 1** had ruled that Supreme Court cannot pass any order in disregard to statutory provisions and against the law laid down by Higher Benches of the Supreme Court **This was the answer of Chief Justice J.S. Khehar to Adv. Fali Nariman who asked the Court to pass an order against the provisions of law.** It is ruled 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."

Fali Nariman was and is having tendency to misinterpret the law, misguide Court & motivate public to act against the law.

Duo to such conduct Advocate Fali Nariman is being made co – accused of charges of sedition Under Section 124 –A,120 (B) & 34 of Indian Penal Code in view of Section 10 of Evidence Act. A Copy of Complaint Dated19/02/2019 (**Complaint No.PRSEC/E/2019/03507**) before Hon'ble President of India given by Human Right Security Council, is annexed herewith **Annexure *"A"***

9. Justice Rohington Fali Nariman who is son of Adv. Fali Nariman, is doing the same illegality by acting against the statutory provisions and law laid down by Higher Benches of Hon'ble Supreme Court in W.P. CC No. 191 of 2019. In said W.P. on 12th March 2019. Justice Rohington Fali Nariman found Adv. Nedumpara guilty of Contempt of Court on face of it for taking name of advocate Fali Nariman and observed that no procedure is required to be followed and ruled that the Court can straightway declare the Advocate guilty of Contempt for his argument and an advocate can be punished straightway.

To support his illegality Justice Rohington Fali Nariman tried to misinterpret & rely on some selected paras of Judgment of Supreme Court in the case of **Leila David Vs. State (2009) 10 SCC 337** & other judgments at his convenience.

In another case in Criminal Appeal No. 387 of 2019 arising out of S.L.P. (Crl.) No. 2632 of 2018 same illegality is committed by Justice Rohington Fali Nariman & Justice Vineet Saran.

10. The present petition is to expose the illegality and Contempt on the part of Justice Rohington Fali Nariman & Justice Vineet Saran.

The present petition is not a matter of expressing solidarity with Advocate Nedumpara or anything personal against Justice Rohinton Fali Nariman but concern for Justice and regarding purely misdirected application of Judicial authority causing anguish to the legal fraternity. In case if this judicial misadventure isn't checked, the common public, judiciary will be bound by Justice Rohington Fali Nariman's unlawful precedent causing huge loss and damage,frightfully shaking the foundation of justice which will not be allowed at any Cost.

ILLEGALITES COMMITED BY JUSTICE R. NARIMAN & JUSTICE VINEET

SARNAN

11) #CHARGE# :- DELIBERATE MISINTERPRETATION OF FULL BENCH JUDGMENT IN LEILA DAVID (6) VS. STATE (2009) 10 SCC 337.

That respondent Judge Rohington Fali Nariman in para 1, 2 & 10 of order date **12th March, 2019** had observed as under;

> *1. In the course of arguments in the present Writ Petition, Shri Mathews Nedumpara, learned counsel appearing on behalf of the petitioners, alleged that Judges of the Court are wholly unfit to designate persons as Senior Advocates, as they only designate Judges' relatives as Senior Advocates. On being asked whether such a designation should be granted as a matter of bounty, Shri Nedumpara took the name of Shri Fali S. Nariman. When cautioned by the Court, he took Shri Fali S. Nariman's name again. Thereafter, on being questioned by the Court as to what the relevance of taking the name of Shri Fali S. Nariman was, he promptly denied having done so. It was only when others present in Court confirmed having heard him take the learned Senior Advocate's name, that he attempted to justify the same, but failed to offer any adequate explanation.*
>
> *2. We are of the view that the only reason for taking the learned Senior Advocate's name, without there being any relevance to his name in the present case, is to browbeat the Court and embarrass one of us. Shri Nedumpara then proceeded to make various statements unrelated to the matter at hand. He stated that, "Your Lordships have enormous powers of contempt, and Tihar Jail is not so far." He further submitted that lawyers are like Judges and are immune from contempt, as they are protected by law. He also stated that there can be no defamation against a lawyer, as also there can be no contempt proceedings against a lawyer, as the same would impinge on the independence of lawyers, which they ought to enjoy to the fullest. All these statements directly affect the administration of justice, and is contempt in the face of the Court.*
>
> *10. In Leila David (2) v. State of Maharashtra, (2009) 4 SCC 578, two learned Judges differed on whether contempt in the face of the Court can be dealt with summarily, without any need of issuing notice to the contemnors, and whether punishment can be inflicted upon them there and then. Pasayat, J. held that this is, indeed, the duty of the Court.*

Ganguly, J. differed. A three-Judge Bench of this Court, in Leila David (6) v. State of Maharashtra, (2009) 10 SCC 337, settled the law, making it clear that Pasayat, J.'s view was the correct view in law. This Court held:

> *"28. As far as the suo motu proceedings for contempt are concerned, we are of the view that Arijit Pasayat, J. was well within his jurisdiction in passing a summary order, having regard to the provisions of Articles 129 and 142 of the Constitution of India. Although, Section 14 of the Contempt of Courts Act, 1971, lays down the procedure to be followed in cases of criminal contempt in the face of the court, it does not preclude the court from taking recourse to summary proceedings when a deliberate and wilful contumacious incident takes place in front of their eyes and the public at large, including Senior Law Officers, such as the Attorney General for India who was then the Solicitor General of India.*
>
> *29. While, as pointed out by Ganguly, J., it is a statutory requirement and a salutary principle that a person should not be condemned unheard, particularly in a case relating to contempt of court involving a summary procedure, and should be given an opportunity of showing cause against the action proposed to be taken against him/her, there are exceptional circumstances in which such a procedure may be discarded as being redundant.*
>
> *30. The incident which took place in the courtroom presided over by Pasayat, J. was within the confines of the courtroom and was witnessed by a large number of people and the throwing of the footwear was also admitted by Dr. Sarita Parikh, who without expressing any regret for her conduct stood by what she had done and was supported by the other contemnors. In the light of such admission, the summary procedure followed by Pasayat, J. cannot be faulted."*
>
> *xxx xxx xxx*
>
> *"35. Section 14 of the Contempt of Courts Act no doubt contemplates issuance of notice and an opportunity to the contemnors to answer the charges in the notice to satisfy the principles of natural justice. However, where an incident of the instant nature takes place within the presence and sight of the learned Judges, the same*

amounts to contempt in the face of the Court and is required to be dealt with at the time of the incident itself. This is necessary for the dignity and majesty of the courts to be maintained. When an object, such as a footwear, is thrown at the Presiding Officer in a court proceeding, the object is not to merely scandalise or humiliate the Judge, but to scandalise the institution itself and thereby lower its dignity in the eyes of the public."

In the Judgment in **Leila David Vs. State (2009) 10 SCC 337** the ratio laid down is that **when the incident like that case i.e. throwing the footwear at Judge in Court in front of public at large and using very offensive and abusive language then the accused should be dealt with at the time of the incident itself and in that case summary procedure is permissible.**

The relevant para of Full Bench in the case of **Leila David Vs. State (2009) 10 SCC 337** Case **(supra)** reads as under;

*" **30.**The incident which took place in the court room presided over by Dr. Justice Pasayat was within the confines of the court room and was witnessed by a large number of people and the throwing of **the footwear was also admitted by Dr. Sarita Parikh, who without expressing any regret for her conduct stood by what she had done and was supported by the other contemnors. In the light of such admission, the summary procedure followed by Dr. Justice Pasayat cannot be faulted.***

35.Section 14 of the Contempt of Courts Act no doubt contemplates issuance of notice and an opportunity to the contemnors to answer the charges in the notice to satisfy the principles of natural justice. However, where an incident of the instant nature takes place within the presence and sight of the learned Judges, the same amounts to contempt in the face of the Court and is required to be dealt with at the time of the incident itself. This is necessary for the dignity and majesty of the Courts to be maintained. When an object, such as a footwear, is thrown at the Presiding Officer in a Court proceeding, the object is not to merely scandalize or humiliate the Judge, but to scandalize the institution itself and thereby lower its dignity in the eyes of the public."

In the case of Adv. Nedumpara the case of alleged unwarranted arguments advanced on 5th March 2019 which is published in the law web news letter **'Bar & Bench'** on 5th March 2019. On that day no action as contemplated Under Section 14 of the Act was taken. But after 7 days i.e. on 12th March, 2019 the order is passed holding Advocate Nedumbara guilty of Contempt.

It is against the procedure of Section 14 of Contempt of Courts Act. As per Section 14 of the Contempt of Courts Act the procedure to be followed is to detain the concerned person at the time of the incident itself. If it is not done then the Court cannot take help of Section 14 of the Act and Court has to follow procedure under Section 15 of the Act. **In the case of Advocate Nedumpara, after 7 days of the incident, Judge cannot adopt summary procedure by invoking provisions of Section 14 of the Contempt of Courts Act. Because the person had left the Court premises on that day. Now the Court can if needed take action under section 15 of the Contempt of Courts Act.**

Even otherwise following summary procedure does not give the Judge any authority to not to frame the charges and not to give opportunity to put his defence. **[vide:- Vinay Chandra Mishra AIR 1995 SC 2348 Full Bench.]**

A reference can be made to law laid down by :

(i) **Dr. L. P. Mishra Vs. State of UP (1998) 7 SCC 379 (Full Bench)**

(ii) **Smt. Manisha Mukherjee Vs. Asoke Chatterjee, 1985 Cri. L. J. 1224**

(iii) **Anil Kumar Dubey Vs. Pradeep Shukla (Full Bench) 2017 SCC OnLine Chh 95**

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

> *"**Contempt of Courts Act (70 of 1971), S.14, S.15** - Two different procedures have been prescribed for conduct amounting to contempt indulged in two broadly different circumstances. - S.15 excludes from its ambit the cases covered by S.14 - two sections are mutually exclusive and apply to two different types of cases, otherwise there was no necessity for prescribing two different procedures for two different types of cases under the Act.*
>
> *As per procedure of Sec. 14, **allegation is to be made soon after the conduct has been indulged in before the offender has left the precincts of the Court.***
> ***But if the offender had left the precincts of the Court and away from the Court then allegations may be made***

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

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

Two different procedures have been prescribed for conduct amounting to contempt indulged in two broadly different circumstances. When the offending conduct has been indulged in the presence or hearing of the Supreme Court or High Court, the court will follow the procedure laid down in S.14. In all other cases, that is to say, when offending conduct was resorted to at places outside the presence or hearing of the Supreme Court or High court, the procedure prescribed by S.15 is to be followed. S.14 occurs first and S.15 coming subsequently expressly mentions "In cases of criminal contempt, other than criminal contempt referred to in S.14". S.15 thus excludes from its ambit the cases covered by S.14. So the conclusion is unavoidable that the two sections are mutually exclusive and apply to two different types of cases, otherwise there was no necessity for prescribing two different procedures for two different types of cases under the Act.

II] In **Dr. L. P. Mishra Vs. State of U.P. (1998) 7 SCC 379 (Full Bench)** ,a group of advocate entered the Court room, shouting slogans and asking the Court to stop its proceedings. As the Court continued, the advocates went on to the Dias and tried to manhandle the Judges and uttered very abusive

language against one of the Members of the Bench. The learned Judges retired to their Chambers and then re-assembled and passed an order holding the Advocates guilty by imposing sentence of imprisonment and fine. In doing so, the learned Judges invoked the High Court's power under Article 215 of the Constitution.

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

> ***8.*** *Mr. Dwivedi, Learned Senior Counsel appearing for the appellant in Crl. Appeal No. 483 of 1994 assailed the impugned order principally on the ground that the court while passing the said order did not follow the procedure prescribed by law. Counsel urged that the court had failed to give a reasonable opportunity to the appellants of being heard. Assuming that the incident as recited in the impugned order had taken place, the court could not have passed the impugned order on the same day after it reassembled without issuing a show cause notice or giving an opportunity to the appellants to explain the alleged contemptuous conduct. The minimal requirement of following the procedure prescribed by law had been over looked by the Court. In support of his submission, Counsel drew our attention to Section 14 of the Contempt of Courts Act, 1971 as also to the provisions contained in Chapter XXXV-E of the Allahabad High Court Rules, 1952. Emphasis was laid on Rule 7 and 8 which read as under :-*
>
> > ***7. "When it is alleged or appears to the Court upon its own view that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and at any time before the rising of the Court, on the same day or as early as possible thereafter, shall -***
> > ***(a) cause him to be informed in writing of the contempt with which he is charged, and if such person pleads guilty to the charge, his***

plea shall be recorded and the Court may in its discretion, convict him thereon,

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

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

(d) make such order for punishment or discharge of such person as may be just.

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

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

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

is in these circumstances, the impugned order cannot be sustained.

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

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

III) In **Leila David (2) Vs. State (2009) 4 SCC 578** it is observed by Hon'ble Justice Ganguly as under;

" Four steps provided under Section 14(1) of the Act are mandatory in nature - power of the High Court under Article 215 of the Constitution is in similar terms as the power of the Supreme Court under Article 129 of the Constitution - Supreme Court cannot, while exercising its jurisdiction under Article 142, render salutary provisions of Statute nugatory and otiose. These provisions as noted above give effect to the fundamental guarantee under Article 21 of the Constitution - where such clear statutory provisions are not there, same principles of caution which is akin to Section 14 of the said Act have been judicially evolved while dealing with a case of contempt in the face of the Court. High Court of Australia in Coward v. Stapleton (1953) 90 CLR 573, 579-80 laid down that no person ought to be punished for contempt of Court unless the specific charge against him be distinctly stated and an opportunity of answering is given to him .

In the case of Dr. L.P. Misra v. State of U.P. 1998 Cri.L.J. 4603 This Court also held that the power of the High Court under Article 215 has to be exercised in accordance with the

procedure prescribed by law

The law of contempt is not dependent solely on Common law principles, but the exercise of contempt jurisdiction in India is regulated in accordance with the provisions of the said Act. It is of course, true that the Supreme Court has its inherent power. Apart from the power conferred on it under the said Act, it has inherent power under Article 129 of the Constitution to punish for contempt of itself. This Court also has power under Article 142 of the Constitution. - power of the High Court under Article 215 of the Constitution is in similar terms as the power of the Supreme Court under Article 129 of the Constitution -Court's power under Article 142 of the Constitution is not meant to circumvent clear statutory requirements.

Supreme Court cannot, while exercising its jurisdiction under Article 142, render salutary provisions of Statute nugatory and otiose. Section 14 of the said Act. The said Section is based on the Recommendation of the Sanyal Committee - *These provisions as noted above give effect to the fundamental guarantee under Article 21 of the Constitution. in contempt proceedings, the Court acts both as Judge and an accuser, rolled into one, and the Court must act with utmost restraint and caution and must follow all the procedural requirements since the liberty of persons is involved.*

It is clear from a perusal of Section 14(1) of the said Act that in initiating a contempt proceeding and when contempt is allegedly committed in the face of the Court, the Court has to inform the alleged contemnors in writing the charge of contempt and then afford them an opportunity to make their defence to the charge and thereafter on taking such evidence as may be necessary or as may be offered by the persons and after hearing them, proceed either forthwith or after adjournment to determine the matter of the charge and may make such order for the punishment or discharge of such persons as may be just.

These four steps provided under Section 14(1) of the Act are mandatory in nature.

In other Common law jurisdictions where such clear statutory provisions are not there, same principles of caution which is akin to Section 14 of the said Act have been judicially evolved while dealing with a case of contempt in the face of the Court. High Court of Australia in Coward v. Stapleton (1953) 90 CLR 573, 579-80 laid down:

It is well-recognised principle of law that no person ought to be punished for contempt of Court unless the specific charge against him be distinctly stated and an opportunity of answering is given to him.... The gist of the accusation must be made clear to the person charged, though it is not always necessary to formulate the charge in a series of specific allegations. The charge having been made sufficiently explicit, the person accused must then be, allowed a reasonable opportunity of being heard in his own defence, that is to say a reasonable opportunity of placing before the court any explanation or amplifications of his evidence and any submissions of fact of law, which he may wish the Court to consider as bearing either upon the charge itself or upon the question of punishment. Resting as it does upon accepted notions of elementary justice, this principle must be rigorously insisted upon.

15. *These steps have been engrafted under the Statute following Common Law traditions in other countries and also possibly keeping in view the age old principle that*

17. Mere unilateral recording in the order that the contemnors stand by what they said in Court is not a substitute for compliance with the aforesaid mandatory statutory requirement.

18. *Apart from that at that time when the alleged offending acts were committed by those persons the Court's atmosphere was so surcharged that no such offer could be validly made.*

20. *Similar principles have been laid down by the* ***Supreme Court of Canada in B.K. v. The Queen:***

There is no doubt in my mind that he was amply justified in initiating the summary contempt procedures. I, however, find no justification for foregoing the usual steps, required by natural justice, of putting the witness on notice that he or she must show cause why they would not be found in contempt of court, followed by an adjournment which need be no longer than that required to offer the witness an opportunity to be advised by counsel and, if he or she chooses, to be represented by counsel. In addition, upon a finding of contempt there should be an opportunity to have representations made as to what would be an appropriate sentence. This was not dons and there was no need to forego all these steps." ***(1996) 129 DLR 500***

21. *Reference in this connection may be made to a decision of*

this Court in ***Dr. L.P. Misra v. State of U.P. reported in MANU/SC/0546/1998 : 1998 Cri.L.J. 4603*** .

22. A somewhat similar incident, may be of a graver import, happened in Allahabad High Court on 15.7.1994 when a group of Advocates entered the Court room, shouting slogans and asking the Court to stop its proceedings. As the Court continued, the advocates went on to the dais and tried to manhandle the Judges and uttered very abusive language against one of the Members of the Bench. The abusive utterances were:

Tum sale with jaao nahien to jann se maar daalenge. Tumne Chief Justice se kaha hai ki Lucknow ke Judges 5000 rupya lekar stay grant karte hain aur stay extend karte hain. Aaj 2 baje tak agar tum apan boriya bistar lekar yahan se nahien bhag jaate ho to tumhe jann se maar daalenge.

23. The learned Judges retired to their Chambers and then re-assembled and passed an order holding the Advocates guilty by imposing sentence of imprisonment and fine. In doing so, the learned Judges invoked the High Court's power under Article 215 of the Constitution. Against that order, an appeal was filed to this Court.

25. The learned three Judge Bench of this Court in L.P. Misra (supra) set aside the order of Allahabad High Court as the same was passed without following the procedure prescribed under the law. In doing so the learned Judges referred to Section 14 of the said Act and the rules of Allahabad High Court Rules (para 6 page 381 of the report). Those rules and the provisions of Section 14(1)(a)(b)(c)(d) of the said Act are almost similar in terms. This Court also held that the power of the High Court under Article 215 has to be exercised in accordance with the procedure prescribed by law (Para 12 page 382 of the report).

26. The safeguards statutorily engrafted under Section 14 of the Act are basically reiterating the fundamental guarantee given under Article 21 of the Constitution. This guarantee which possibly protects the most precious fundamental right is against deprivation of one's personal liberty "except according to procedure established by law". This Court, being the guardian of this right, cannot do anything by which that right is taken away or even abridged and especially when the Court is acting suo motu.

> ***29.*** *The opening words of Article 142 shows that the Supreme Court shall exercise its power under the said Article "in exercise of its jurisdiction'". Therefore, the Jurisdiction of the Supreme Court in initiating proceeding for contempt under Section 14 of the said Act must be exercised following the statutory dispensation. In other words,* ***Supreme Court cannot, while exercising its jurisdiction under Article 142, render salutary provisions of Statute nugatory and otiose. These provisions as noted above give effect to the fundamental guarantee under Article 21 of the Constitution.***
>
> ***30.*** *Therefore, in this view of the matter, I cannot agree with the view expressed in the order of His Lordship Justice Pasayat, for sending the alleged contemnors to prison for allegedly committing the contempt in the face of the Court without following the mandate of the Statute under Section 14. I, therefore, cannot at all agree with His Lordship's order by which sentence has been imposed. I am of the view that the liberty of those persons cannot be affected in this manner without proceeding against them under Section 14 of the Act. In my opinion Section 14 is in consonance with a person's fundamental right under Article 21".*

While deciding the reference of **Leila David's case, the 3 - Judge Bench in (2009) 10 SCC 337 ,** had ruled that **in cases where the footware are thrown at a Judge and if said charge is not disputed by the alleged *Contemnor then* summary procedure can be followed.**

Apart from the ratio decided regarding that incident, it is worth to note that, while deciding that case, Supreme Court had not considered earlier the law laid down by Full Bench in **Dr. L.P. Misra Vs. State of U.P. reported in MANU/SC/0546/1998**and therefore the judgment **Leila David's case 3 - Judge Bench (2009) 10 SCC 337** is not binding precedent and is per –incuriam as compared with **Dr. L.P. Misra's case.**

Hon'ble Suprem Court in **Sandeep Kumar Bafna Vs. State of Maharashtra (2014) 16 SCC 623**it is ruled as under;

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

succeeding ones would fall in the category of per incuriam.

B) Judge shall remain impervious *- Influence by media and Public - Judge shall remain impervious to any pressure that may be brought to bear upon him either from the public or from the media - We expect that the learned Single Judge shall remain impervious to any pressure that may be brought to bear upon him either from the public or from the media as this is the fundamental and onerous duty cast on every Judge."*

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

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

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

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

However, in the case in hand, this avenue could also not

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

Therefore law laid down by Full Bench in **Dr. L.P. Mishra Vs. State (1998) 7 SCC 379** shall be binding.

V] Secondly, the case of **Leila David Vs. State (2009) 10 SCC 337** does not laid down the ratio regarding a case, related with an advocate found behaving against the accepted norms while arguing before the court.

In the case of advocates the law laid down in following cases is relevant :

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

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

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

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

A) CONTEMPT OF COURTS ACT, 1971 - SECTION 14 READ WITH ARTICLE 215 OF THE CONSTITUTION OF INDIA - ***Suo motu contempt against Advocates and parties for scandalous draft*** *- Application filed by a party to the proceedings requesting a Judge to recuse himself from hearing the case on the ground that he is biased, whether constitute contempt -HELD,* ***if the Contempt is on the face of the Court then the procedure under section 14 of the contempt of courts act should be followed – as per law declared by Supreme Court in the case of Leila David v. State of Maharashtra & Ors reported in AIR 2010 SC 862, the case of contempt in the face of the Court under this section is required to be dealt with at the time of the incident itself*** *- In the*

instance case, the contempt alleged is the words used in the affidavit filed in support of the application - If the Judges on entertaining the said application felt as such, A. 1 should have been detained in custody and pending determination of the charges, he could have been released him on bail as provided in Sub-section (4) of Section 14 of the Act. Thereafter inform him in writing, of the contempt with which he is charged and afford him an opportunity to make his defence to the charge. Then they should have taken such evidence as may be necessary or as may be offered by A.1. After hearing the matter, they could have decided whether the charge is proved or not and accordingly punished A. 1 or discharge him. Admittedly, the Court did not follow this procedure - It is under these circumstances, the contempt proceedings now which is initiated cannot be construed as the proceedings under Section 14 of the Act.

When the contempt is on the face of the Court, then it is very essential for that Court to follow the procedure as prescribed in Section 14 of the Act. ***But for any reason if the concerned Court does not proceed in accordance with Section 14 of the Act*** *and refers the matter to the Hon'ble Chief Justice of the High Court informing about the alleged contempt, then* ***in that event, it is always open and within the powers of the High Court to take suo moto cognizance of the same and proceed against the alleged contemnor in accordance with the procedure as laid down under Section 15 of the Act.***

18 . suo motto contempt action has to be initiated against the 1st respondent, the Secretary of the 1st respondent, the President of respondent No. 1, Sri. S.K.V. Chalapathi, Senior counsel, Sri. V.H. Ron, Sri. Ramesh Babu and Sri. S.A. Maruthi Prasad, Advocates. Thereafter, at para 71 they referred to the observations made by Hon'ble Mr. Justice C.R. Kumaraswamy and at para 75 they observed as under:

"In view of this order and being conscious of our limitations we direct the Registry to post the contempt proceeding as well as this appeal before a Bench of which Manjunath J., and Nagarathna J., are not

members, after obtaining necessary orders from the Hon'ble Chief Justice."

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

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

The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members.

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

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

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

It only means that he is an integral part of the machinery for the administration of justice.

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

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

201. The casualness and indifference with which some

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

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

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

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

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

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

72. In the instance case, the contempt alleged against A.

1 is the words used in the affidavit filed in support of the application for recusal. As the said application was presented before the Court and that affidavit contained the words accusing bias of Hon'ble Mr. Justice K.L. Manjunath, it is alleged that it amounts to committing contempt in the face of the High Court. If the Judges on entertaining the said application felt as such, A. 1 should have been detained in custody and pending determination of the charges, he could have been released him on bail as provided in Sub-section (4) of Section 14 of the Act. Thereafter inform him in writing, of the contempt with which he is charged and afford him an opportunity to make his defence to the charge. Then they should have taken such evidence as may be necessary or as may be offered by A.1. After hearing the matter, they could have decided whether the charge is proved or not and accordingly punished A. 1 or discharge him. Admittedly, the Court did not follow this procedure.

73. Similarly, no proceedings were initiated under Section 14(1) even against A.2, A.3 and A.4 who are also accused of the same. In so far as A.5 and A.6 are concerned, they are not accused of anything being done in the face of the Court. Therefore the question of proceeding against them under Section 14(1) did not arise.

74. Even Section 14(2) is not attracted, because, the Court did not inform A. 1 of the contempt of which he is charged. It is only if A.1 had been informed about the charge, then, he could have requested the Judges who had issued him the charge that he be tried by some Judge other than them. As the accused were not informed in writing the charge of contempt, the accused did not have any occasion to apply orally or in writing to have the charge against them tired by some Judge other than the Judges, who had framed the charge against him. Therefore, the procedure prescribed even in sub-section (2) was not followed. It is under these circumstances, the contempt proceedings now which is initiated cannot be construed as the proceedings under Section 14 of the Act.

When the contempt is on the face of the Court, then it is very essential for that Court to follow the procedure as prescribed in Section 14 of the Act. But for any reason if the concerned Court does not proceed in accordance with Section 14 of the Act and refers the matter to the Hon'ble Chief Justice of the High Court informing about the alleged contempt, then in that event, it is always open and within the powers of the High Court to take suo moto cognizance of the same and proceed against the alleged contemnor in accordance with the procedure as laid down under Section 15 of the Act.

The Apex Court interpreting Section 14 of the Act, in the case of Leila David v. State of Maharashtra & Ors reported in MANU/SC/1767/2009 : AIR 2010 SC 862 has held as under:

"18. Section 14 of the Contempt of Courts Act, 1971, deals with contempt in the face of the Supreme Court or the High Court. The expression "Contempt in the face of the Supreme Court" has been interpreted to mean an incident taking place within the sight of the learned Judges and others present at the time of the incident, who had witnessed such incident.

19. Section 14 of the Contempt of Courts Act no doubt contemplates issuance of notice and an opportunity to the contemnors to answer the charges in the notice to satisfy the principles of natural justice. However, where an incident of the instant nature takes place within the presence and sight of the learned Judges, the same amounts to contempt in the face of the Court and is required to be dealt with at the time of the incident itself.

67. Sections 14 and 15 of the Act of 1971, prescribe procedure for two different types of cases. Where Contempt of Court is committed in the presence of the Supreme Court or High Court, procedure prescribed in Section 14 has to be followed. In all other cases, procedure of Section 15 has to be followed. Proceedings under Sections 14 and 15 of the Act of 1971 contemplate two entirely different types of and mutually exclusive procedure.

*The principle", says Halsbury, "**nemo debet case judex***

in causaproprta sua precludes a justice, who is interested in the subject matter of a dispute, from acting as a justice therein". *In our opinion, there is and can be no doubt about the validity of this principle and we are prepared to assume that this principle applies not only to the justice as mentioned by Halsbury but to all tribunals and bodies which are given jurisdiction to determine judicially the rights of parties."*

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

12. The case of Adv. Nedumpara is of much lessor import than that of Dr. **L.P. Mishra's** case (Supra) and that of **Vinay Chandra's** case *(Supra)* But Respondent Judge Rohington Fali Nariman deliberately ignored the law and dictum laid down by the Full Bench and misinterpreted the law & ratio laid down in Leila David's case. Justice Rohington Nariman had taken para convenient to him by ignoring the ratio laid down therein.

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

"29. *In Union of India & Others v. Dhanwati Devi & Others { MANU/SC/1272/1996 : (1996) 6 SCC 44} the Apex Court held that the High Court should analyze the decision of the Supreme Court and decide what is the ratio decidendi. It is only this ratio which is binding. The relevant portion of the judgment reads as follows:*

"9.....It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it, is the abstract ratio decidendi, ascertained on a consideration of

the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding....."

30. *In Haryana Financial Corporation & Another v. Jagdamba Oil Mills & Another { MANU/SC/0056/2002 : (2002) 3 SCC 496}, the Apex Court dealing with the law of precedents, held as follows:*

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

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

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

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

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

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

33. *One of the settled rule of interpretation is that if the language and intention of the legislature is unambiguous and clear, the Court cannot give a different interpretation. In Deeplal Girishbhai Soni & Others v. United India Insurance Co. Ltd. Baroda { MANU/SC/0246/2004 : (2004) 5 SCC 385}, the Apex Court held as follows:*

"53. Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the court would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered thereby. (See Regional Director, Employees' State Insurance Corporation, Trichur v. Ramanuja Match Industries.)."

90. *Section 19 of the Contempt of Courts Act, 1971 came for consideration before the Supreme Court in the matter of Baradakanta Mishra v. Mr. Justice Gatikrushna Misra, C.J. of the Orissa High Court MANU/SC/0095/1974 : AIR 1974 SC 2255. The three Judges bench of the Supreme Court took notice of the recommendations made by the Sanyal Committee and held that in cases of contempt, even a person punished for contempt had no right of appeal and he could impugn the order committing him for contempt only if the High Court grants the appropriate certificate under Article 134 in fit cases or on the refusal of the High Court to do so, to seek special leave under Article 136 of the Constitution of India. The Supreme Court also referred the report of the Sanyal Committee in paragraphs 2.1 and 3.1 of Chapter XI and clause 25 of Chapter XII, and held that the Parliament, while enacting the Contempt of Courts Act, 1971, introduced Section 19, sub-section (1) in that Act conferring an appeal as of right "from any order or decision of a High Court in the exercise of its jurisdiction to punish for contempt".*

91. *Appeal under Section 19 of the Contempt of Courts Act, 1971 is contemplated only against an order or decision of the High Court made in exercise of its jurisdiction to punish for contempt. The successive steps by which jurisdiction is to be exercised by the High Court or procedure where contempt is in the face of the High Court is also indicated in clause (a) to clause (d) in sub-section (1) of Section 14 of the Act of 1971.*

92. *A critical reading of clause (a) to clause (d) of sub-section (1) of Section 14 of the Contempt of Courts Act, 1971 would show that at the first stage, the contemnor*

has to be informed in writing of the contempt of court which he is charged thereafter, the court has to afford him an opportunity to make his defence to the charge and thereafter, after taking such evidence as may be necessary or as may be offered by such contemnor and after hearing the contemnor, the court has to determine the matter of the charge, and clause (d) is the final stage where the court exercises jurisdiction to make an order for punishment or discharge of the person accused of contempt and if the court makes an order imposing punishment for contempt and imposes any of the penalty(ies) provided in Section 12 of the Act of 1971. Thus, this would be the stage where the High Court can be said to have exercised its jurisdiction to punish for contempt under sub-section (1) of Section 19 of the Act of 1971.

93. *Thus, Section 14 of the Contempt of Courts Act, 1971 is a procedural provision relating to taking cognizance and hearing of contempt alleged to have been committed in face of court. In order to properly appreciate the purport of Section 14, it would be apposite to refer para 2.2 of Chapter X of the Sanyal Committee Report which is quite instructive and which states as under: -*

"2.2. The Constitution having guaranteed to the citizen the rights of freedom of speech and personal liberty, the aim of the law should be to ensure that these rights are adequately safeguarded and it is from this point of view that one should examine the present question. In our opinion, it is both necessary and desirable that the main principles of the law of procedure relating to contempts should be expressly stated in the law. This is necessary not only in the interests of uniformity and certainty but more so in the interest of administration of justice. No doubt, as stated before, the procedure and practice relating to contempt cases has to some extent already become crystallised but, as in the case of the substantive law relating to contempt, it is stated that there is reserved unto the courts an undefined degree of discretion and elasticity to be utilised by them as occasion demands it. While such discretion and elasticity may to some extent be justified in regard to the substantive law on the ground that the categories of

contempt cannot be regarded as closed, there does not seem to be the same justification for not stating clearly, the broad outlines of the procedural law, and in following paragraphs, we propose to deal with the broad principles of procedure which may be given clear cut statutory form."

94. After referring to the extent of use of summary powers in England, America and certain other countries, the Committee opined in para 4 of Chapter X as follows:-

"4. From what we have stated, it is clear that it is not wise to modify in any manner the summary powers of courts to deal with contempts committed in their presence. We, therefore, feel that the court should, in cases of criminal contempt committed in its presence, be able to deal with the contempt forthwith or at any time convenient to it after informing the person charged with contempt orally of the charge against him and after giving him an opportunity to make his defence to the charge. Pending determination of the charge, the person charged with contempt may be detained in such custody as the court deems fit. Wherever the matter is not disposed of forthwith, we also feel that the person charged should be enlarged on bail pending determination on the execution of a bond for due appearance for such sum and with or without sureties as the court considers proper. We are happy to note that this is generally the practice."

95. Thus, clauses (a), (b), (c) and (d) of sub-section (1) of Section 14 of the Contempt of Courts Act, 1971, are based on the recommendations of the Sanyal Committee and expressly provide for compliance with the rules of natural justice in case where contempt is committed in the face of a High Court or the Supreme Court, as the case may be.

96. *The procedure envisaged under Section 14 of the Contempt of Courts Act, 1971 came to be considered before the Supreme Court in the matter of Leila David v. State of Maharashtra and others MANU/SC/0488/2009 : (2009) 4 SCC 578. Justice Ganguly in his separate and dissenting opinion held that four steps provided under Section 14(1) of the Act are mandatory in nature and the court must act with utmost restraint and caution and*

must follow all the procedural requirements since the liberty of persons is involved, and held as under: -

"9.... It is clear from a perusal of Section 14(1) of the said Act that in initiating a contempt proceeding and when contempt is allegedly committed in the face of the Court, the Court has to inform the alleged contemnors in writing the charge of contempt and then afford them an opportunity to make their defence to the charge and thereafter on taking such evidence as may be necessary or as may be offered by the persons and after hearing them, proceed either forthwith or after adjournment to determine the matter of the charge and may make such order for the punishment or discharge of such persons as may be just.

17. The safeguards statutorily engrafted under Section 14 of the Act are basically reiterating the fundamental guarantee given under Article 21 of the Constitution. This guarantee which possibly protects the most precious fundamental right is against deprivation of one's personal liberty "except according to procedure established by law". This Court, being the guardian of this right, cannot do anything by which that right is taken away or even abridged and especially when the court is acting suo motu."

97. *In Leila David (supra), on account of disagreement on the question of opportunity of hearing particularly with reference to Section 14 of the Contempt of Courts Act, 1971, the matter was placed before larger bench. The three-judge bench of the Supreme Court in the matter of Leila David (6) v. State of Maharashtra and others MANU/SC/1767/2009 : (2009) 10 SCC 337 resolved the difference of opinion and observed as under:-*

"35. Section 14 of the Contempt of Courts Act no doubt contemplates issuance of notice and an opportunity to the contemnors to answer the charges in the notice to satisfy the principles of natural justice. However, where an incident of the instant nature takes place within the presence and sight of the learned Judges, the same amounts to contempt in the face of the Court and is required to be dealt with at the time of the incident itself. This is necessary for the dignity and majesty of the courts to be maintained. When an object, such as a

footwear, is thrown at the Presiding Officer in a court proceeding, the object is not to merely scandalise or humiliate the Judge, but to scandalise the institution itself and thereby lower its dignity in the eyes of the public."

99. Thus, the purpose of noticing and considering the nature and scope of Section 14(1) of the Contempt of Courts Act, 1971 is to lay emphasis that when steps enumerated in clauses (a) to (c) of Section 14(1) are followed, then only, clause (d) of Section 14(1) steps in, where the Court hearing the contempt petition gets an opportunity to exercise the jurisdiction to make an order to punish for contempt or discharge of person accused of contempt and therefore unless steps as engrafted in clauses (a) to (c) of Section 14 of the Act of 1971 are completed, question of exercise of jurisdiction by the court to punish for contempt does not arise at all. Framing of charge is only the first step while proceeding with contempt petition. *Clause (a) of sub-section (1) of Section 14 provides that the court shall cause him to be informed in writing of the contempt with which he is charged, which is based on the recommendations of the Sanyal Committee. Framing of charge against the contemnor is only to comply with the principles of natural justice and to clearly specify the accusation which a contemnor is supposed to meet by filing reply and further to adduce evidence in his or her defence, as the case may be, on the charges so levelled against him.*

100. *The High Court of Australia in Coward v. Stapleton MANU/AUSH/0045/1953 : (1953) 90 CLR 573 while emphasizing the need for explicitly informing the specific charge to the contemnor held as under: -*

"It is a well-recognised principle of law that no person ought to be punished for contempt of court unless the specific charge against him be distinctly stated and an opportunity of answering is given to him..... The gist of accusation must be made clear to the person charged, though it is not always necessary to formulate the charge in a series of specific allegations. The charge having been made sufficiently explicit, the person accused must then

be allowed a reasonable opportunity of being heard in his own defence, that is to say a reasonable opportunity of placing before the court any explanation or amplifications of his evidence and any submissions of fact of law which he may wish the court to consider as bearing either upon the charge itself or upon the question of punishment. Resting as it does upon accepted notions of elementary justice, this principle must be rigorously insisted upon."

101. *The Supreme Court in the matter of Santosh Kumari v. State of Jammu and Kashmir and others MANU/SC/1066/2011 : (2011) 9 SCC 234 has held that the object of charge is to give the accused notice of the matter he is charged with and does not touch jurisdiction. Similarly, in the matter of* ***Chandra Prakash v. State of Rajasthan MANU/SC/0457/2014 : (2014) 8 SCC 340 while highlighting the purpose of framing charge under the provisions of the Code of Criminal Procedure; it was held that purpose of framing charge is that accused should be informed with certainty and accuracy of charge brought against him and there should be no vagueness."***

14. Hence it is clear that the order passed by Justice Rohington Fali Nariman & Vineet Saran is Contempt of Full Bench of Supreme Court judgment in Dr. L. P. Mishra's case and misinterpretation of Supreme Court judgment in **Leila David (6) (2009) 10 SCC 337.**

15) # CHARGE # WHEN ANY JUDGE MISINTERPRET THE SUPREME COURT JUDGMENT THEN SAID JUDGE IS GUILTY OF CONTEMPT OF SUPREME COURT .

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. ".

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

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

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

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

*"**POOR LEVEL OF UNDERSTANIG OF JUDGE - first appellate court without considering the ratio laid down in the above referred judgments, made distinction in a cursory manner, which is not***

proper for a Judicial Officer - The wrong interpretation or distinction of a judgment of Hon'ble Supreme Court and this Court by subordinate court amounts to disobedience of the order of Hon'ble Supreme Court and this Court, therefore, the impugned order passed by first appellate court is contemptous. <u>It also shows that legal knowledge or appreciation of judgment of Hon'ble Apex Court, of the first appellate court is very poor.</u> The distinction made by first appellate court that Hon'ble Apex court has passed the order in S.L.P. is also not proper. The Apex Court, under Article 136 of the Constitution of India may, in its discretion grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India. Learned first appellate court has also committed an illegality in making a distinction for not following the judgments of this Court on the ground that the orders have been passed in second appeal whereas it was dealing first appeal.

First appellate court has distinguished the judgment of Hon'ble Apex Court delivered in M/s. Atma Ram Properties(P) Ltd. Vs. M/s. Federal Motors (P) Ltd.(supra) on the ground that the said judgment relates to Delhi Rent Control Act, whereas present case is under the provisions of Rajasthan Rent Control Act, and further that Hon'ble Apex Court has passed the order in Special Leave Petition.

It appears that learned first appellate court without considering the ratio laid down in the above referred judgments, made distinction in a cursory manner, which is not proper for a Judicial Officer. The provisions of C.P.C. are applicable throughout the country and even if Atma Ram's case was relating to Delhi Rent Control Act, the provisions of Order 41 Rule 5 C.P.C. were considered and interpreted by Hon'ble Apex Court in the said judgment, therefore, the ratio laid down by the Hon'ble Apex Court was binding on first appellate court under Article 141 of the

Constitution of India. Learned court below failed to take into consideration that judgments of this Court were relating to cases decided under the provisions of Rajasthan Rent Control Act and judgment of Hon'ble Apex Court in Atma Ram Properties(P) Limited Vs. Federal Motors (P) Limited(supra) was relied upon. When this Court relied upon a judgment of Hon'ble Apex Court, then there was no reason for the first appellate court for not relying upon the said judgment and in observing that the judgment of Hon'ble Apex Court in Atma Ram Properties(P) Limited Vs. Federal Motors (P) Limited(supra) is on Delhi Rent Control Act and the same has been passed in S.L.P. If in the opinion of learned court below, the judgment of Atma Ram Properties(P) Limited Vs. Federal Motors (P) Limited(supra) was with regard to Delhi Rent Control Act, then at least the judgments of this Court, which were relating to Rajathan Rent Control Act itself, were binding on it. The distinction made by first appellate court is absolutely illegal.

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

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

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

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

High Court initiated disciplinary proceedings against Appellant who is working as Additional District Judge, Jaipur City for not following the Judgments of the High

Court and Supreme Court. Appellant filed SLP before Supreme Court - Supreme Court dismissed the petition.

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

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

19) <u>CHARGE # :- AS PROCEEDINGS ARE CONDUCTED OUT OF CONDUCTED PERSONAL BIAS THE PROCEEDING VITIATED.</u>

The, another illegality is regarding conflict of interest & violation of law laid down by Hon'ble Supreme Court in the case of **<u>State of Punjab Vs. Davinder Pal Singh Bhullar & Ors (2011) 14 SCC 770.</u>**

That, since last 2 years, Advocate Nedumpatra is posting articles against Advocate Fali S. Nariman. He also filed Writ Petition before Delhi High Court Advocate Methews Nedumpara Vs. Advocate Fali Nariman being W.P (C) No. 2019 of 2019, where Advocate Fali Nariman is a respondent personally, Advocate Nedumpara raised the issue of Advocate Fali Nariman practicing in Supreme Court where his son Rohington Fali Nariman is a Judge.

Under these circumstances having direct conflict of interest and having prejudice with Advocate Nedumpara, Justice Rohington Fali Nariman was disqualified to hear the case and he should have recused himself from the cases where Advocate Nedumpara is appearing . Law in this regard is well settled by Hon'ble Supreme Court in **<u>State of Punjab Vs. Davinder Pal Singh Bhullar & Ors (2011) 14 SCC 770.</u>** It is ruled as under;

"Constitution of India, Article 226 - BIAS- allegations made against a Judge of having bias - High Court Judge in order to settle personal score passed illegal order against public servant acted against him - Actual proof of prejudice in such a case may make the case of the party

concerned stronger, but such a proof is not required. In fact, what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. However, once such an apprehension exists, the trial/judgment/order etc.

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

Bias is the second limb of natural justice. Prima facie no one should be a judge in what is to be regarded as "sua causa. Whether or not he is named as a party. The decision-maker should have no interest by way of gain or detriment in the outcome of a proceeding. Interest may take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with the subject-matter, from a close relationship or from a tenuous one – No one should be Judge of his own case. This principle is required to be followed by all judicial and quasi-judicial authorities as non-observance thereof, is treated as a violation of the principles of natural justice. The failure to adhere to this principle creates an apprehension of bias on the part of Judge."

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

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

Justice should not only be done but should manifestly be seen to be done. It is on this principle that the

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

But instead of maintaining dignity & sobriety of the Supreme Court the Respondent Judge Rohington Fali Nariman heard the case and brought the dignity & majesty of Hon'ble Supreme Court into disrepute. The facet of rule of law has been eroded as held by Hon'ble Suprme Court in **P.K. Ghosh Vs.J.G. Rajput (1995) 3 SCC 744,** it is ruled as under;

*"**Judicial Bias: Judge should have recused himself from hearing the contempt petition.***

Contempt of Courts Act - Constitution of Bench - Objection as to hearing of Contempt petition by a particular Judge - Failure to recuse himself is highly illegal - order vitiated - The response given by B. J. Shethna, J. to Chief Justice of India indicated his disappointment that contempt proceedings were not initiated against the appellants for raising such an objection. The expression of this opinion by him is even more unfortunate.

In the fact and circumstances of this case, we are afraid that this facet of the rule of law has been eroded. We are satisfied that B. J. Shethna, J., in the facts and circumstances of this case, should have recused himself from hearing this contempt petition, particularly when a specific objection to this effect was taken by the appellants in view of the respondent's case in the contempt petition wherein the impugned order came to be made in his favour. In our opinion, the impugned order is vitiated for this reason alone.

Learned Chief Justice of India apprised B. J.

Shethna, J. of this allegation to elicit his comments - Letter sent by B. J. Shethna, J. to the Chief Justice of India in this connection are on record. *In none of these letters, the basic facts relevant in the present context have been defined and the tenor of both the letters indicates, unfortunately, an attempt to justify the course adopted by B. J. Shethna, J. of hearing the contempt petition and making the impugned order in spite of the above objection expressly taken to his presence in the Bench which heard the contempt petition - These letters also 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 view of the fact that B. J. Shethna, J. has since then been transferred from the High Court of Gujarat to the High Court of Rajasthan, it is needless to direct that the matter be now heard in the High Court of Gujarat by a Bench of which he is not a member.

We are indeed sad that in these circumstances, B. J. Shethna, J. persisted in hearing the contempt petition, in spite of the specific objection which cannot be called unreasonable on the undisputed facts, and in making the impugned order accepting prima facie the respondent's above noted contention- The more appropriate course for him to adopt was to recuse himself from the Bench hearing this contempt petition, even if it did not occur to him to take that step earlier when he began hearing it. It has become our painful duty to emphasise on this fact most unwillingly. We do so with the fervent hope that no such occasions arise in future which may tend to erode the credibility of the course of administration of justice.

- Ensuring credibility and impartiality of judiciary - Litigant having reasonable basis to expect that practitioner Judge should not hear his matter - Judge should rescue himself from Bench .

A basic postulate of the rule of law is that 'justice should not only be done but it must also be seen to be done'. ***If there be a basis which cannot be treated as unreasonable for a litigant to expect that his matter should not be heard by a particular Judge and there is no compelling necessity, such as the***

absence of an alternative, it is appropriate that the learned Judge should rescue himself from the Bench hearing that matter. *This step is required to be taken by the learned Judge not because he is likely to be influenced in any manner in doing justice in the cause, but because his hearing the matter is likely to give rise to a reasonable apprehension in the mind of the litigant that the mind of the learned Judge, may be subconsciously, has been influenced by some extraneous factor in making the decision, particularly if it to happens to be in favour of the opposite party. Credibility in the functioning of the justice delivery system and the reasonable perception of the affected parties are relevant considerations to ensure the continuance of public confidence in the credibility and impartiality of the judiciary. This is necessary not only for doing justice but also for ensuring that justice is seen to be done."*

21) # CHARGE # PASSING VEGUE ORDER TO FRAME ADVOCATE NEDUMPARA UNDER CHARGE OF CONTEMPT

In the present case the charge so alleged by Justice Rohington Fali Nariman in his order is vegue. It states that;

1. In the course of arguments in the present Writ Petition, Shri Mathews Nedumpara, learned counsel appearing on behalf of the petitioners, alleged that Judges of the Court are wholly unfit to designate persons as Senior Advocates, as they only designate Judges' relatives as Senior Advocates. ***On being asked whether such a designation should be granted as a matter of bounty, Shri Nedumpara took the name of Shri Fali S. Nariman. When cautioned by the Court, he took Shri Fali S. Nariman's name again. Thereafter, on being questioned by the Court as to what the relevance of taking the name of Shri Fali S. Nariman was, he promptly denied having done so. It was only when others present in Court confirmed having heard him take the learned Senior Advocate's name, that he attempted to justify the same, but failed to offer any adequate explanation.***

2. We are of the view that the only reason for taking the learned Senior Advocate's name,

> ***without there being any relevance to his name in the present case, is to browbeat the Court and embarrass one of us. Shri Nedumpara then proceeded to make various statements unrelated to the matter at hand.*** *He stated that, "Your Lordships have enormous powers of contempt, and Tihar Jail is not so far." He further submitted that lawyers are like Judges and are immune from contempt, as they are protected by law. He also stated that there can be no defamation against a lawyer, as also there can be no contempt proceedings against a lawyer, as the same would impinge on the independence of lawyers, which they ought to enjoy to the fullest. All these statements directly affect the administration of justice, and is contempt in the face of the Court.*

What were the exact words used by Advocate Nedumpara and what happened on that day is not known as CCTV's are not yet installed. It is more suprising that, what exact words were used by Adv. Nedumpara when he took the name of Adv. Fali Nariman is not mentioned in the order **for the simple reason that there was no illegality by advocate Nedumpara.**

The news published in Bar & Bench on 5th March 2019.

> *"WHY DID YOU TAKE FALI NARIMAN'S NAME IN THIS CASE ? JUSTICE ROHINGTON NARIMAN SLAMS METHEWS NEDUMPARA*
>
> *An angry Justice Rohinton Nariman today warned Advocate Mathews Nedumpara of initiating contempt proceedings against him if he is not careful while arguing.*
>
> *Justice Nariman came down heavily upon Nedumpara for referring to Senior Advocate Fali Narimanwhile hearing a case for automatic senior designation upon lawyers who have attained the age above 62 years and who have had an active practice of over 30 years."*

The vesion of Advocate Nedumpara is that 'he took the name of Advocate Fali Nariman to say that he also supports the stand taken by NLC (the Petitioner). This cannot be a Contempt by any stretch of imagination.

The law in this regard is very well settled.

In **Phaniraj 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.*
>
> *Dignified behaviour is not only expected of the Judge but also from the members of his/her family. When the family members, because of their proximity to the Judges enjoy privileges, it is high time they should know their limitations and be prepared to sacrifice some of their right. That is what is expected of them. They also should conduct in such a manner that their actions in no way affect the Judge and the institution.*
>
> *41. Incidentally one of persons to whom preference was given contrary to rules happened to be a son of Judge of this Court - Wrong done to Judge personally, if at all amounted to defamatory attack on a Judge and it might be a libel and it was open to Judge to proceed against libellor in an appropriate action.*
>
> *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 in public 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.

48. This unsavory episode brings into the fore how a trivial matter of this nature, if not contained, could create problems to the Judges, over which they have no control. As rightly pointed out in the judgment of the Supreme Court, the members of the legal fraternity have to turn their eyes inwards. Today not only the conduct of the Judges but also the conduct of the members of their family is under public scrutiny. When the family members, because of their proximity to the Judges enjoy privileges, it is high time they should know their limitations and be prepared to sacrifice some of their right. That is what is expected of them. They also should conduct in such a manner that their actions in no way affect the Judge and the institution. Today when Judges are working under tremendous pressure, also under attack from various quarters, the family members should not become one more source of headache and trouble. Dignified behaviour is not only expected of the Judge but also from the members of his/her family. The Judge should not be embarrassed by their conduct.

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.

22. Even if for a moment it is assumed that for whatever reason the name of Fali Nariman was taken maliciously by advocate during his submissions then proper course foe the Court was to issue notice calling forthwith and call for explanation and if found guilty then punish him even by adopting summary procedure as per Section 14 of the Contempt of Courts Act,1973 as explained in **Vinay Chandra Mishra's** Case *(Supra)* and Dr. L. P. Mishra's case *(Supra).*But this was not done.

The only irresistible conclusion for not following procedure under section 14 is that can be drawn is that there were no malafides on the part of Advocate Nedumpara, and, if it were put in notice calling explanation in open Court on the spots then would have exposed Justice Nariman in front of advocates and public and that's why a very strange and different method is adopted by Justice Nariman by pronouncing conviction of advocate.

Furthermore taking a reference of view expressed by Advocate Fali Nariman can never be Contempt or act of browbeating the Bench.

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

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

explanation for this course of conduct - Punishment of compulsory retirement directed.

A wanton breach of the governing principles of law or procedure by a Judge is indicative of judicial officer has been actuated by an oblique motive or corrupt practice. In the absence of a cogent explanation to the contrary, it is for the disciplinary authority to determine whether a pattern has emerged on the basis of which an inference that the judicial officer was actuated by extraneous considerations can be drawn - It is not the correctness of the verdict but the conduct of the officer which is in question- . There is on the one hand a genuine public interest in protecting fearless and honest officers of the district judiciary from motivated criticism and attack. Equally there is a genuine public interest in holding a person who is guilty of wrong doing responsible for his or his actions. Neither aspect of public interest can be ignored. Both are vital to the preservation of the integrity of the administration of justice - A charge of misconduct against a Judge has to be established on a preponderance of probabilities - No reasons appear from the record of the judgment, for We have duly perused the judgments rendered by the Appellant and find merit in the finding of the High Court that the Appellant paid no heed whatsoever to the provisions of Section 135

23. In **Vinay Chandra Mishra's** Case *(Supra)*, Full Bench of Hon'ble Supreme Court had ruled that Section 14 of the Contempt is not aimed at protecting the Judge personally but protecting the administration of justice. Similar law is laid down by Hon'ble High Court **Phaniraj Kashyap Vs. S.R. Ramkrishna, 2011 (3) Kar L.J. 572**, (*Supra*). In Vinay Chandra Mishra's case *(Supra)* it is further ruled by Full Bench that the summary procedure does not mean that the procedural requirement viz. that an opportunity of meeting the Charge is denied to the Contemnor.

This is a clear violation of principles of natural justice and it is also against the law laid down by Hon'ble Supreme Court in the case of ***Himanshu Singh Sabharwal* -Vs-** ***State2008 ALL SCR 1252,*** where it has been held that,

"12....Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law.It is inherent in the concept of due process of law, that

condemnation should he rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty stage-managed, tailored and partisan trial.

13....The fair trial for a criminal offence consists not only in technical observance of the frame and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice. "

24. <u>Non mentioning of the exact words uttered by the defence counsel which forced Court to observe the same to be browbeating transpires the lack of cogent material in the impugned proceedings, in regard to the exact conduct of defence counsel:</u>

Delhi High Court (C.B.I Special Court) in the case of **<u>Benny Mohan Vs. State (Govt. of NCT of Delhi)</u>** had ruled that;

"*Reverting to the present matter, it is found that in the proceedings dated 03.07.2015, inter alia, it has been observed by ld. Trial court that the defence counsel was continuously disturbing the proceedings and getting into baseless and illogical arguments with the Court and spoke unnecessarily and irrelevant words against Ld. PP for State, witness as well as Presiding Officer.* ***<u>But there is no mentioning of the exact words uttered by the defence counsel which forced Ld.Trial Court to observe the same to be baseless or illogical. It transpires the lack of cogent material in the impugned proceedings, in regard to the exact conduct of defence counsel unacceptable to the Ld.Trial Court.</u>***

In respect to making any remark, Hon'ble Supreme Court in case <u>State of U.P. vs Mohd Naim</u> AIR (1964) SC 703, has held to consider the relevant points as under :-

It has been judicially recognized that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider a) Whether the

party whose conduct is in question is before the Court or has any opportunity of explaining or defending himself; b) whether there is evidence on record bearing on the CA No.60/2015 Bhupesh Kumar, Spl.Judge (PC Act) CBI1, South, Saket,New Delhi/10.05.2016 conduct, justifying the remarks; c) whether it is necessary for decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognized that judicial pronouncement must be judicial in nature, and should not be normally depart from sobriety, moderation and reserved.

10. The act of tendering apology by ld. Senior counsel during, South, Saket,New Delhi/10.05.2016 course of arguments as came in impugned order dated 14.07.2015, should not be termed as admission of misconduct of defence counsel because in order to resolve any unwanted controversy and to show respect to the Court, seasoned Advocates generally adopt this approach. On the other hand this approach of learned senior counsel deserves appreciation.

11. Considering the entire facts and circumstances of the matter and in the light of judgment State of U.P. vs Mohd Naim (supra), it is found that the observations made by the Ld. Trial Court against defence counsel in impugned proceedings dated 03.07.2015 and order dated 14.07.2015 were unwarranted and uncalled for. Accordingly, the adverse remarks made by learned Trial Court in the impugned proceedings dated 03.07.2015 and order dated 14.07.2015 against defence counsel Sh.Sidharth Agarwal and Sh.Sri Singh, stands expunged. The adverse remarks passed by the learned Trial court in the impugned order shall have no effect on the merits of the case.

In fact it is mandatory for the Court to specify the exact words and first ask to withdrew it and if not done then serve notice by mentioning those words.

In **Dr. D.C. Saxena Vs. Hon'ble The Chief Justice Of India on 19 July,1997,** in a matter of highly scandalous pleadings the procedure followed by Hon'ble Supreme Court was to point out such pleadings which are scandalous and amounts to contempt. Hon'ble Supreme Court observed as under :

"It is already noted that while dismissing the second writ petition, this Court has pointed out the scandalous nature of accusations which found

<u>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.</u>

25. That, Hon'ble Supreme Court time and now warned Judges to not to pass such vague orders when it comes to issuing notice under Contempt. In **<u>J.R. Parashar Vs. Prashant Bhushan AIR 2001 SC 3395</u>** it is ruled as under;

"A.....36. It is true that ***the notice did not specify the contumacious acts with which the respondent was charged. Only a copy of the petition had been served on the respondents along with the notice. It would not be unreasonable for the respondent No. 2 to assume that every statement contained in the petition formed part of the charge.***

B...36.The actual proceedings for contempt are quasi-criminal and summary in nature. Two consequences follow from this. First, ***the acts for which proceedings are intended to be launched must be intimated to the person against whom action is proposed to be taken with sufficient particularity so that the persons charged with having committed the offence can effectively defend themselves. It is for this reason Section 15 requires that every motion or reference made under this section must specify the contempt of which the person charged is alleged to be guilty.***

The second consequence which follows from the quasi-criminal nature of the proceeding is that if there is reasonable doubt on the existence of a state of facts that doubt must be resolved in favour of the person or persons proceeded against."

26. Here no Chrges were framed and no opportunity was given to the advocate to put his stand in defence to prove his innocence . This is done with ulterior purposes to execute the game plan of Justice Kathawala of Bombay High Court. It is clear that Justice Rohington Fali Nariman was well aware that no case of Contempt is made out but then also he issued notice by declaring Advocate Nedumpara as guilty of Contempt.

Hon'ble Bombay High Court in the case of **Vaidya Kuldip Raj Kohil Vs. State of Maharashtra 2002 SCC OnLine Bom 236** had ruled as under ;

> "***Misuse of power by Judge in taking cognizance even if complaint disclosed no offence***.
> ***Illegal cognizance by Magistrate – The complaint disclosed no offence but the Magistrate going out of the way and for extraneous consideration issued process against the accused – The order of Magistrate does not show that how he come to the conclusion that how and what offence disclosed - observation by Magistrate that it is a case for full fledged trial is illegal - it appears that for some reasons not on record the learned Magistrate took cognizance of offence without having been himself satisfied that any offence was in fact committed. The order of learned Magistrate if read in its entirety, clearly shows that the Magistrate was aware that complaint discloses no offence and in spite of having become aware, he issued the process for reasons which can only be extraneous – proceeding quashed – Accused granted compensation of Rs. 10,000/-***"
>
> ***9.*** *So far as complainant is concerned, he has intentionally resorted to Criminal Court and used the process of law to take revenge by filing false and frivolous complaint. He must be saddled with costs, which I quantify to Rs. 10,000/- to be paid to the petitioner by the 2nd respondent***.**
>
> ***10.*** *Petition is allowed. Order of learned Magistrate dated 29-10-1998 passed in Misc. Application No. 18/Misc./1997 (C.C. 2158/S/1998) is quashed and set aside. The complaint filed by respondent No. 2 is dismissed. Respondent No. 2 shall pay Rs. 10,000/- as*

costs to the petitioner for filing such total false and frivolous complaint causing mental agony and torture to the petitioner.

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

The threats given by Justice Nariman to Advocate Nedumpara on 5th March, as published in "Bar & Bench" is itself an offence of Contempt on the part of Justice Rohington Fali Nariman.

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

A] Judge intimidating Lawyer is guilty of Contempt. He Should have tendered apology to the advocate. Since the respondent Judge tendered apology before High Court. Court is taking lenient view and fine of Rs. 50 imposed upon the Judge and in default imprisonment of 1 month ordered.

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

"You are instrumental in procuring this foolish order and as such you have committed a crime

for which you could be sent behind the bars."

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

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

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

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

Constitution Bench of Hon'ble High Court in the case of **Harish Chandra Mishra Vs. Justice Ali Ahmad 1986 (34) BLJR 63** had observed as under;

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

3*. It was essential to preserve the discipline, while administering justice, was realised centuries ago when Anglo Saxon Laws developed the concept of contempt of court and for punishment therefor. The acts which tend to obstruct the course of justice really threaten the very administration of justice. By several pronouncements*

such acts which tend to obstruct or interfere with the course of justice were identified and were grouped into 'civil contempt' and 'criminal contempt'. However, for a long time they were never defined leaving it to the courts to give their verdict whether under particular set of circumstances any such offence has been committed or not.

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

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

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

16. *There cannot be two opinions that Judges of the Supreme Court and High Courts are expected to conduct the proceedings of the Court in dignified, objective and courteous manners and without fear of contradiction it can be said that by and large the proceedings of the higher courts have been in accordance with well settled norms. On rare occasions complaints have been made about some outrageous or undignified behaviour. It has always been impressed that the dignity and majesty of court can be maintained only when the members of the Bar and Judges maintain their self imposed restriction while advancing the cause of the clients and rejecting submissions of the counsel who appear for such cause. It is admitted on all counts that a counsel appearing before a court is entitled to press and pursue the cause of his client to the best of his ability while maintaining the dignity of the court.* ***The Judge has also a reciprocal duty to perform and should not be discourteous to***

the counsel and has to maintain his respect in the eyes of clients and general public. *This is, in my view, very important because the system through which justice is being administered cannot be effectively administered unless the two limbs of the court act in a harmonious manner.* ***Oswald on Contempt of Court, 3rd Edition at page 54 remarked "an over subservient bar would have been one of the greatest misfortune that could happen to the administration of Justice."***

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

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

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

Here the proper course for Justice Nariman was to recuse himself if he got irritated because of Advocate Nedumpara referring his father's name or because he earlier filed Writ against his father.

28. In **Anil Kumar Das Vs Sukumar De 1962 1 Cri.L.J 194** it is ruled as under ;

"Criminal P.C. (5 of 1898), -Transfer of case - If Judge feels irritated on a submission by a party makes it will be a good

ground for transfer as there is every likelihood of the subsequent trial before him being not impartial and in any case the party will have reasonable apprehension for such a fear- Case should be transferred.

It often happens that Magistrates feel irritated when a party makes clear his intention to apply for transfer from the Court. But Magistrates must realise that it is a statutory right given under Sec. 526(8) to a party and that they should not by their conduct display any irritation when a party exercises his statutory right"

Here the proper course for Justice Nariman was to recuse himself if he got irritated because of Advocate Nedumpara referring his father's name or because he earlier filed writ against his father.

29. CHARGE # <u>MISUSE OF POWER TO USE MATERIAL OUTSIDE THE COURT RECORD AND RECEIVED BY PERSONAL KNOWLEDGE WITHOUT DISCLOSING ITS SOURCE MAKES ORDER VITIATED AND IT IS CONTEMPT OF SUPREME COURT JUDGMENT IN Som Mittal Vs. Government of Karnataka (2008) 3 SCC 574.</u>

It is settled law that Court cannot rely on the materials which are not the part of record but are in his personal knowledge.

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.

Even if it becomes necessary it will be done only after notifying it to the parties.

A law in this regard is very clear. In **<u>Som Mittal Vs. Government of Karnataka (2008) 3 SCC 574</u>** it is ruled as under;

> *"Constitution of India, Art. 136, 141 – Court should refrain from travelling beyond and making observations alien to case – Even if it becomes necessary to do so, it may do so only after notifying parties concerned so that they can put forth their views on such issues."*

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

Hon'ble Supreme Court in **Pritam Singh case AIR 1956 SC 415** had ruled that;

" A Judge is not entitled to allow his view or observation to take the place of evidence because such view or observation of his cannot be tested by Cross-Examination and the accused would certainly not be in a position to furnish any explanation in regard to the same."

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 "

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

It is really unfortunate that the trial Judge was more influenced by her personal predilections and other extraneous considerations than the proved circumstances in this case to justify the 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.

Also relied upon Hon'ble Supreme Court's judgment in **The State of Uttar Pradesh Vs. Mohammad Naim AIR 1964 SC 703.**

In **Baboolal and Others 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."*

30. The malafides of Justice Rohington Fali Nariman are writ large as can be seen from the fact that the materials relied by him in para 3,4,5,6,7,8 are totally the personal work of Justice Rohington Nariman and as can be easily inferred. It is clear that the most of the material supplied is from Justice S. J. Kathawala of Bombay High Court who in turn is Rohington's close and rival of Adv. Nedumpara.

31. Be that as it may, this is not expected from any Judge and more particularly from a Judge of Highest Court in the country to do such exercise and bring the material from Bombay at his own and use it in the order without following the procedure against an Advocate who is also an officer of the Court.

> *"Judge cannot travel beyond the records of the case. He cannot use outside information or his personal knowledge. If he uses proceedings/order vitiated, case is liable to be transferred to other Judge"*

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.*

32. 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.*

33. The pending cases against Adv. Nedumpara which are referred by Justice Rohington Fali Nariman are referred without mentioning about the present status of the case i.e. what is the extract situation today, whether those proceedings are terminated has not been mentioned in the order as Mr. Nedumpara had not been given any opportunity to explain the same.

Needless to mention that one case pending before Hon'ble Bombay High

Court, of which order dated 20th June, 2013 referred by Justice Rohington Fali Nariman is false & misleading and itself offence Under Section 191, 193, 471,474,167,469,120(B) of Indian Penal Code, on the part of Justice Nariman, because in said case, later it is proved that, said allegations are false and case is filed against person making such allegations. Cognizance is taken by the Magistrate.

34. Justice Rohington Fali Nariman relied on one show cause Notice issued to Adv. Nedumpara by Hon'ble Bombay High Court.
That as per law laid down in **R. S Sherawat Vs Rajeev Malhotra 2018 SCC OnLine Sc 1347,** the Respondent in Contempt is having all protection available to accused in a criminal case.

The first protection is "presumption of innocence till proved guilty"and therefore even if show cause notice under contempt is issued by any court then on that basis no Court can draw any presumption of guilt against the alleged contemnor.
Hon'ble Supreme Court in **Sanjay Chandra Vs C.B.I. (2012) 1 SCC 40** had ruled as under ;

> ***25.***..... ***In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual.***
>
> ***29.*** *In the case of Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240, V.R. Krishna Iyer,J., sitting as Chamber Judge, enunciated the principles of bail thus:*
>
> *"3. What, then, is "judicial discretion" in this bail context? In the elegant words of Benjamin Cardozo: "The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the*

primordial necessity of order in the social life". Wide enough in all conscience is the field of discretion that remains."

Even so it is useful to notice the tart terms of Lord Camden that:

"the discretion of a Judge is the law of tyrants: it is always unknown, it is different in different men; it is casual, and depends upon constitution, temper and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly and passion to which human nature is liable...."

Hence Justice Rohington Fali Nariman by placing reliance on the Notice in Contempt proceeding , and making it as a basis to draw conclusion of conduct of an advocate knowing fully well that the said matter is still subjudice before sub-ordinate court , have violated Fundamental rights of Advocate Nedumpara and acted against the Constitutional mandate and thereby breached the oath taken as a Supreme Court Judge and is unbecoming of a Judicial officer.

It seems that Justice Rohington Fali Nariman is not having elementary knowledge of Indian Evidence Act. Section 54 of the Indian Evidence Act reads as under;

"54. Previous bad character not relevant, except in reply.—In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant. Explanation 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue. Explanation 2.—A previous conviction is relevant as evidence of bad character."

In **Caione Vs. Palace Shipping Co., (1907) 1 KB 670**. In **Hollington Vs. Hewthorn & Co Ltd., [1943] 2 All ER 35**, it was held that **conviction is no evidence of guilt, not even prima facie evidence.** Lord Denning MR in **Goody Vs. Odhams Press, (1967) 1 QB 333**, observed that;

"It means that when anyone publishes a story about a crime, he is inperil of being sued for libel. … He cannot rely on the convicti on as proof of guilt. He has to prove it all over again, if he can".

Needless to mention here that in the same Bombay High Court there are cases when Division Bench of Hon'ble Bombay High Court in **Suo Motu (Court's on its own Motion Vs. Mr. T.G.Babul, Nashik and Ors 2018 SCC OnLine Bom 4853** had apologized advocates for illegal notice of Contempt issued by a single

Judge **(Z.A.Haq.J.),** The Contempt notice was discharged as it was issued by single Judge on false & incorrect facts of his own misinterpretation.

In another case before Hon'ble Bombay High Court in Contempt Petition No. 02 of 2017 when Respondent gave proofs and sting operation of corrupt practices of Justice Kathawalla, then specially Constituted 5 - Judge Bench had not even deciding the preliminary objections.

Therefore reliance placed by Justice Rohington Fali Nariman on show cause Contempt notice is illegal and shows his lack of knowledge.

Even otherwise the said orders are not relevant in view of the provisions of Section 41, 42, 43 etc. of Evidence Act, and therefore have no legal or evidentiary value.

Even otherwise it will always be unsafe to rely upon the conclusion drawn by any Court even by Supreme Court in other cases as there are cases where even conclusion drawn by Supreme Court against a person being hardened criminal are being reversed by the Supreme Court itself and the person was granted compensation of Rs. 5 lakh. The recent case is of **Ankush Shinde Vs. State of Maharashtra 2019 SCC online SC 317,** where the accused were convicted for offences of rape, murder, and dacoity. Reference by Session Judge for confirmation of death sentence was heard by Division Bench of the Bombay High Court and confirmed the death sentence. Matter reached Supreme Court. Supreme Court also dismissed the criminal appeal No.1008 – 1000 of 2007. After that i.e. after around 18 years, Full Bench of 3 Judges Bench, vide order 5th March, 2019 found that the appellants are innocent and falsely implicated.
Hence the one-sided blanket reliance by some illiterate Judges having half-backed knowledge of law will broke the fabric of cardinal principles of criminal and civil jurisprudence. This will also erode the facet of rule of law.

VI) CONSPIRACY TO DISTROY IMAGE AND KEEP THE ADVOCATE AWAY FROM HIS CLIENTS CAUSING SERIOUS PREJUDICES TO THEIR SUBJUDICE CAUSE EX-FACIE PROVED:

In the present case Justice Nariman is being aggrieved by act of Petitions filed by Advocate Nedumpara against his father Fali Nariman and also against his close Justice Kathawalla and therefore had taken refrence of different irrelevant cases and inadmissible evidences. The object of the Justice Nariman as stated earlier, is not really to cleanse and purify the legal profession, or to protect dignity and majesty of justice but to silence the advocates who appear as opponents. i.e. against Justice Kathawala, his father Fali Nariman so that

litigation could be won on a different turf.

By relying on Hon'ble Supreme **Court In Central Bureau of Investigation v. K.Narayana Rao [(2012) 9 SCC 572],** Hon'ble Madras High Court in **R.Swaminathan vs Bar Council Of Tamil Nadu 2014 SCC OnLine Mad 12777** had ruled that

> *" **It is a matter of record that the allegations and complaint given against the advocate, is obviously to cause a collateral damage to the other side i.e. his clients. The complaint made against the Advocate before the Bar Council, is motivated, with a desire to keep the petitioners away from their clients. The Bar Council ought to have seen this game plan on the part of the second Respondent.** No one can be permitted to intimidate a lawyer appearing for his opponent. If allowed to do so, it will pollute the stream of administration of justice. It will only weaken the morale of the petitioners and prevent them from the honest and courageous discharge of their duties to their own clients. Such a sinister move on the part of the second Respondent cannot be permitted. In the version set out by the second Respondent in both the writ petitions, he has (1) mentioned the names of several Judges of this Court as well as other High Courts and (2) mentioned the names of several advocates who have either appeared for different parties including the second Respondent himself or given opinion in the property litigation in which the second Respondent is involved. **The object of the second Respondent, as I have stated earlier, is not really to cleanse and purify the legal profession, but to silence the advocates who appear for his opponents, so that his property litigation could be won on a different turf. Therefore I am constrained to impose exemplary costs.***
>
> *29. Accordingly the writ petitions are allowed. The second respondent shall pay costs of Rs.50,000/-*

to each of the petitioners in view of the facts and circumstances stated above. ”

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

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

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

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

In each such instance, the tendency is to poison the fountain of justice, sully the stream of judicial administration, by creating distrust, and

pressurizing the advocates as officers of the court from discharging their professional duties as enjoined upon them towards their clients for protecting their rights and liberties.

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

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

The Courts are under an obligation not only to protect the dignity of the Court and uphold its majesty, but also to extend the umbrella of protection to all the limbs of administration of justice and advocates, while discharging their professional duties, also play a pivotal role in the administration and dispensation of justice. It is thus the duty of the courts to protect the advocate from being cowed down into submission and under pressure of threat of menace from any quarter and thus abandon their clients by withdrawing pleas taken on their behalf or by withdrawing from the brief itself, which may prove fatal not only to the legal proceeding in question but also permit an impression to gain ground that adoption of such tactics are permissible or even acceptable. Failure to deal with such conduct and nip it in the bud

shall result in the justice system itself taking a severe knocking, which tendency must be put down as it amounts to direct interference with the administration of justice and is, Therefore, a contempt of a serious nature.

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

The law of contempt covers the whole field of litigation itself. The real end of a judicial proceeding, civil or criminal, is to ascertain the true facts and dispense justice. Various persons have their respective contributions to make in the proper fulfilment of that task. They are necessarily the Judges or the Magistrates, the parties to the proceedings, or their agents or pleaders or advocates, the witnesses and the ministerial or menial staff of the Court. All these persons can well be described as the limbs of the judicial proceedings. For proper administration of justice, it is essential that all these persons are, in the performance of their respective duties, ensured such fullness of freedom as is fair and legitimate. Anything that tends to curtail or impair the freedom of the limbs of the judicial proceeding must of necessity result in hampering the due administration of law and in interfering with the course of justice. It must Therefore be held to constitute contempt of Court.

The real end of a judicial proceeding, civil or criminal, is to ascertain the true facts and dispense justice. Various persons have their respective contributions to make in the proper fulfilment of

that task. They are necessarily the Judges or the Magistrates, the parties to the proceedings, or their agents or pleaders or advocates, the witnesses and the ministerial or menial staff of the Court. All these persons can well be described as the limbs of the judicial proceedings.

It is the right of every litigant to take before the court every legitimate plea available to him in his defense. If the pleas are found to be patently false, contrary to law, an attempt to mislead the court, irrelevant, immaterial, scandalous or extraneous, the courts are not powerless. The courts have sufficient power not only to reject such false pleadings, but also to have such irrelevant, immaterial, scandalous or extraneous pleas struck out from the record either on an application being made to the court or even on its own. However, any attempt made by a party to pressurize the opposite party or its advocate to withdraw a plea taken in the course of proceedings pending in court, amounts to direct interference with the administration of justice. Such an attempt, in our opinion, also takes in its fold, issuance of notices and filing of applications, etc., containing scurrilous, disparaging and derogatory remarks against the opposite party and its advocate. In preventing the respondent from putting forward its defense and pleas as may be deemed by it to be relevant for the purposes of adjudicating the case in hand, it cannot be a defense to state that any party, even if he is a party in person, enjoys a privilege to pressurize the opposite party, much less his/her advocate. In our opinion, such an act amounts to creating impediments in the free flow of administration of justice. Any such attempt has to be treated as an attempt to interfere with and obstruct the administration of justice. In this context, we may refer to the following judgments:

In order to amount to a threat, the language used need not necessarily be aimed at causing bodily

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

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

20. The Courts are under an obligation not only to protect the dignity of the Court and uphold its majesty, but also to extend the umbrella of protection to all the limbs of administration of justice and advocates, while discharging their professional duties, also play a pivotal role in the administration and dispensation of justice. It is thus the duty of the courts to protect the advocate from being cowed down into submission and under pressure of threat of menace from any quarter and thus abandon their clients by withdrawing pleas taken on their behalf or by withdrawing from the brief itself, which may prove fatal not only to the legal proceeding in question but also permit an impression to gain ground that adoption of such tactics are permissible or even acceptable. Failure to deal with such conduct and nip it in the bud

shall result in the justice system itself taking a severe knocking, which tendency must be put down as it amounts to direct interference with the administration of justice and is, Therefore, a contempt of a serious nature.

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

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

However Justice Nariman is trying to create an atmosphere of prejudice against Advocate Nedumpara and his clients so that no advocate will accept their brief and they will be denied their constitutional right of being represented by a Lawyer of their choice.

36. In Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra [AIR 1984 SC 110], *the Supreme Court pointed out that "there is world of difference between the giving of improper legal advise and the giving of wrong legal advise." In the same decision, the Supreme Court pointed out that when an advocate is entrusted with a brief, he is expected to follow the norms of professional ethics and try to protect the interests of his client in relation to whom he occupies a position of trust and that "the Counsel's paramount duty is to the client". The Supreme Court pointed out that for an advocate to act towards his client otherwise than with utmost good faith is unprofessional. Therefore what the*

petitioners have done to their clients, is only in the due discharge of their professional duties. A person who is in the opposite camp cannot take exception to this.

37. Judge Shri Nariman had acted in utter disregard and defiance of Hon'ble Supreme Court's judgment in the case of **S. R. Ramaraj Vs. Special Court, Bombay (AIR 2003 SC 3039)** where it is ruled as under;

> ***(A) Contempt of Courts Act (70 of 1971), S.2- Contempt - Pleading/defense made on basis of facts which are not false - Howsoever the pleading may be an abuse of process of Court - Does not amount to contempt - Merely because an action or defence can be an abuse of process of the Court those responsible for its formulation cannot be regarded as committing contempt - The entire proceedings in relation to contempt of Court shall stand set aside.*** *(Para 9)*
>
> *We, therefore, set aside the order made by the learned Judge of the Special Court initiating the proceedings for contempt and convicting the appellant for the same. The entire proceedings in relation to contempt of Court shall stand set aside. The appeal is allowed accordingly.*

Furthermore Hon'ble Supreme Court in case of **State of Punjab V Jgjit Singh 2008 Cri. L. J. 801**had ruled that **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**. **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.** It is ruled as under;

> *"**Contempt of Courts Act (70 of 1971), S.2(c), S.14- Contempt of Court - Use of improper language - Police Officer using loose expressions in his affidavit and application - Held, though was not contempt, language used should have been in consonance with dignity of Court and facts stated should be correct - Notice for contempt issued by High Court liable to be set aside. (Para 9)***
>
> *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 (MarkandeyKatju, J.) has observed in an article 'Contempt of Court : The Need for a Fresh Look' published in the Journal Section of AIR 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****. The S. S. P. had sworn the affidavit but the counsel who has prepared the application should have been more careful while drafting such an application. They should not make incorrect statements. The language used by them should be in consonance with the dignity of the Court.*
>
> ***10. Having regard to the facts and circumstances of the case, we do not think it to be a proper case where contempt notice ought to have been issued****."*

It is settled law that person having half backed knowledge of law should not be allowed to participate in court proceedings [**Vide:N. Natarajan Vs. B.K. Subba Rao AIR 2003 SC 541**]

Then how the person having half backed knowledge will be allowed to hold the post of Judges in the of the Highest Court of Country i.e. Supreme Court.

This Country had seen the activities of Justice Karnan, where he had passed sentence of punishment against the Judges of Supreme Court. In the present case, the advocate , who is also officer of the Court is being punished by Justice Rohington Nariman & Justice Vineet Saran (both are Justice Karnan in making) in an arbitrary manner at their whim & fancies, rather to satisfy their personal grudges and settle the scores of people who are interested to see Adv. Nedumpara is out of his mission of Transparency. If this is not checked in time then this evil get propogated as tolerance will boost their confidence.

> *"This world suffered a lot because of silence of good people ; than violence of bad people"*

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

> ***If Judge is passing illegal order either due to negligence or extraneous consideration giving undue advantage to***

the party then that Judge is liable for action in spite of the fact that an order can be corrected in appellate/revisional jurisdiction - The acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the Judicial Officer, in such cases imposition of penalty of dismissal from service is well justified

The order was passed giving undue advantage to the main accused - grave negligence is also a misconduct and warrant initiation of disciplinary proceedings - in spite of the fact that an order can be corrected in appellate/revisional jurisdiction but if the order smacks of any corrupt motive or reflects on the integrity of the judicial officer, enquiry can be held .

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

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

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

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

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

The then Chief Manager, Punjab National Bank, Birhana Road Branch, Kanpur Nagar made a

complaint on the administrative side on 11.11.1995 to the then Hon'ble Chief Justice of this Court. The matter was entrusted to the Vigilance Department to enquire and report. After almost four and half years, the vigilance inquiry report was submitted on 14.03.2002 and on the basis of the same the petitioner was suspended on 30th April, 2002 and it was resolved to initiate disciplinary proceedings against the petitioner. A charge sheet was issued to the petitioner on 6th September, 2002 to which he submitted a reply on 22.10.2002. The enquiry was entrusted to Hon'ble Justice Pradeep Kant, who conducted the enquiry and submitted a detailed report dated 06.02.2002 (Annex-8). A show cause notice was issued to the petitioner along with a copy of the enquiry report to which the petitioner submitted his reply on 19.05.2004 (Annex.10). The enquiry report was accepted by the Administrative Committee and the Full Court ultimately resolved to reinstate the petitioner but imposed the punishment of withholding of three annual grade increments with cumulative effect which order is under challenge in the present writ petition.

B) JUDICIAL OFFICERS - has to be examined in the light of a different standard that of other administrative officers. There is much requirement of credibility of the conduct and integrity of judicial officers - the acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, in such cases imposition of penalty of dismissal from service is well justified - Judges perform a "function that is utterly divine" and officers of the subordinate judiciary have the responsibility of building up of the case appropriately to answer the cause of justice. "The personality, knowledge, judicial restrain, capacity to maintain dignity" are the additional aspects which go into making the Courts functioning successfully - the judiciary is the repository of public faith. It is the trustee of the people. It is the

last hope of the people. After every knock of all the doors fail, people approach the judiciary as a last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth because of the power he wields. A Judge is being judged with more strictness than others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside which will lead to a catastrophe in the justice delivery system resulting in the failure of public confidence in the system. We must remember woodpeckers inside pose larger threat than the storm outside

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

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

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

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

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

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

observed as under:-

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

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

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

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

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

"Today, the judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock of all the doors fail, people approach the judiciary as a last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth because of the power he wields. A Judge is being judged with more strictness than others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside which will lead to a catastrophe in the justice delivery system resulting in the

failure of public confidence in the system. We must remember woodpeckers inside pose larger threat than the storm outside."

39. Hence the Observation by Justice Rohinton Fali Nariman are Unconstitutional and is Contempt of Supreme Court and also reflects their poor level of understanding and lack of basic knowledge of law.

As per section 52 of Indian Penal Code Justice Rohington Fali Nariman is not entitled for any protection of good faith.

Section 52 reads as under;

"Good faith.—Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention."

40. Furthermore in para 8 of the Judgment dated 12th March, 2019 Justice Rohington Fali Nariman as he felt aggrieved of case against his close Judge of Bombay High Court (Justice S.J. Kathawala) had observed that the prayers of W.P. (L) No. 1180 of 2018 are contemptuous. This is again travesty of Law on two counts;

(i) Said Petition was decided by Division Bench of High Court vide order dated 26.07.2018 and at that time High Court did notfind it contemptuous then how Justice Rohington Fali Nariman after a period of 8 months can not comment it to be contemptuous.

(ii) Secondly the prayers were regarding initiation of Criminal proceeding against Justice S.J.Kathawalla who acted against various Supreme Court Judgments and making such prayers is fundamental right of the victim it cannot be termed as Contempt.

In **Trident Steel and Engineering Co. Vs.Vallourec 2018 SCC OnLine Bom 4060** while criticizing the conduct and lack of basic knowledge of Justice Kathawalla, it is where is it ruled as under;

"80. In assuming jurisdiction which was not vesting in it,the Court has usurped it. In law, that means taking possession of a power illegally or by force. That cannot be justifieand uphold by applying the principles of legal engineering".

48. ***All concerned ought to be aware that the journey in criminal law is not simple by any means. There is a presumption of innocence and not of guilt. In the instant case, the prosecution has been launched by the State/police. All such stages during the course of criminal proceedings***

are vital and crucial insofar as the rights of the person proceeded against are concerned. At every stage, such a court has to be vigilant and has to bear in mind that the presumption of innocence is a human right. That cannot be displaced casually and lightly. By the impugned orders, there is every likelihood of this presumption getting displaced and it is possible that people in-charge of prosecution may argue that given the observations and remarks of the learned Single Judge of the High Court, such persons should not be discharged from the criminal case. It is not necessary that those who are named as accused should be visited with adverse legal consequences based on the observations and remarks in such orders. They need not actually suffer and undergo these consequences. That there is a possibility of their rights being jeopardised is enough and that is why one frequently notices the High Courts and the Hon'ble Supreme Court clarifying even in interlocutory orders that the observations and remarks therein should not be taken as conclusive findings or a binding opinion and the courts below or those in-charge of conducting the prosecution should not be influenced by them. It is amply clarified that the court has not expressed any opinion on the rival pleas and which would be taken as binding on the trial courts or the police machinery.

53. Despite such clarification, the learned Single Judge called upon the police machinery to place on record of these civil proceedings, the investigation reports. He has carefully perused them and retained them in the files. He has also directed the parties before him to handover documents in their possession to certain police officials. He has presumed that because one of the parties named before him-Dharampalpad Singh has given his residential address as that of Worli, Mumbai, that the offence is committed within the local limits of Worli Police Station. It is in these circumstances that we find that the orders under challenge cannot be sustained by

accepting the arguments of the learned senior counsel appearing for the contesting respondents.

75. The learned Judge could not have called upon the police officials to remain present before him nor could he summon all the parties to the suit personally as if they were accused before a criminal court, we do not intend to confer any benefit to those who are involved in criminal acts. If there is an element of criminality in their acts, then, that has to be taken care of by recourse to criminal law.

Since all the reports of the investigations carried out till date are on the file of the civil suits in this court, we direct that they shall be forthwith transferred to the file of the competent criminal court. ***It is for the competent criminal court to then decide as to whether a prima facie case has been made out against the persons named therein and can a charge be framed against them. Once these reports are placed before the competent criminal court, it is its duty and function in accordance with the Criminal Procedure Code, 1973 to take an appropriate decision. That decision will be taken strictly in accordance with law. While taking that decision, the criminal court shall not be influenced by any opinion or expression of any opinion in the orders under challenge.***

52. The learned Single Judge has not assigned any reasons in arriving at the conclusion that the pipes are spurious. Beyond the version of the plaintiff that the certificates are forged and fabricated, nothing has been referred by the learned Single Judge. When such conclusions are to be rendered even at a prima facie stage, the learned Single Judge, with great respect, ought to have referred to not only the pleadings meaning thereby the plaint and the affidavit in support, but the version of all the parties before him. ***They deserve an opportunity to rebut the allegations against them. It is only after such rebuttal or denial is found to be vague or there being no denial at all that the learned Single Judge could have termed the act of***

the concerned parties as illegal. **He has not only termed that as illegal, but gone ahead and termed it as a punishable offence. Once a High Court Judge makes, and in the course of rendering a decision on an interim relief application in civil suit, such observations, they are bound to influence the police officials, if not competent criminal courts necessarily. That is why we say that the learned Single Judge should have been careful enough in holding that the supply of pipes by the appellant is a deal in spurious pipes. Such a finding is recorded by referring to certificates which are allegedly forged and fabricated. He could have avoided the use of the words, particularly "forged" and "fabricated" at this stage. The conclusions reached by him may be based upon the investigations by the police machinery.**

We have seen several presiding officers and judges routinely observing in their orders that there is a huge scam. It may be a word of day to day usage. However, when it finds place in a judicial order, it has serious consequences. A scam by itself is not a punishable offence. However, when such a word is employed in judicial orders, those implementing such orders frequently get carried away. They think that a serious offence is committed and the persons allegedly involved in commission of the same can safely be termed as accused and can be proceeded against accordingly. Then, they forget the long and arduous journey in criminal law. It is in these circumstances that we are constrained to hold, with great respect, that the learned Single Judge should not have ventured into this territory, but left the needful to be done by a competent criminal court.

45…….. The learned Single Judge, with utmost respect to him, was not aware of the scheme of the Criminal Procedure Code, 1973 and that once a crime is registered, it should be investigated by a competent police functionary. "

Harischandra s/o VishwanathChavan and Anr.vs. The State of Maharashtra *decided on 24th March,*

2017:-

"13] ….. When the defendants appeared and did not file the written statement in consonance with the provisions prescribed under the CPC, it was incumbent on the part of concerned Civil Judge to proceed further for adjudication of matter in issue without written statement and pass a decree in the suit, as envisaged under Order VIII, Rule 5 of CPC. But, instead of taking recourse of the provisions of Civil Procedure Code, the concerned Civil Judge appreciated the allegations nurtured on behalf of defendants against the plaintiff and exceeded his jurisdiction by exercising powers of a Magistrate. He ventured to pass the impugned order directing the police to investigate under Section 156(3) of the Cr.P.C. The action of the concerned civil Judge (J.D.) ***diverting civil proceeding to criminal complaint, for initiating penal action against the plaintiffs at the behest of defendant, appears somewhat strange and not amenable within the ambit of procedural law. The concerned presiding officer of the Civil Court could not avail the liberty to exercise the powers of Magistrate in the civil proceeding, as per his whims and caprices. There are guidelines laid down under the procedural law in regard to jurisdiction of civil and criminal court and judicial powers to be exercised while presiding over such courts.***

15] ….. ***Albeit, it emerges from the impugned order that the learned Civil Judge, instead of awaiting for separate registration of proceeding as Miscellaneous Criminal Application, contemporaneously proceeded to pass the impugned order under section 156 of Cr.P.C. in most hasty manner and appended his signature as a Presiding Officer of civil court. The manner in which the learned Civil Judge dealt with the civil proceeding and passed the impugned order of criminal in nature is indefensible and incomprehensible one within the purview of procedural law.***

20] …… In case, after filing civil proceeding for any relief of civil nature against the defendants, the plaintiffs are forced to face criminal proceedings, on the allegations

nurtured on behalf of the defendants, it would, create a very unhealthy atmosphere and would open the flood-gates of such type of unscrupulous and unprincipled litigation/complaints to harass the plaintiffs in such civil proceedings, and nobody would dare to come forward to seek reliefs from the civil courts of law. It may also result in cynical disregard of law which would have impact on the society and people may lose faith from the judicial system

21] The impugned order under Section 156(3) of Criminal Procedure Code passed on bare protest application of respondent No.2 filed in the civil proceedings is not amenable within the purview of legal provisions. ***The action on the part of the concerned civil court, appears deprecative and unsustainable one. The plaintiff should not be victimized or exploited at any point of time and cost, on his approaching to the civil court for seeking justice. In case, defendant would have any grievance of penal nature he may take recourse of remedy available under Criminal Procedure Code and file separate complaint for penal action against the miscreants. We find force in the submission canvassed on behalf of applicants that the impugned order is erroneous, imperfect, perverse and liable to be quashed and set aside. ....."***

We respectfully concur with the above views.

72. Thus, when the jurisdiction is usurped by a court in passing an order during the course of deciding an injunction application that such order is appealable if it would have been passed with jurisdiction, an appeal against the order cannot be defeated on the ground that the order was made without jurisdiction.

73. ..... The learned Single Judge in this case was seized of an application for interim relief/injunction made in a IP(L) Commercial Suit.

The learned Single Judge, unmindful of the consequences of such recommendations/ opinions/ observations has gone ahead and termed their acts as punishable offences. In view of these sweeping directions and observations, there is enough

material to conclude that the learned Single Judge took over the powers of a competent criminal court in making such orders.

Hence it is clear that Justice Rohington Fali Nariman acted illegally and with immaturity showing his lack of knowledge not expected from a Supreme Court Judge.

41. Furthermore this matter of filing of petition against Justice kathawala was known to Supreme Court. In an another case before Full Bench headed by Hon'ble Chief Justice of India on 3rd May 2018 , Justice D.Y.Chandrachud pointed out this fact to Adv. Nedumpara in a somewhat diplomatic way as under;

> *".....Justice Chandrachud said : I have received another petition on Whatsapp where you have impleaded a Judge of the Bombay High Court and sought action against him. We thought the bar was supposed to be the protector of the Bench........"*
>
> **[Courtesy: Live Law dated: 3rd May, 2018].**

Hence it is matter of record that Division Bench of Hon'ble Bombay High Court which decided the Writ Petition of Mr. Nedumpara did not find it as Contempt , Full Bench of Supreme Court did not find it as Contempt but after 8 months Justice Rohington Fali Nariman call it as contemptuous it not only being judicial impropriety to be abide by views of larger bench but even by brother Judges but also proves ulterior motive of Justice Nariman.

42. Furthermore Justice Nariman don't know the basic law that, the Petition for prosecution of Judge can never be contempt if not being frivolous. Rather it is duty of the advocate to make complaint of corrupt Judges.

In R. Muthukrishnan Vs.The Registrar General of the High Court of Judicature at MadrasAIR 2019 SC 849 :

> *It is duty of the lawyer to lodge appropriate complaint to the concerned authorities as observed by this Court in Vinay Chandra Mishra (supra), which right cannot be totally curtailed.*
>
> ***..Making the Bar too sycophant and fearful which would not be conducive for fair administration of***

justice. *Fair criticism of judgment and its analysis is permissible. Lawyers' fearlessness in court, independence, uprightness, honesty, equality are the virtues which cannot be sacrificed.*

It is the duty of the Bar to protect honest judges and not to ruin their reputation and at the same time to ensure that corrupt judges are not spared.

Oswald on Contempt of Court, 3rd Edition at page 54 remarked "an over subservient bar would have been one of the greatest misfortune that could happen to the administration of Justice."

Hon'ble Supreme Court in the case of **O. P. Sharma Vs. High Court of Punjab & Haryana (2011) 6 SCC 86** has ruled that, as per 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'.**

Hence observation of Justice Nariman are encroachment on the duty of a lawyer and also encroachment of fundamental Human Rights of a citizen.

43. Constitutional Bench of Hon'ble Supreme Court in **Anita Khushwaha's case (2016) 8 SCC 509** had ruled that right to access to justice is fundamental right guaranteed under Article 14 & 21 of the Indian Constitution. Any attempt to deny access to justice will weaken the rule of law. It denies the guarantee of equality. It seems that Justice Nariman is involved in his mission to weaken the rule of law and lead the nation towards lawlessness.

In **Anirudha Bahal's case 2010 (119) DRJ 104** it is ruled that :

Duty of a citizen under Article 51A(h) is to develop a spirit of inquiry and reforms. It is fundamental right of citizens of this country to have a clean & incorruptible judiciary, legislature, executive and other organs and in order to achieve this fundamental right every citizen has a corresponding duty to expose corruption wherever he finds. Constitution of India mandates citizens to act as agent provocateurs to bring out and expose and uproot the corruption - Sting operation by citizen - the sting operation was conducted by them to expose corruption -

Police made them accused - The intention of the petitioners was made clear to the prosecution by airing of the tapes on T.V channel that they want to expose corruption - Quashing the charge-sheet and order of taking cognizance and issuing summons against whistle Blower high Court observed that- it is a fundamental right of citizens of this country to have a clean incorruptible judiciary, legislature, executive and other organs and in order to achieve this fundamental right, every citizen has a corresponding duty to expose corruption wherever he finds it, whenever he finds it and to expose it if possible with proof so that even if the State machinery does not act and does not take action against the corrupt people when time comes people are able to take action

It is argued by learned Counsel for the State that the petitioners in this case in order to become witnesses should have reported the matter to CBI rather conducting their own operation. I need not emphasize that in cases of complaints against the persons, in powers how CBI and police acts. The fate of whistle blowers is being seen by the people of this country. They are either being harassed or being killed or roped in criminal cases. I have no doubt in my mind that if the information would have been given by the petitioners to the police or CBI, the respective MPs would have been given information by the police, before hand and would have been cautioned about the entire operation. Chanakaya in his famous work 'Arthshastra' advised and suggested that honesty of even judges should be periodically tested by the agent provocateurs. I consider that the duties prescribed by the Constitution of India for the citizens of this country do permit citizens to act as agent provocateurs to bring out and expose and uproot the corruption

I consider that one of the noble ideals of our national struggle for freedom was to have an independent and corruption free India. The other duties assigned to the citizen by the Constitution is to uphold and protect the sovereignty, unity and integrity of India and I consider that sovereignty, unity and integrity of this country cannot be protected and safeguarded if the corruption is not removed from this country. - I consider that a country

cannot be defended only by taking a gun and going to border at the time of war. The country is to be defended day in and day out by being vigil and alert to the needs and requirements of the country and to bring forth the corruption at higher level. The duty under Article 51A(h) is to develop a spirit of inquiry and reforms. The duty of a citizen under Article 51A(j) is to strive towards excellence in all spheres so that the national constantly rises to higher level of endeavour and achievements I consider that it is built-in duties that every citizen must strive for a corruption free society and must expose the corruption whenever it comes to his or

her knowledge and try to remove corruption at all levels more so at higher levels of management of the State.

9. I consider that it is a fundamental right of citizens of this country to have a clean incorruptible judiciary, legislature, executive and other organs and in order to achieve this fundamental right, every citizen has a corresponding duty to expose corruption wherever he finds it, whenever he finds it and to expose it if possible with proof so that even if the State machinery does not act and does not take action against the corrupt people when time comes people are able to take action either by rejecting them as their representatives or by compelling the State by public awareness to take action against them.

The rule of corroboration is not a rule of law. It is only a rule of prudence and the sole purpose of this rule is to see that innocent persons are not unnecessarily made victim. The rule cannot be allowed to be a shield for corrupt.

It requires great courage to report a matter to the Anti Corruption Branch in order to get a bribe taker caught red handed. In our judicial system complainant sometime faces more harassment than accused by repeatedly calling to police stations and then to court and when he stands in the witness box all kinds of allegations are made against him and the most unfortunate is that he is termed as an accomplice or an interested witness not worthy of trust. I fail to understand why a witness should not be interested in seeing that the criminal

should be punished and the crime of corruption must be curbed. If the witness is interested in seeing that there should be corruption free society, why Court should disbelieve and discourage him.

11. It is argued by learned Counsel for the State that the petitioners in this case in order to become witnesses should have reported the matter to CBI rather conducting their own operation. I need not emphasize that in cases of complaints against the persons, in powers how CBI and police acts. The fate of whistle blowers is being seen by the people of this country. They are either being harassed or being killed or roped in criminal cases. I have no doubt in my mind that if the information would have been given by the petitioners to the police or CBI, the respective MPs would have been given information by the police, before hand and would have been cautioned about the entire operation.

I consider that in order to expose corruption at higher level and to show to what extent the State managers are corrupt, acting as agent provocateurs does not amount to committing a crime. The intention of the person involved is to be seen and the intention in this case is clear from the fact that the petitioners after conducting this operation did not ask police to register a case against the MPs involved but gave information to people at large as to what was happening. The police did not seem to be interested in registration of an FIR even on coming to know of the corruption. If the police really had been interested, the police would have registered FIR on the very next day of airing of the tapes on TV channels. The police seem to have acted again as 'his master's voice' of the persons in power, when it registered an FIR only against the middlemen and the petitioners and one or two other persons sparing large number of MPs whose names were figured out in the tapes.

13. The corruption in this country has now taken deep roots. Chanakaya in his famous work 'Arthshastra' advised and suggested that honesty of even judges should be periodically tested by the agent provocateurs. I consider that the duties prescribed by the Constitution of India for the citizens of this country do permit citizens to act as agent provocateurs to bring out and expose and

uproot the corruption.

The law regarding prosecution of High Court and Supreme Court Judges is very well explained by Constitution Bench **(5-Judges)** of Hon'ble Supreme Court in **K. Veeraswami Vs. Union of India (UOI) and Ors.1991 (3) SCC 655** &**IN RE: C.S. Karnan(2017) 7 SCC 1 [7-Judge Constitution Bench] ,M/s. Spencer Ltd. Vs. Vishwadarshan Distrubutors Pvt. Ltd. (1995) 1 SCC 259** and more particularly by Justice Dr. B.S.Chauhan in **Raman Lal Vs. State 2001 Cri.L.J. 800.**

In Justice **C.S. Karnan (2017) 7 SCC 1,** it is ruled as under;

> *A) High Court Judge disobeying Supreme Court direction and abusing process of court sentenced to six months imprisonment.*
>
> *B) Even if petition is filed by a common man alleging contempt committed by a High Court Judge then Supreme Court is bound to examine these allegation.*

In the case of **Raman Lal Vs. State 2001 Cri.L.J. 800.** it is ruled as under;

> ***" A] Cri. P.C. Sec. 197 – Sanction for prosecution of High Court Judge – Accused are Additional High Court Judge, Suprintendant of Police Sanjeev Bhatt and others – The accused hatched conspiracy to falsely implicate a shop owner in a case under N.D.P.S. Act and when shop owner submitted to their demands he was discharged – Complaint u.s. 120-B, 195, 196, 342, 347, 357, 368, 388, 458, 482, I.P.c. and Sec. 17, 58 (1), (2) of NDPS Act – Held – there is no connection between official duty and offence – No sanction is required for prosecution – Registration of F.I.R. and investigation legal and proper.***
>
> ***B] Cri. P.C. Sec. 156 – Investigation against accused Addl. High Court Judge – Whether prior consultation with Chief Justice is necessary prior filling of F.I.R. against a High Court Judge as has been laid down by Supreme Court in K. Veerswami's case (1991) (3) SCC 655) – Held – In K. Veerswami's case Supreme Court observed that the Judges are liable to be dealt with just the same as any other person in respect of criminal***

offence and only in offence regarding corruption the sanction for criminal prosecution is required – the directions issued by Hon'ble Supreme Court are not applicable in instant case.

C] The applicant – Ram Lal Addl. High Court Judge hatched criminal conspiracy – The Bar Association submitted a representation to Hon'ble Chief Justice of India on 11-09-1997 requesting to not to confirm Raman Lal as Judge of the High Court – Later on he was transferred to Principal Judge of city Civil and Sessions Court at Ahmedabad – S.P. (C.I.D.) Jaipur sent a questionnaire through the registrar, Gujrat High Court to accused Addl. High Court Judge – Chief Justice granted permission to I.O. to interrogate – Later on I.O. sent letter to applicant to remain present before Chief Judicial Magistrate at the time of filing the charge-sheet – Applicant filed petition before High Court challenging it – Petition of applicant was rejected by High Court and Supreme Court in limine – No relief is required to be granted to petitioner in view of the facts of the case.

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

E] Jurisdiction – Continuing offence – Held – Where complainants allegations are of stinking magnitude and the authority which ought to have redressed it have closed its eyes and not even trid to find out the real offender and the clues for illegal arrest and harassment are not enquired then he can not be let at the mercy of such law enforcing agencies who adopted an entirely indifferent attitude – Legal maxim Necessiatas sub lege

Non continetureQuia Qua Quad Alias Non EstLictumNecessitasfacitLictum, Means necessity is not restrained by laws – Since what otherwise is not lawful necessity makes it lawful – Proceeding proper cannot be quashed."

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

"*Hon'ble Supreme Court observed:*

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

The petitioner Justice Mrs. Nirmal Yadav, the then Judge of Punjab and Haryana High Court found to have taken bribe to decide a case pending before her- CBI charge sheeted - It is also part of investigation by CBI that this amount of Rs.15.00 lacs was received by Ms. Yadav as a consideration for deciding RSA No.550 of 2007 pertaining to plot no.601, Sector 16, Panchkula for which Sanjiv Bansal had acquired interest. It is stated that during investigation, it is also revealed that Sanjiv Bansal paid the fare of air tickets of Mrs. Yadav and Mrs. Yadav used matrix mobile phone card provided to her by Shri Ravinder Singh on her foreign visit. To establish the close proximity between Mrs. Yadav, Ravinder Singh, Sanjiv Bansal and Rajiv Gupta, CBI has given details of phone calls amongst these accused persons during the period when money changed hands and the incidence of delivery of money at the residence of Ms. Nirmaljit Kaur and even during the period of initial investigation - the CBI concluded that the offence punishable under Section 12 of the PC Act is established against Ravinder Singh, Sanjiv Bansal and Rajiv Gupta whereas offence under Section 11 of the PC Act is established against Mrs.Justice Nirmal Yadav whereas offence punishable under Section 120-B of the IPC read with Sections

193, 192, 196, 199 and 200 IPC is also established against Shri Sanjiv Bansal, Rajiv Gupta and Mrs. Justice Nirmal yadav

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

B) In-House procedure 1999 , for enquiry against High Court and Supreme Court Judges - Since the matter pertains to allegations against a sitting High Court Judge, the then Hon'ble Chief Justice of India, constituted a three members committee comprising of Hon'ble Mr.Justice H.L. Gokhale, the then Chief Justice of Allahabad High Court, presently Judge of Hon'ble Supreme Court, Justice K.S. Radhakrishnan, the then Chief Justice of Gujarat High Court, presently, Judge of Hon'ble Supreme Court and Justice Madan B.Lokur, the then Judge of Delhi High Court, presently Chief Justice Gauhati High Court in terms of In-House procedure adopted by Hon'ble Supreme Court on 7.5.1997. The order dated 25.8.2008 constituting the Committee also contains the terms of reference of the Committee. The Committee was asked to enquire into the allegations against Justice Mrs. Nirmal Yadav, Judge of Punjab and Haryana High Court revealed, during the course of investigation in the case registered vide FIR No.250 of 2008 dated 16.8.2008 at Police Station, Sector 11, Chandigarh and later transferred to CBI. The Committee during the course of its enquiry examined the witnesses and recorded the statements of as many as 19 witnesses, including Mrs.Justice Nirmal Yadav (petitioner), Ms. Justice Nirmaljit Kaur, Sanjiv Bansal, the other accused

named in the FIR and various other witnesses. The Committee also examined various documents, including data of phone calls exchanged between Mrs. Justice Nirmal yadav and Mr.Ravinder Singh and his wife Mohinder Kaur, Mr.Sanjiv Bansal and Mr.Ravinder Singh, Mr.Rajiv Gupta and Mr. Sanjiv Bansal. On the basis of evidence and material before it, the Committee of Hon'ble Judges has drawn an inference that the money delivered at the residence of Hon'ble Ms.Justice Nirmaljit Kaur was in fact meant for Ms.Justice Nirmal Yadav."

44. Hon'ble High Court in the case of **Court on its own Motion Vs. DSP Jayant Kashmiri and Ors. MANU/DE/0609/2017** where it is ruled as under;

Contempt Of Courts Act, 1971 - Section Section 2(c), 15 – CASE NOTE : 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.

45. In view of the above settled law it is clear that Justice Rohington Fali Nariman is not having basic knowledge of law or he has a tendency to lower down the authority of Hon'ble Supreme Court by treating him above the law.

46. In **Indirect Tax Practitioners Association Vs. R.K. Jain , (2010) 8 SCC 281,** it is ruled as under ;

CONTEMPT OF COURTS ACT- TRUTH should not be allowed to be silenced by using power of Contempt by unscrupulous proceedings - Exposing corruption in Judiciary is Duty of every citizen as per Art. 51 - A (h) of Constitution of India - Let Truth and

Falsehood grapple - whoever knew Truth put to the worse, in a free and open encounter - Truth is strong, next to the Almighty; she needs no policies, no stratagems, no licensings to make her victorious; those are the shifts and defences that error makes against her power.

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.

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..

A person like the respondent can appropriately be described as a whistleblower for the system who has tried to highlight the malfunctioning of an important institution and there is no reason to silence such person by invoking Contempt jurisdiction Articles 129 or 215 of the Constitution or the provisions of the Act.

- The association by filing a Contempt petition commited illegality - the petition is dismissed. For filing a frivolous contempt petition, the petitioner is saddled with cost of Rs.2,00,000/-, of which Rs.1,00,000/- shall be deposited with the Supreme Court Legal Services Committee and Rs.1,00,000/- shall be paid to the respondent- In administration of justice and judges are open to public criticism and public scrutiny - 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 .

Though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and Falsehood grapple;

whoever knew Truth put to the worse, in a free and open encounter?... Who knows not that Truth is strong, next to the Almighty; she needs no policies, no stratagems, no licensings to make her victorious; those are the shifts and defences that error makes against her power ...."

A whistleblower is a person who raises a concern about wrongdoing occurring in an organization or body of people. Usually this person would be from that same organization.

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- 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.In fact such fair and reasonable criticism must be encouraged because after all no one, much less judges, can claim infallibility. 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.Truth's taciturn strategy, the testimony of history says, has a higher power than a hundred thousand tongues or pens.

The statement of a scandalous fact that is material to the issue is not a scandalous pleading

15. In the land of Gautam Buddha, Mahavir and Mahatma Gandhi, the freedom of speech and expression

and freedom to speak one's mind have always been respected. After independence, the Courts have zealously guarded this most precious freedom of every human being. Fair criticism of the system of administration of justice or functioning of institutions or authorities entrusted with the task of deciding rights of the parties gives an opportunity to the operators of the system/institution to remedy the wrong and also bring about improvements. Such criticism cannot be castigated as an attempt to scandalize or lower the authority of the Court or other judicial institutions or as an attempt to interfere with the administration of justice except when such criticism is ill motivated or is construed as a deliberate attempt to run down the institution or an individual Judge is targeted for extraneous reasons.Ordinarily, the Court would not use the 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. Only when the criticism of judicial institutions transgresses all limits of decency and fairness or there is total lack of objectivity or there is deliberate attempt to denigrate the institution then the Court would use this power. The judgments of this Court in Re S. Mulgaokar (1978) 3 SCC 339 and P.N. Duda v. P. Shiv Shanker(1988) 3 SCC 167 are outstanding examples of this attitude and approach. In the first case, a three-Judge Bench considered the question of contempt by newspaper article published in Indian Express dated 13.12.1977 criticising the Judges of this Court. The article noted that the High Courts had strongly reacted to the proposal of introducing a code of judicial ethics and propriety. In its issue dated December 21, 1977 an article entitled "behaving like a Judge" was published which inter alia stated that the Supreme Court of India was "packed" by Mrs Indira Gandhi "with pliant and submissive judges except for a few". It was further stated that the suggestion that a code of ethics should be formulated by judges themselves was "so utterly inimical to the independence of the judiciary, violative of the constitutional safeguards in that respect and offensive to the self-respect of the judges as to make one wonder how it was conceived in the first place". A notice had been

issued to the Editor-in-Chief of the newspaper to show cause why proceedings for contempt under Article 129 of the Constitution should not be initiated against him in respect of the above two news items. After examining the submissions made at the Bar, the Court dropped the contempt proceedings. Beg, C.J., expressed his views in the following words:

"Some people perhaps believe that attempts to hold trials of everything and everybody by publications in newspapers must include those directed against the highest Court of Justice in this country and its pronouncements. If this is done in a reasonable manner, which pre-supposes accuracy of information about a matter on which any criticism is offered, and arguments are directed fairly against any reasoning adopted, I would, speaking for myself, be the last person to consider it objectionable even if some criticism offered is erroneous.

Political philosophers and historians have taught us that 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. "Although, our Constitution does not contain a separate guarantee of Freedom of the Press, apart from the freedom of expression and opinion contained in Article 19(l)(a) of the Constitution, yet, it is well-recognised that the Press provides the principal vehicle of expression of their views to citizens. It has been said:

"Freedom of the Press is the Ark of the Covenant of Democracy because public criticism is essential to the

working of its institutions. Never has criticism been more necessary than today, when the weapons of propaganda are so strong and so subtle. But, like other liberties, this also must be limited."

Krishna Iyer, J. agreed with C.J. Beg and observed:

"Poise and peace and inner harmony are so quintessential to the judicial temper that huff, "haywire" or even humiliation shall not besiege; nor, unveracious provocation, frivolous persiflage nor terminological inexactitude throw into palpitating tantrums the balanced cerebration of the judicial mind. The integral yoga of shanti and neeti is so much the cornerstone of the judicial process that criticism, wild or valid, authentic or anathematic, shall have little purchase over the mentation of the Court. I quite realise how hard it is to resist, with sage silence, the shafts of acid speech; and, how alluring it is to succumb to the temptation of argumentation where the thorn, not the rose, triumphs. Truth's taciturn strategy, the testimony of history says, has a higher power than a hundred thousand tongues or pens. In contempt jurisdiction, silence is a sign of strength since our power is wide and we are prosecutor and judge."

What the respondent projected was nothing but true state of the functioning of CESTAT on administrative side and to some extent on judicial side.By doing so, he had merely discharged the constitutional duty of a citizen enshrined in Article 51A(h).

In the free market place of ideas criticisms about the judicial system or judges should be welcomed, so long as such criticisms do not impair or hamper the administration of justice. This is how courts should approach the powers vested in them as judges to punish a person for an alleged contempt, be it by taking notice of the matter suo motu or at the behest of the litigant or a lawyer. 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- per Krishna Iyer, J. in Baradakanta

Mishra v. Registrar of Orissa High Court. It has to be admitted frankly and fairly that there has been erosion of faith in the dignity of the court and in the majesty of law and that has been caused not so much by the scandalising remarks made by politicians or ministers but the inability of the courts of law to deliver quick and substantial justice to the needy.Many today suffer from remediless evils which courts of justice are incompetent to deal with. Justice cries in silence for long, far too long. The procedural wrangle is eroding the faith in our justice system. It is a criticism which the judges and lawyers must make about themselves- 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.In fact such fair and reasonable criticism must be encouraged because after all no one, much less judges, can claim infallibility. 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.

- Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men - The integral yoga of shanti and neeti is so much the cornerstone of the judicial process that criticism, wild or valid, authentic or anathematic, shall have little purchase over the mentation of the Court. I quite realise how hard it is to resist, with sage silence, the shafts of acid speech; and, how alluring it is to succumb to the temptation of argumentation where the thorn, not the rose, triumphs. Truth's taciturn strategy, the testimony of history says, has a higher power than a hundred thousand tongues or pens. In contempt jurisdiction, silence is a sign of strength since our power is wide and we are prosecutor and judge.

"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."

Although, the petitioner has tried to project the editorial as a piece of writing intended to demean CESTAT as an institution and scandalize its functioning but we do not find anything in it which can be described as an attempt to lower the authority of CESTAT or ridicule it in the eyes of the public. Rather the object of the editorial was to highlight the irregularities in the appointment, posting and transfer of the members of CESTAT and instances of the abuse of the quasi judicial powers. What was incorporated in the editorial was nothing except the facts relating to manipulative transfer and posting of some members of CESTAT and substance of the orders passed by the particular Bench of CESTAT, which were set aside by the High Courts of Karnataka and Kerala

What the respondent projected was nothing but true state of the functioning of CESTAT on administrative side and to some extent on judicial side.By doing so, he had merely discharged the constitutional duty of a citizen enshrined in Article 51A(h). It is not the petitioner's case that the facts narrated in the editorial regarding transfer and posting of the members of CESTAT are incorrect or that the respondent had highlighted the same with an oblique motive or that the orders passed by Karnataka and Kerala High Courts to which reference has been made in the editorial were reversed by this Court. Therefore, it is not possible to record a finding that by writing the editorial in question, the respondent has tried to scandalize the functioning of CESTAT or made an attempt to interfere with the administration of justice.

Since, the petitioner has not even suggested that what has been mentioned in the editorial is incorrect or that the respondent has presented a distorted version of the facts, there is no warrant for discarding the respondent's assertion that whatever he has written is based on true facts and the sole object of writing the editorial was to enable the concerned authorities to take corrective/remedial measures.

23. At this juncture, it will be apposite to notice the

growing acceptance of the phenomenon of whistleblower. A whistleblower is a person who raises a concern about wrongdoing occurring in an organization or body of people. Usually this person would be from that same organization. The revealed misconduct may be classified in many ways; for example, a violation of a law, rule, regulation and/or a direct threat to public interest, such as fraud, health/safety violations and corruption. Whistleblowers may make their allegations internally (for example, to other people within the accused organization) or externally (to regulators, law enforcement agencies, to the media or to groups concerned with the issues). Most whistleblowers are internal whistleblowers, who report misconduct on a fellow employee or superior within their company. One of the most interesting questions with respect to internal whistleblowers is why and under what circumstances people will either act on the spot to stop illegal and otherwise unacceptable behavior or report it. There is some reason to believe that people are more likely to take action with respect to unacceptable behavior, within an organization, if there are complaint systems that offer not just options dictated by the planning and controlling organization, but a choice of options for individuals, including an option that offers near absolute confidentiality. However, external whistleblowers report misconduct on outside persons or entities. In these cases, depending on the information's severity and nature, whistleblowers may report the misconduct to lawyers, the media, law enforcement or watchdog agencies, or other local, state, or federal agencies. In our view, a person like the respondent can appropriately be described as a whistleblower for the system who has tried to highlight the malfunctioning of an important institution established for dealing with cases involving revenue of the State and there is no reason to silence such person by invoking Articles 129 or 215 of the Constitution or the provisions of the Act.

25. In the result, the petition is dismissed. For filing a frivolous petition, the petitioner is saddled with cost of Rs.2,00,000/-, of which Rs.1,00,000/- shall be deposited with the Supreme Court Legal Services Committee and

Rs.1,00,000/- shall be paid to the respondent.

47. Worst part is that, Justice Justice Rohington Fali Nariman in para 8 of his order tried give a certificate to Justice Kathawalla that he is being attacked for lawful order. In fact the said petition was filed by advocate for observations against an advocate without issuing any notice to him which is prima-facie illegal and against the settled legal principle by various Supreme Judgments and more particularly in **Sarwan Singh Lamba's Case (Supra).** Said matter against Justice Kathawalla is still subjudice. Hence being subjudice should not be commented unilaterally by Justice Rohington Fali Nariman.

It is matter of experience the Criminal minded Judges by twisting material facts, by misleading legal position and by misinterpreting the settled law of Hon'ble Supreme Court are trying to make the Court as their personal property. Absolute Power corrupts Absolutely.**[vide: Perumal VS Janaki (2014) 5 SCC 377]** And such type of Judges are running syndicate to extort money for giving favorable orders to the undeserving people. Some of them are prosecuted by C.B.I. such as:

i) Justice Nirmal Yadav, Rs. 15 lakh for passing favourable order (2011(4) RCR (Criminal) 809)

(ii) Justice Shameet Mukharjee. (Shameet Mukherjee Vs. C.B.I. 2003 SCC OnLine Del 821) Money, Woman and wine for passing favourable order

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

In Judge Loya's death it is found that Rs. 100 Crores (Rupees Hundred Crores Only) bribe offered by Justice Mohit Shah of Bombay High Court.
Former Chief Justice J.S Khelhar, Justice Deepak Mishra demanded 77 Crores (Rupees Seventy Seven Crores Only) & 27 Crores (Rupees Twenty Seven Crores Only) respectively from former Chief Minister Kalikho Pul. Suicide note was found on 8th August, 2016 but no action is taken till date, Supreme Court (Justice Rohinton Nariman) does not feel it proper to take Suo-Motu action by directing investigation to give clean judiciary to citizens of the country.

These are double standards His father Advocate Fali Nariman made complaint against Justice Dinakaran's elevation to Supreme Court refused and thereafterhe was compelled to resign. Why the same Fali Nariman had not said anything against other Judges.
It is clear that he speak only against Judges of backword Community.
There cannot be double standards in Court of Law. Advocates are also officers of the Courts. So ignoring the misconduct of Judges and thereby attacking the

Advocates will lead to a very danger position as one day this volcano will erupt.

Constitution Bench in **K.Veeraswami Vs.Union of India (1991) 3 SCC 655** had ruled as under;

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

48. It is Fundamental Right of any person to approach the Court. Adv. Nedumpara wants prosecution and compensation for violation of his Fundamental Rights. Apex Court in R.Muthukrishanan's case *(Supra)* made it clear that Advocate is duty bound to make Complaint against Judges.

Constitution Bench of Supreme Court in **Anita Khushwha & Ors.Vs. Pushap Sudan And Ors. (2016) 8 SCC 509**had ruled that;

> ***RIGHT TO ACCESS TO THE COURT IS FUNDAMENTAL RIGHT***
>
> ***(A)Constitution of India, Art.21, Art.14- Right to life includes Right of access to justice - Access to justice is also a facet of rights guaranteed u/Art. 14, 21 - Rule of law, independence of judiciary and access to justice are conceptually interwoven - an aggrieved person cannot be left without the remedy and that access to justice is a human right and in certain situations even a fundamental right.***
>
> *Denial of the right undermines public confidence in the justice delivery system and incentivises people to look for shot cuts and other fora where they feel that injustice will be done quicker. In the long run, this also weakens the justice delivery system and poses a threat to the rule of law - access to justice in an egalitarian democracy must be understood to mean qualitative access to justice as well. Access to justice is, therefore, much more than improving an individual's access to courts, or guaranteeing representation - 'life' implies not only*

life in the physical sense but a bundle of rights that makes life worth living - Denial of 'access to justice' will affect the quality of human life and violates of right to life guaranteed under Article 21 - it result in denial of the guarantee contained in Article 14 both in relation to equality before law as well as equal protection of laws - Denial of 'access to justice' thereby negate the guarantee of equality before laws or equal protection of laws and reduce it to a mere teasing illusion. Article 21 of the Constitution apart, access to justice can be said to be part of the guarantee contained in Article 14 as well.

Access to justice is and has been recognised as a part and parcel of right to life in India and in all civilized societies around the globe. The right is so basic and inalienable that no system of governance can possibly ignore its significance, leave alone afford to deny the same to its citizens.

Access to justice is indeed a facet of right to life guaranteed under Article 21 of the Constitution. Access to justice may as well be the facet of the right guaranteed under Article 14 of the Constitution, which guarantees equality before law and equal protection of laws to not only citizens but non-citizens also. It is because equality before law and equal protection of laws is not limited in its application to the realm of executive action that enforces the law. It is as much available in relation to proceedings before Courts and tribunal and adjudicatory fora where law is applied and justice administered. The Citizen's inability to access courts or any other adjudicatory mechanism provided for determination of rights and obligations is bound to result in denial of the guarantee contained in Article 14 both in relation to equality before law as well as equal protection of laws. Absence of any adjudicatory mechanism or the inadequacy of such mechanism, needless to say, is bound to prevent those looking for enforcement of their right to equality before laws and equal protection of the laws from seeking redress and thereby negate the guarantee of equality before laws or equal protection of laws and reduce it to a mere teasing illusion. Article 21 of the Constitution apart, access to justice can be said to be part of the guarantee contained in Article 14 as well.

It makes it clear that observation of Justice Justice Rohington Fali Nariman are prima-facie seems to be the outcome of his frustrated mind and done to help Justice Kathawala of Bombay High Court, whose orders are set aside by Higher Benches for his misuse of power with strict & harsh observation**.[Trident Steel**

and Engineering Co. Vs.Vallourec 2018 SCC OnLine Bom 4060].

49. The said Justice Kathawala was caught in a sting operation & his corrupt practices are under scrutiny before **(Five- Judge Bench of Hon'ble Bombay High Court).** Hence it is clear that Justice Rohington Fali Nariman tried to save an accused Judge and in both the eventuality he is unfit to work as a Judge of a Highest Court and is liable to be removed forthwith by using powers under **"In-House-Procedure'** as done in Justice Karnan's case.

50. # CHARGE # PASSSING ADVERSE STRICTURE, REMARKS AGAINST ADVOCATE WITHOUT HEARING HIM ON THE SAID POINT IS AGIANST LAW LAID DOWN BY CONSTITUTION BENCH IN SARWAN SINGH LAMBA VS. UNION OF INDIA . AIR 1995 SC 1729

VIOLATION OF ARTICLE 21 OF THE CONSTITUTION AND ALSO VIOLATION OF PRINCIPLES OF NATURAL JUSTICE.

It is settled law that, Court while passing any order is not expected to pass strictures against advocate or any person who is not arrayed as a party to the proceeding. If any adverse remarks are passed without hearing that person and without there being necessity then it will be violation of Article 21 of the Constitution as no one should be condemned unheard. **[Audi Alteram Partem]**

In the case of **InderFakirchand Jain Vs State of Maharashtra 2007 ALL MR (Cri.) 3012** had ruled as under ;

> ***Criminal P.C. (1973), S. 482- EXPUNGING OF ADVERSE REMARKS- APPLICATION FOR- MAGISTRATE SEEMING TO BE PREJUDICED AGAINST LAWYERS AS WELL AS COMPLAINANT AND MADE ADVERSE REMARKS AGAINST THEM-*** *Held, a judge is expected to maintain equanimity and not to get swayed by the prejudices- Those remarks directed to be expunged- Judge directed to refrain from making such uncalled and unwarranted remarks against any person and particularly without hearing them.*

In **Testa Setalvad Vs. State of Gujarat 2004 (10) SCC 88,** wherein the Hon'ble Supreme Court held as follows:

> *It is not in dispute and the records also reveal that the appellants were not parties in the case before the High Court. It is beyond comprehension as to how the learned*

Judges in the High Court could afford to overlook such a basic and vitally essential tenet of 'Rule of law', that no one should be condemned unheard and risk themselves to be criticised for injudicious approach and/or render their decisions vulnerable for challenge on account of violating judicial norms and ethics. The observations quoted above do not prima facie appear to have any relevance to the subject matter of dispute before the High Court. Time and again this Court has deprecated the practice of making observations in judgments, unless the persons in respect of whom comments and criticisms were being made were parties to the proceedings, and further were granted an opportunity of having their say in the matter, unmindful of the serious repercussions they may entail on such persons. Apart from that, when there is no relevance to the subject matter of adjudication, it is certainly not desirable for the Courts to make any comments or observations reflecting on the bonafides or credibility of any person or their actions. Judicial decorum requires dispassionate approach and the importance of issues involved for consideration is no justification to throw to winds basic judicial norms on mere personal perceptions as saviours of the situation.

51. Constitution Bench of Supreme Court in **Sarwan Singh Lamba Vs. Union of India . AIR 1995 SC 1729** had ruled as under;

*"**Constitution of India, Art.226, Art.14- Powers of Court - The finding of the High Court observing conduct of the party as machination - the conclusions were drawn without giving parties, against whom inferences were drawn any opportunity to explain the same - It is violative of basic rule of natural justice and cannot be upheld - The Court should have been extra cautious since it was casting serious aspersions against the appellants - High Court read too much in this act of the Chief Secretary R.P. Kapoor. - This suspicion of the High Court unfortunately coloured its vision resulting in it viewing each and every action leading to his appointment with suspicion. These, in brief, are a few aspects of the case which we have highlighted to demonstrate how the High*

Court fell into an error and misdirected itself causing miscarriage of justice. We must undo this injustice by allowing this appeal and setting aside the impugned judgment and order of the High Court. (Paras 25 26)

The finding of the High Court that the appointments of R.P. Kapoor and G.S. Patel were vitiated because their appointments were the result of their own machination cannot be upheld. Nor can it be said that their appointments were fraudulent or otherwise vitiated. This High Court seems to have read too much from the notes on the file and, with respect, has drawn unsustainable and wholly unwarranted inference based on, if we may say so, suspicion.

The Court inspected the files and has drawn its own conclusions on the basis of the notings without giving the parties, the appellants, against whom the inferences were drawn any opportunity to explain the same. This was clearly in violation of the basic rule of natural justice. The Court should have been extra cautious since it was casting serious aspersions against the appellants, particularly, R.P. Kapoor. As we shall briefly point out, the conclusion that "the appointments... are result of murky self motivated machinations" ***and are, therefore, "vitiated by bias," is not borne out from the material relied on by the High Court.*** *In the first place in must be remembered that the original petitioners had filed writ petitions in the High Court wherein they had sought an interim order against their repatriation to their parent department.*

In **Sri. Abani Kanta Ray Vs. State (1995) 4 Supp. SCC 169** where it is ruled as under;

*"**14.** Before parting with this case, We consider it necessary to refer to the observations in some earlier decisions of this Court in similar context indicating the need for sobriety and restraining in making adverse and critical comments. In Niranjan Patnaik vs. Sashibhusan Kar & Anr., 1986 (2) SCR 47. in a similar contex, after referring to earlier authorities, it was stated as under:*

"It is, therefore, settled law that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before courts of law unless it is really necessary for the decision of the case, as an integral part thereof to animadvert on that conduct We hold that the adverse remarks made against the appellant were neither justified nor called for."

(at page 483) In State of Madhya Pradesh & Ors. vs. Nandlal Jaiswal & Ors., 1987 (1) SCR 1, one of the questions raised was the propriety of certain observations and some disappearing remarks made by a learned Judge of the High Court in his separate concurring opinion in a matter decided by a Division Bench While holdings that those disparaging remarks were unwarranted, this Court expressed its strong disapproval of the same as follows:

"Before we part with this we must express our strong disapproval of the observations made by B.M. Lal, J. in paragraphs 1, 9, 17, 18, 19 and 34 of his concurring opinion The learned Judge made sweeping observations attributing mala fides, corruption and under-hand dealing to the State Government. These observations are in our opinion not at all justified by the record. ....."

(at page 62) " ..... What the learned Judge has said is based entirely on conjecture and suspicion judicial disposition of a case. .....

(at page 63) "We may observe in conclusion that Judges should not use strong and carping language while criticizing the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint They must have the humility to recognize that they are not infallible and any harsh and disparaging strictures passed by them against any party may be mistaken and unjustified and if so, they may do considerable harm and mischief and result in injustice. here, in the present case, the observations made and strictures passed by B.M. Lal, J. were totally unjustified and unwarranted and they ought not to have been made."

(at page 66) Again this Court in A.M. Mathur vs. Pramod Kumar Gupta, 1990 (2) SCR 1100, ***reiterated this position while expunging the diappearing remarks***

made against an advocate who was also the former Advocate General of the State while dismissing a review petition. *These disparaging remarks were also contained only in the separate concurring order of one of the learned Judges of the division Bench. Incidentally, this matter was the afterm ath of Nandlal Jaiswal (supra) which made it worse While expunging the disparaging remarks made by the learned Judge in a separate concurring order, this Court stated as under :*

"It may be noted that C.P. Sen, J dismissed the review petition on the ground of maintainability, limitation and locus standing of the petitioner. Thereafter the application was filed to pass strictures against the appellant in the light of Vidhan Sabha proceedings. B.M. Lal, J. seems to have acceded to that request. No doubt each Judge is independent to form an opinion of his own in deciding ses or in any phase of the decisional function, But the facts of the present case against the background of the views expressed by this Court apropos to the earlier strictures against the Government clear he was in his mind, not to criticise the appellant The evidence of even the appearances of bitterns. so important in a judge required him not to cast aspersing on the professional conduct of the appellant."

(at page 116) "Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be a constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary Judicial restraint in this regard might better be called judicial respect: that is, respect by the judiciary. Respect to those who come before the Court as well to other co-ordinate branches of the state. the Executive and Legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will neither good for the judge nor for the judicial process.

The Judges Branch is a seat of power Not only do judges have power to make binding decisions, their decisions legitimate the use of power by other officials. ***The***

Judges have the absolute and unchallenged control of the Court domain, But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. We concede that the Court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct. *(See (i) R.K. Lakshmanan v. A.K. Srinivasan, [1976] 1 SCR 204 and (ii)Niranjan Patnaik v. Sashibhushan Kar, [1986] 2 SCC 567 at 576)."*

(at page 117) "We therefore, allow the appeal and expunge all the remarks made by B.M. Lal, J. against the appellant in the impugned order."

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

"19. We may now refer to certain earlier decisions where the right of courts to make free and fearless comments and observations on the one hand and the corresponding need for maintaining sobriety, moderation and restraint regarding the character, conduct integrity, credibility etc. of parties, witnesses and others are concerned.

20. In The State of Uttar Pradesh v. Mohammad Naim [1964] 2 SCR 363 it was held as follows :

"If there is one principle of cardinal importance in the administration of justice, it is this : the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions 'freely and fearlessly and without undue interference by any body, even by this Court. At the same time it is equally necessary that ***in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fairplay and restraint.*** *It is not infrequent that sweeping*

generalizations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. ***It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."***

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

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

"The High Court, as the supreme court of revision, must be deemed to have power to see that Courts below do not unjustly and without any lawful excuse take away the character of a party or of a witness or of a counsel before it."

23. *It is, therefore, settled law that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before courts of law unless it is really necessary for the decision of the case, as an integral part thereof to animadvert on that conduct. We hold that the adverse remarks made against the appellant were neither justified nor called for.*

24. Having regard to the limited controversy in the appeal to the High Court and the hearsay nature of evidence of the appellant it was not at all necessary for the Appellate Judge to have animadverted on the conduct of the appellant for the purpose of allowing the appeal of the first respondent. Even assuming that a serious evaluation of the evidence of the appellant was really called for in the appeal the remarks of the

learned Appellate Judge should be in conformity with the settled practice of courts to observe sobriety, moderation and reserve. We need only remind that the higher the forum and the greater the powers, the greater the need for restraint and the more mellowed the reproach should be.

25. *As we find merit in the contentions of the appellant, for the aforesaid reasons, we allow the appeal and direct the derogatory remarks made against the appellant set out earlier to stand expunged from the judgment under appeal."*

53. Hon'ble Supreme Court in the case of **Amar Pal Singh Vs. State of U.P. (2012) 6 SCC 491,** it is ruled as under;

19. From the aforesaid enunciation of law it is quite clear that for more than four decades this Court has been laying emphasis on the sacrosanct duty of a Judge of a superior Court how to employ the language in judgment so that a message to the officer concerned is conveyed. It has been clearly spelt out that there has to be a process of reasoning while unsettling the judgment and such reasoning are to be reasonably stated with clarity and result orientation. ***A distinction has been lucidly stated between a message and a rebuke. A Judge is required to maintain decorum and sanctity which are inherent in judicial discipline and restraint. A judge functioning at any level has dignity in the eyes of public and credibility of the entire system is dependent on use of dignified language and sustained restraint, moderation and sobriety.*** *It is not to be forgotten that independence of judiciary has an insegregable and inseparable link with its credibility.* ***Unwarranted comments on the judicial officer creates a dent in the said credibility and consequently leads to some kind of erosion and affects the conception of rule of law. The sanctity of decision making process should not be confused with sitting on a pulpit and delivering sermons which defy decorum because it is obligatory on the part of the superior Courts to take recourse to correctional measures.*** *A reformative method can be taken recourse to on the administrative side. It is condign to state it should be paramount in the mind of a Judge of*

superior Court that a Judicial officer projects the face of the judicial system and the independence of judiciary at the ground reality level and ***derogatory remarks against a judicial officer would cause immense harm to him individually (as the expunction of the remarks later on may not completely resuscitate his reputation) but also affects the credibility of the institution and corrodes the sacrosanctity of its zealously cherished philosophy. A judge of a superior Court however strongly he may feel about the unmerited and fallacious order passed by an officer, but is required to maintain sobriety, calmness, dispassionate reasoning and poised restraint. The concept of loco parentis has to take a foremost place in the mind to keep at bay any uncalled for any unwarranted remarks.***

20. Every judge has to remind himself about the aforesaid principles and religiously adhere to them. In this regard it would not be out of place to sit in the time machine and dwell upon the sagacious saying of an eminent author who has said that ***there is a distinction between a man who has command over 'Shastras' and the other who knows it and puts into practice. He who practises them can alone be called a 'vidvan'.*** *Though it was told in a different context yet the said principle can be taken recourse to, for one may know or be aware of that use of intemperate language should be avoided in judgments but while penning the same the control over the language is forgotten and acquired knowledge is not applied to the arena of practice. Or to put it differently the knowledge stands still and not verbalised into action. Therefore, a committed comprehensive endeavour has to be made to put the concept to practice so that it is concretised and fructified and the litigations of the present nature are avoided.*

21. Coming to the case at hand in our considered opinion the observations, the comment and the eventual direction were wholly unwarranted and uncalled for. The learned Chief Judicial Magistrate had felt that the due to delay and other ancillary factors there was no justification to exercise the power under Section 156 (3) of the Code. The

learned Single Judge, as is manifest, had a different perception of the whole scenario. Perceptions of fact and application of law may be erroneous but that never warrants such kind of observations and directions. Regard being had to the aforesaid we unhesitatingly expunge the remarks and the direction which have been reproduced in paragraph three of our judgment. If the said remarks have been entered into the annual confidential roll of the judicial officer the same shall stand expunged. That apart a copy of the order be sent by the Registrar of this Court to the Registrar General of the High Court of Allahabad to be placed on the personal file of the concerned judicial officer.

Advocates are also officers of the Court and they entitled for equal treatment as that of Judges

Hence it is clear that Justice Rohington Fali Nariman is a person who neither knows the law nor knows its application .i.e. neither Command over shastras nor put it into practice.

54. # CHARGE # <u>CONVICTING A PERSON UNDER CONTEMPT WITHOUT FRAMING CHARGE MAKES THE JUDGE LIABLE TO PAY COMPENSATION TO VICTIM AS IT IS VIOLATION OF FUNDAMENTAL RIGHTS OF THE ALLEGED CONTEMNOR.</u>

(i) In the present case it is crystal clear that the proper procedure to be followed was either to follow procedure under section 14 of the Contempt of Courts Act as ruled by Full Bench of Hon'ble Supreme Court in **<u>Dr. L. P. Mishra Vs. State of U.P. (1998) 7 SCC 379 (Full Bench)</u>** *(Supra)*, **<u>Leila David Vs. State (2009) 10 SCC 337</u>** *(Supra)*, **<u>Smt. Manisha Mukherjee Vs. Asoke Chatterjee, 1985 Cri. L. J. 1224</u>** *(supra)*by taking action on the spot when it was alleged to have been committed.

OR

The next course open to the Court was to follow the procedure of Section 15 of the Contempt of Courts Act as explained in **<u>Smt. Manisha Mukherjee Vs. Asoke Chatterjee, 1985 Cri. L. J. 1224</u>**,**<u>High Court of Karnataka Vs Jai Chaitanya Dasa 2015 (3) AKR 627.</u>**

In any of the procedure i.e. either under section 14 of 15 of Act it is mandatory ruled that framing of the charge of Contempt is must. **<u>[Vide:- Vinay Chandra Mishra AIR 1995 SC 2348 (Full Bench)]</u>**

Hon'ble Supreme Court **<u>in Re: Vinay Chandra Mishra AIR 1995 SC 2348</u>** case it is ruled as under;

"9*. ….The learned Judge or the Bench could have taken action for the offence on the spot. …… However the fact that process is sumary does not mean that the procedure requirement. Viz., that an opportunity of making the charge is denied to the Contemnor. The degree of precision with which the charge may be stated depends upon the circumstances……..*

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

10. *In the present case, although the contempt is in the face of the court, the procedure adopted is not only not summary but has adequately safeguarded the contemner's interest. The contemner was issued a notice intimating him the specific allegation against him. He was given an opportunity to counter the allegations by filing his counter affidavit and additional counter/supplementary affidavit as per his request, and he has filed the same. He was also given an opportunity to file an affidavit of any other person that he chose or to produce any other material in his defence, which he has not done. However, in the affidavit which he has filed, he has requested for an examination of the learned Judge. We have at length dealt with the nature of in facie curiae contempt and the justification for adopting summary procedure and punishing the offender on the spot. In such procedure, there is no scope for examining the Judge or Judges of the court before whom the contempt is committed. To give such a right to the contemner is to destroy not only the raison d'etre for taking action for contempt committed in the face of the court but also to destroy the very jurisdiction of the Court to adopt proceedings for such conduct. It is for these reasons that neither the common law nor the statute law countenances the claim of the offender for examination of the Judge or Judges before whom the contempt is committed. Section 14of our Act, i.e., the Contempt of Courts Act, 1971 deals*

with the procedure when the action is taken for the contempt in the face of the Supreme Court and the High Court. Sub-section [3] of the said Section deals with a situation where in facie curiae contempt is tried by a Judge other than the Judge or judges in whose presence or hearing the offence is alleged to have been committed. The provision in specific terms and for obvious reasons, states that in such cases it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, to appear as a witness and the statement placed before the Chief Justice shall be treated as the evidence in the case. The statement of the learned Judge has already been furnished to the contemner and he has replied to the same. We have, therefore, to proceed by treating the statement of the learned Judge and the affidavits filed by the contemner and the reply given by the learned Judge to the saidaffidavits, as evidence in the case."

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

"20 As a matter of fact, the appellant ought to succeed on the singular ground that the High Court unjustly proceeded against him without framing formal charges or furnishing such charges to him; and moreso because filing of affidavit by the appellant was supported by contemporaneous official record, which cannot be termed as an attempt to obstruct the due course of administration of justice. Accordingly, this appeal ought to succeed."

It is further ruled that ;

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

"27. In view of the above, the law can be summarised

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

13.*We may usefully refer to two other decisions dealing with the issue under consideration. In* ***Muthu Karuppan, Commissioner of Police, Chennai Vs. Parithi Ilamvazhuthi and Anr.(2011) 5 SCC 496****, 2 this Court observed thus:*

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

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

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

Hence even if summary procedure is followed then also framing of charge and giving the opportunity to alleged Contemnor to produce defence evidence is mandatory.

But Justice Rohington Fali Nariman & Justice Vinneet Saran did not frame the charge nor allowed Advocate Nedumpara to produce defence evidence and without following the procedure declared him guilty of Contempt. This is violation of Fundamental Rights of Advocate Nedumpara and he is entitled for Compensation. A law in this regard is well settled.

In **Privy Council Appeal No 7 of 1976** a **[3-Judge Bench]** in the case between **Ramesh Maharaj Vs. The Attorney General** had ruled that when advocate is punished under Contempt without framing specific charge against him and without affording him the opportunity to appoint a lawyer to defence his case is illegal. Appellate Bench had criticized the conduct of said Judge. It is ruled as under;

> *"Advocate – The appellant was advocate – he was punished under Contempt without opportunity to consult lawyer. It is very unfortunate conduct on the part of subordinate Judge."*
> ***Their Lordship think it unfortunate that in this case the learned Judge, in his discretion, refused the appellant's request for an opportunity of consulting Dr. Ramsahoye, a senior member of the Bar who no doubt would have given the appellant excellent advice and also perhaps***

have persuaded the learned Judge from falling into error.

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

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

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

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

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

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

55. In **Walmik s/o Deorao Bobde Vs. State 2001 ALLMR (Cri.)1731,** it is ruled that

> *In our opinion a reckless arrest of a citizen and detention even under a warrant of arrest by a competent Court without first satisfying itself of such necessity and fullfilment of the requirement of law is actionable as it violates not only his fundamental rights but such action deserves to be condemned being taken in utter disregard to human rights of an individual citizen.*
>
> *Compensation granted*
>
> *"11. We have ascertained the status of the petitioner so as to work out his entitlement for compensation. We are informed that the petitioner works as Production Manager in a reputed firm M/s. Haldiram Bhujiwala, and draws salary of more than Rs.7000/- p.m. He has, wife, two marriageable daughters and a son in his family. After giving our anxious thought to the matter we award a sum of Rs.10,000/- to the petitioner as compensation. The State is directed to pay the amount of Rs.10,000/- to the petitioner within a period of four weeks, or deposit the same in this Court. We are also granting cost to the petitioner quantified to Rs.5000/-. It will be open for the State to recover the amount so awarded from the monetary benefits/pension, the delinquent clerk/his family is entitled to receive or will be receiving on his death. Rule made absolute in the aforesaid terms. Certified copy expedited.*
>
> *12. Additional Registrar, to circulate the copy of this order to all the District & Sessions Judges, for being circulated to Judicial Officers working within their jurisdiction."*

56. Hon'ble Supreme Court in **Indirect Tax Practitioner Associations Vs. R.K.Jain (2010) 8 SCC 281** had granted compensation of Rupees 2 Lacs for frivolous Contempt against the whistle blower.

57. Hence based on the above principle appropriate compensation need to be granted to Advocate Nedumpara by invoking Writ Jurisdiction under Article 32 of the Constitution of India.

In **Dr. Mahmood Nayyer Azam Vs. State (2012) 8 SCC 1**, it is ruled as under ;

> ***Article 21 of the Constitution - RIGHT TO LIFE***

includes the right to live with human dignity and all that goes along with it – If reputation is injured by unjustified acts of Public servants then Writ Court can grant compensation- Rs.5.00 lacs (Rupees five lacs only) should be granted towards compensation to the appellant - law cannot become a silent spectator - The law should not be seen to sit by limply, while those who defy if go free, and those who seek its protection lose hope - When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector- The action of the State, must be "right, just and fair". Using any form of torture would neither be 'right nor just nor fair' and, therefore, would be impermissible, being offensive to Article 21 - Any psychological torture inflicts immense mental pain. A mental suffering at any age in life can carry the brunt and may have nightmarish effect on the victim. The hurt develops a sense of insecurity, helplessness and his self-respect gets gradually atrophied- the authorities possibly have some kind of sadistic pleasure or to "please someone" meted out the appellant with this kind of treatment. It is not to be forgotten that when dignity is lost, the breath of life gets into oblivion. In a society governed by rule of law where humanity has to be a laser beam, as our compassionate constitution has so emphasized, the police authorities cannot show the power or prowess to vivisect and dismember the same. When they pave such path, law cannot become a silent spectator - The law should not be seen to sit by limply, while those who defy if go free, and those who seek its protection lose hope.

B] The High Court, despite no factual dispute, has required him to submit a representation to the State Government for adequate relief pertaining to grant of compensation after expiry of 19 years with a further stipulation that if he is aggrieved by it, he can take recourse to requisite proceedings available to him under law. We are pained to say that this is not only asking a man to prefer an appeal from Caesar to Caesar's wife but it also compels him like a cursed Sisyphus to carry

the stone to the top of the mountain wherefrom the stone rolls down and he is obliged to repeatedly perform that futile exercise.

58. Full Bench of Hon'ble Supreme Court in the case of **S. Vambi Narayanan Vs. Siby Mathews and Others (2018) 10 SCC 804**had granted compensation of Rupees 50 Lacs. It is ruled as under para 40 & 44

> ***40.*** *If the obtaining factual matrix is adjudged on the aforesaid principles and parameters, there can be no scintilla of doubt that the Appellant, a successful scientist having national reputation, has been compelled to undergo immense humiliation.* ***The lackadaisical attitude of the State police to arrest anyone and put him in police custody has made the Appellant to suffer the ignominy. The dignity of a person gets shocked when psycho-pathological treatment is meted out to him. A human being cries for justice when he feels that the insensible act has crucified his self-respect. That warrants grant of compensation under the public law remedy. We are absolutely conscious that a civil suit has been filed for grant of compensation. That will not debar the constitutional court to grant compensation taking recourse to public law. The Court cannot lose sight of the wrongful imprisonment, malicious prosecution, the humiliation and the defamation faced by the Appellant.*** *In Sube Singh v. State of Haryana and Ors. MANU/SC/0821/2006 : (2006) 3 SCC 178, the three-Judge Bench, after referring to the earlier decisions, has opined:*
>
> ***38. It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right Under Article 21, by a public servant.*** *The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation Under Section 357 of the Code of Criminal*

Procedure.

44. *Mr. Giri, learned senior Counsel for the Appellant and the Appellant who also appeared in person on certain occasions have submitted that the grant of compensation is not the solution in a case of the present nature. It is urged by them that* ***the authorities who have been responsible to cause such kind of harrowing effect on the mind of the Appellant should face the legal consequences. It is suggested that a Committee should be constituted to take appropriate steps against the erring officials. Though the suggestion has been strenuously opposed, yet we really remain unimpressed by the said oppugnation. We think that the obtaining factual scenario calls for constitution of a Committee to find out ways and means to take appropriate steps against the erring officials. For the said purpose, we constitute a Committee which shall be headed by Justice D.K. Jain, a former Judge of this Court. The Central Government and the State Government are directed to nominate one officer each so that apposite action can be taken.*** *The Committee shall meet at Delhi and function from Delhi. However, it has option to hold meetings at appropriate place in the State of Kerala. Justice D.K. Jain shall be the Chairman of the Committee and the Central Government is directed to bear the costs and provide perquisites as provided to a retired Judge when he heads a committee. The Committee shall be provided with all logistical facilities for the conduct of its business including the secretarial staff by the Central Government.*

59. #CHARGE# FRIVOLOUS CHARGE OF CONTEMPT IS OFFENCE UNDER SECTION 211 OF INDIAN PENAL CODE As per **Hari Das & Another Vs State of West Bangal & othersAIR 1964 SUPREME COURT 1773**

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

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

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

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

In **Kapol Co-op. Bank Ltd. Vs. State of Maharashtra 2005 Cri.L.J.765** it is ruled that the term **"Abuse of Process of Court**" means act of bringing frivolous, vexations and oppressive proceedings.

The same is the act of Justice Rohington Fali Nariman by bringing frivolous Contempt case against Advocate Nedumpara. Therefore Justice Rohington Nariman & Justice Vineet Saran are liable to be punished under section 211, 120(B) & 34 of Indian Penal Code.

They are also liable for action under section 220 o Indian Penal Code.

Section 220 of Indian Penal Code reads as under;

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

61. #CHARGE# NO LENIENCY CAN BE SHOWN TO JUDGE IF HE FOUND GUILTY OF FRAUD ON POWER.

In **Vijay Shekhar Vs. Union of India 2004 (3) Crimes 22 (Full Bench) (S.C.),** it is ruled that if any Judge passes any order taking in to consideration the

material outside the record i.e. extraneous consideration ,then it is called as ***"Fraud on Power"***

62. In Formac Engineering Ltd. and Ors. Vs. Municipal Corporation of Greater Mumbai and Ors. 2011 (4) Mh.L.J. 152 it is ruled as under;

> ***1 .When the impugned order is founded on considerations alien to or extraneous of the subject provision and attempt is made to justify some other observations and findings, then, unless it is possible to exclude or separate the relevant and the irrelevant or non-existent, the final conclusion cannot be upheld.***
>
> ***2. The emphasis is that no extraneous matters should be taken into consideration by the public Authority. Precisely, that has been found in this case.***
>
> ***3. It is well settled that a Court exercising jurisdiction under Article 226 of the Constitution of India and particularly while considering a request to issue a writ of certiorari, quashing an order of the present nature is entitled to investigate the action of the local Authority with a view to seeing whether or not they have taken into account matters which they ought to have taken into account or conversely have refused to take into account or neglected to take into account matters which they ought to take into account.***

In present case Justice Nariman had done the same wrong. It is done with malafide intention and for ulterior purposes as ex-facie proved from the record and explanation given in the proceeding prasa.

63. Under these circumstances since Justice Nariman is Judge of a Supreme Court, he does not deserve any leniency. A useful references can be made from **Court On Its Own Motion Vs. Rajeev Dhawar 2007 SCC OnLine Del 5**, Where it is ruled as under ;

> ***"Contempt - Addl. Sessions Judge directed that a reference to the High Court be prepared and a copy of the complaint received from the accused be also***

sent to the Chairman, Bar Council of Delhi – Held, for maintaining the stream of justice unsullied, it is essential that aberration committed by those who are integral part of the administration of justice are sternly and firmly dealt with. Magnanimity and latitude should be available to those who are not knowledgeable or conversant with the system or commit the offence unwittingly or innocently here person who committed criminal contempt is well versed with the law and is liable to be punished for the same. We impose a fine of Rs. 2000/- on respondent. Further, in exercise of powers under Article 215 of the Constitution of India, we direct that respondent-contemnor shall not be permitted to appear in this Court or the courts subordinate to it for a period a two months.

64. #CHARGE# ABUSE OF POWER BY PASSING CONVICTION WITH UNDUE HASTE PROVES MALAFIDES, C.B.I. INVESTIGATION NEEDED TO KNOW THE CONSPIRACY.

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

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

In the present case when Justice Rohington Fali Nariman had not taken any action on the spot i.e. on 5th March, 2019 then there was no such urgency to not to follow the procedure of Section 14 & Section 15 of Contempt of Courts Act 1971 as ruled by Full Bench of Hon'ble Supreme Court in **Dr. L. P. Mishra Vs. State of U.P. (1998) 7 SCC 379** *(Supra).*

But Justice Rohington Fali Nariman had acted against the procedure without any explanation as to what is the urgency to not to follow the procedures mandated under the law. This itself is a ground to infer that he have been actuated by an oblique motive or corrupt practice. **[Vide:- R.R. Parekh Vs. High Court of Gujrat (2016) 14 SCC 1]**

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

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

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

handed down sentences of five months and three months in such a manner that after taking account of the set-off of the period during which they had remained as under-trial prisoners, they would be released from jail. The Appellant had absolutely no convincing explanation for this course of conduct.

Hon'ble Bombay High Court in **Garware Polyster Ltd. Vs. The State of Maharashtra and Ors. 2010 SCC OnLine Bom 2223** had ruled as under ;

Contempt of Courts Act – All the officers /authorities are bound to follow the procedure laid down by Higher Court in its judgment – The legal proceeding is initiated by the officer is against the judgment of High Court amounts to contempt of High Court – show cause notice is issued to Mr. MoreshwarNathuji Dubey, Dy. Commissioner, LTU, Aurangabad, returnable after four weeks to show cause, as to why action under the provisions of the Contempt of Courts Act should not be initiated against him.

In **Rabindra Nath Singh Vs. Rajesh Ranjan @ Pappu Yadav and Anr. (2010) 6 SCC 417** it is ruled as under ;

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

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

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

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

means.

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

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.

In Erusian Equipment & Chemicals Ltd. v. State of West Bengal and Anr. ([1975] 2 SCR 674), the Supreme Court observed that where Government activity involves public element, the "citizen has a right to gain equal treatment", and when "the State acts to the prejudice of a person, it has to be supported by legality." Functioning of "democratic form of Government demands equality and absence of arbitrariness and discrimination."

Every action of the executive Government must be informed by reasons and should be free from arbitrariness. That is the very essence of rule of law and its bare minimum requirement.

The decision taken in an arbitrary manner contradicts the principle of legitimate expectation and the plea of legitimate expectation relates to procedural fairness in decision making and forms a part of the rule of non-

arbitrariness as denial of administrative fairness is Constitutional anathema.

The rule of law inhibits arbitrary action and such action is liable to be invalidated. Every action of the State or its instrumentalities should not only be fair, legitimate and above-board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even apparently give an Impression of bias, favoritism and nepotism.

Procedural fairness is an implied mandatory requirement to protect arbitrary action where Statute confers wide power coupled with wide discretion on the authority. If procedure adopted by an authority offends the fundamental fairness or established ethos or shocks the conscience, the order stands vitiated. The decision making process remains bad.

Official arbitrariness is more subversive of doctrine of equality than the statutory discrimination. In spite of statutory discrimination, one knows where he stands but; the wand of official arbitrariness can be waved in all directions indiscriminately.

Similarly, in S.G. Jaisinghani v. Union of India and Ors.([1967] 65 ITR 34 (SC)), the Constitution Bench of the Apex Court observed as under:

"In the context it is important to emphasize that absence of arbitrary power is the first essence of the rule of law, upon which our whole Constitutional System is based. In a system governed by rule of law, discretion, when conferred upon Executive Authorities, must be confined within the clearly defined limits. Rule of law, from this point of view, means that the decision should be made by the application of known principle and rules and h general such, decision should be predictable and the citizen should know where he is, if a decision is taken without any principle or without any rule, it is unpredictable and such a decision is" antithesis to the decision taken in accordance with the rule of law."

Even in a situation where an authority is vested with a discretionary power, such power can be exercised by adopting that mode which best serves the interest and even if the Statute is silent as to how the discretion should be exercised, then too the authority cannot act

whimsically or arbitrarily and its action should be guided by reasonableness and fairness because the legislature never intend that its authorities could abuse the laws or use it unfairly. Any action which results in unfairness and arbitrariness results in violation of Article 14 of the Constitution. It has also been emphasized that an authority cannot assume to itself an absolute power to adopt any procedure and the discretion must always be exercised according to law. It was, therefore, obligatory for the Chancellor to have held a proper enquiry in accordance with the principles of natural justice and mere giving of show cause notice requiring the petitioner to submit an explanation does not serve the purpose. The factual position that emerges in the present case is that the report of the Commissioner, Jhansi formed the sole basis for taking action against the Vice-Chancellor.

A Constitution Bench of the Hon'ble Supreme Court in Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors. ([1978] 2 SCR 272), while considering the issue held that observing the principles of natural justice is necessary as it may adversely affect the civil rights of a person. While deciding the said case, reliance was placed by the Hon'ble Supreme Court on its earlier judgments in State of Orissa v. Dr. (Miss) Binapani Dei and Ors. (1967 IILLJ 266 SC) wherein the Court held that the procedural rights require to be statutorily regulated for the reason that sometimes procedural protections are too precious to be negotiated or whittled down.

In Dr.Binapani Dei (supra), the Hon'ble Apex Court held as under:

"It is one of the fundamental rules of our constitutional set up that every citizen is protected against the exercise of arbitrary authority by the State or its officers If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity."

Discretion - It signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste - Discretion cannot be arbitrary - But must be result of judicial thinking - Word in itself implies vigilant circumspection and care.

The contention that the impugned order was liable to be set aside inasmuch as the Chancellor had proceeded in hot haste after receiving the report from the State Government on 2nd June, 2005 as he issued the notice to the Vice-Chancellor on 24th June, 2005 and passed the impugned order on 16th July, 2005 when his term was going to end on 31st July, 2005 if, also worth acceptance.

Constitution of India - Article 14 - Principles of natural justice - If complaint made is regarding mandatory facet of principles of natural justice - Proof of prejudice not required.

In a case where a result of a decision taken by the Government the other party is likely to be adversely affected, the Government has to exercise its powers bona fide and not arbitrarily. The discretion of the Government cannot be absolute and in justiciable vide Amarnath Ashram Trust Society v. Governor of U.P. (AIR 1998 SC 477).

Each action of such authorities must pass the test of reasonableness and whenever action taken is found to be lacking bona fide and made in colorable exercise of the power, the Court should not hesitate to strike down such unfair and unjust proceedings. *Vide Hansraj H. Jain v. State of Maharashtra and Ors[(1993) 3 SCC 634].*

In fact, the order of the State or State instrumentality would stand vitiated if it lacks bona fides as it would only be a case of colourable exercise of power. In State of Punjab and Anr.v. Gurdial Singh and Ors. [(1980) 1 SCR 1071] the Hon'ble Apex Court has dealt with the issue of legal malice which is, just different from the concept of personal bias. The Court observed as under:

"When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the Court calls it a colourable exercise and is undeceived by illusion.... If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impels the action mala fides or fraud on power vitiates the...official act."

In Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Ors. [(1991) I LLJ 395 SC] and DwarkaDass and Ors. v. State of Haryana (2003 CriLJ 414) the Supreme Court observed that "discretion when conferred upon the executive authorities, must be confined within definite limits. The rule of law from this point of view means that decision should be made by the application by known-principles and rules and in general, such decision should be predictable and the citizen should know where he is.

The scope of discretionary power of an authority has been dealt with by the Supreme Court in Bangalore Medical Trust v. B.S. Muddappa and Ors [(1991) 3 SCR 102]and it has been observed:

"Discretion is an effective tool in administration. But wrong notions about it results in ill-conceived consequences. In law it provides an option to the authority concerned to adopt one or the other alternative. But ***a better, proper and legal exercise of discretion is one where the authority examines the fact, is aware of law and then decides objectively and rationally what serves the interest better. When a statute either provides guidance or rules or regulations are framed for exercise of discretion then the action should be in accordance with it. Even where statutes are silent and only power is conferred to act in one or the other manner, the Authority cannot act whimsically or arbitrarily. It should be guided by reasonableness and fairness. The legislature never intends its***

authorities to abuse the law or use it unfairly.”

In Suman Gupta and Ors.v. State of J. & K. and Ors. ([1983] 3 SCR 985), the Supreme Court also considered the scope of discretionary powers and observed:

> *“We think it beyond dispute that the exercise of all administrative power vested in public authority must be structured within a system of controls informed by both relevance and reason - relevance in relation to the object which it seeks to serve, and reason in regard to the manner in which it attempts to do so. Wherever the exercise of such power affects individual rights, there can be no greater assurance protecting its valid exercise than its governance by these twin tests. A stream of case law radiating from the now well known decision in this Court in Maneka Gandhi v. Union of India has laid down in clear terms that Article 14 of the Constitution is violated by powers and procedures which in themselves result in unfairness and arbitrariness. It must be remembered that our entire constitutional system is founded in the rule of law, and in any system so designed it is impossible to conceive of legitimate power which is arbitrary in character and travels beyond the bounds of reason.’*

In Union of India v. Kuldeep Singh (AIR 2004 SC 827), the Supreme Court again observed:

> ***“When anything is left to any person, judge or Magistrate to be done according to his discretion, the law intends it must be done with sound discretion, and according to law.*** *(See Tomlin's Law Dictionary.) In its ordinary meaning, the word "discretion" signifies unrestrained exercise of choice or will; freedom to act according to one's own judgment; unrestrained exercise of will; the liberty or power of acting without control other than one's own judgment. But, when applied to public functionaries, it means*

a power or right conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. ***Discretion is to discern between right and wrong; and therefore, whoever hath power to act at discretion, is bound by the rule of reason and law."***

Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, the discernment which enables a person to judge critically of what is correct and proper united with caution; nice soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colourable glosses and pretences, and not to do according to the will and private affections of persons. When It is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office ought to confine himself *(per Lord Halsbury, L.C., in Sharp v. Wakefield). Also see S.G. Jaisinghani v. Union of India { [1967] 65 ITR 34 (SC) }.*

The word "discretion" standing single and unsupported by circumstances signifies exercise own judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently therefore a discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore, where the legislature concedes discretion it also imposes

a heavy responsibility.

MandalVikas Nigam Ltd. v. Girja Shankar Pant and Ors (AIR 2001 SC 24).while examining the legality of an order of dismissal that had been passed against the General Manager (Tourism) by the Managing, Director. In this context, while considering the doctrine of principles or natural justice, the Supreme Court observed:

"It is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence of this country. The judicial process itself embraces a fair and reasonable opportunity to defend though, however, we may hasten to add that the, same is dependent upon the facts and circumstances of each individual case.... It is on this context, the observations of this Court in the case of SayeedurRehman v. The State of Bihar ([1973] 2 SCR 1043) seems to be rather apposite."

The omission of express requirement of fair hearing in the rules or other source of power is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties.

G) Incidentally, Hidyatullah, C.J., in Channa basappa Basappa Happali v. State of Mysore ([1971] 2 SCR 645), recorded the need of compliance of certain requirements in a departmental enquiry as at an enquiry, facts have to be proved and the person proceeded against must have an opportunity to cross-examine witnesses and to give his own version or explanation about the evidence on which he is charged and to lead his defence. On this state of law simple question arises in the contextual facts, has this been complied with? The answer however on the factual score is an emphatic "no".

Was the Inquiry Officer justified in coming to such a conclusion on the basis of the charge-sheet only? The answer cannot possibly be in the affirmative. If the records have been considered, the immediate necessity would be to consider as to who is the person who has produced the same and the next issue could be as regards the nature of the records-unfortunately there is not a whisper in the rather longish report in that regard. Where is the Presenting Officer? Where is the notice fixing the date of hearing? Where is the list of witnesses? What has happened to the defence witnesses? All these questions arise but unfortunately no answer is to be found in the rather longish Report. ***But if one does not have it-Can it be termed to be in consonance with the concept of justice or the same tantamounts to a total miscarriage of justice. The High Court answers it as miscarriage of justice and we do lend out concurrence therewith.***

H) If a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following other course is not permissible *A decision of the King's Bench Division in the case of Denby (William) and Sons Limited v. Minister of Health [(1936) 1 KB 337] may be considered Swift, J. while dealing with the administrative duties of the Minister has the following to state:*

" 'Discretion' means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion : Rooke's case (1598) 5 Co Rep 99b 100a; according to law, and not humor. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself.

When the Statute provides for a particular

procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. It has been hither to uncontroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all, Other methods or mode of performance are impliedly and necessarily forbidden."

The aforesaid settled legal proposition is based on a legal maxim "Expressiouniusestexclusioalterius", meaning thereby that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following other course is not permissible his maxim has consistently been followed, as is evident from the cases referred to above. A similar view has been reiterated in HareshDayaram Thakur v. State of Maharashtra and Ors (AIR 2000 SC 266).

The Commissioner did not examine any witness in the presence of the Vice-Chancellor; nor was the Vice-Chancellor given any opportunity to cross-examine them. Even date, time or place was not fixed for the enquiry and neither any Presenting Officer had been appointed.

Removal of the Vice-Chancellor from such an office is a very serious matter and it not only curtails the statutory term of the holder of the office but also casts a stigma on the holder as allegations rendering him untrustworthy of the office are found to be proved. It, therefore, becomes all the more necessary that great care should be taken in holding the enquiry for removal of the Vice-Chancellor of the University and the principles of natural justice should be strictly complied with.

The contention advanced by Sri NeerajTripathi that the Chancellor was justified in restricting the scope of enquiry in his discretionary powers to the issuance of the notice alone cannot be accepted.

The Supreme Court has repeatedly observed that even in a situation where an authority is vested with a discretionary power, such power can be exercised by adopting that mode which best serves the interest and even if the Statute is silent as to how the discretion should be exercised, then too the authority cannot act whimsically or arbitrarily and its action should be guided by reasonableness and fairness because the legislature never intend that its authorities could abuse the laws or use it unfairly. Any action which results in unfairness and arbitrariness results in violation of Article 14 of the Constitution. It has also been emphasized that an authority cannot assume to itself an absolute power to adopt any procedure and the discretion must always be exercised according to law. It was, therefore, obligatory for the Chancellor to have held a proper enquiry in accordance with the principles of natural justice and mere giving of show cause notice requiring the petitioner to submit an explanation does not serve the purpose. The order of removal of the Vice-Chancellor is, therefore, liable to be set aside only on this ground.

The contention of Sri NeerajTripathi, learned Counsel for the Chancellor that even in such situation, the order should not be set aside as the petitioner has not been able to substantiate that prejudice had been caused to him for not observing the principles of natural justice cannot also be accepted. In the first instance, as seen above, prejudice had been caused to the petitioner in the absence of a regular enquiry but even otherwise, the Supreme Court in State Bank of Patiala and Ors. v. S.K. Sharma [(1996) IIILLJ 296 SC] had observed that if the complaint made is regarding the mandatory facet of the principles of natural justice, then proof of prejudice is not required.

In Dr. Bool Chand v. The Chancellor Kurukshetra University ((1968) II LLJ 135 SC), the Hon'ble Supreme Court examined a similar case wherein

there was no procedure prescribed for removal of the Vice Chancellor under the Act applicable therein. After examining the statutory provisions applicable therein, the Court lime to the following conclusion:

"The power to appoint a Vice Chancellor has its source in the University Act; investment of that power carries with it the power to determine the employment; but the power is coupled with duty. The power may not be exercised arbitrarily, it can, be only exercised for good cause, i.e. in the interest of the University and only when it is found after due enquiry held in manner consistent with the rules of natural justice that the holder of the office is unfit to continue as Vice Chancellor."

I) For directing a fresh enquiry on the same allegations/charges, authority is required to record reasons otherwise it may become a tool for harassment of the delinquent in the hands of authority and in that case it may tantamount to a mala fide or colorable exercise of power.

The expression 'willful' excludes casual, accidental, bonafide or unintentional acts or genuine inability. It is to be noted that a willful act does not encompass accidental, involuntary or negligent. It must be intentional, deliberate, calculated and conscious with full knowledge of legal consequences flowing there from The expression 'willful' means an act done with a bad purpose, with an evil motive.

'Wilful' means an act or omission which is cone voluntarily and intentionally and with a specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose.

Hon'ble Supreme Court held that word 'otherwise' should be construed as ejusdem generis and must be interpreted to mean some kind of legal obligation or some transaction enforceable at law.

J) Earlier an enquiry had been conducted, and allegation was found to be baseless. It could not have been reopened. Criminal prosecution in this respect had also been launched but it failed.

Observation by the Chancellor that the petitioner did not lead any evidence in support of denial of the charge of giving employment to his close relatives is self-contradictory and supports the case of the petitioner, as he had not been given a chance to lead evidence on the issue. It could be possible for him only if a regular inquiry was conducted. Petitioner's preliminary objections that provisions of Section 8(1) to 8(7) were not complied with while conducting the inquiry, had been brushed aside by the Chancellor being merely "technical". Such a course was not permissible.

Indian Penal Code's Section 219 reads as under ;

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

Indian Penal Code's Section 167 reads as under ;

167. *Public servant framing an incorrect document with intent to cause injury.—Whoever, being a public servant, and being, as 1[such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby*

cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Hence Justice Rohington Fali Nariman & Justice Vineet Saran aree liable to be prosecuted and punished under section 219,167,220,120(B) & 34 of Indian Penal Code.

65. #CHARGE# <u>PASSING ORDER WITH ULTERIOR MOTIVE TO SAVE ACCUSED JUDGE S.J.KATHWALA AGAINST WHOM "INDIAN BAR ASSOCIATION" GOT DEEMED SANCTION MAKES JUSTICE ROHINGTON FALI NARIMAN LIABLE FOR PROSECUTION UNDER SECTION 218 OF INDIAN PENAL CODE.</u>

That in para 8 of His Judgment had made observation as under;

8. *The result of this order was that Shri Nedumpara felt emboldened enough to file a writ petition, being Writ Petition (L) No.1180 of 2018, in his own name against the Single Judge of the Bombay High Court who passed this order, the said Single Judge being arrayed as the sole respondent in the said petition. The prayers in the said petition are set out in paragraph 2 of the order dated 26.07.2018. The petition was dismissed holding that it was not maintainable. Paragraph 2 of the said petition reads as follows:*

*"**2.** The learned Judge (respondent herein) who has taken up the said Notice of Motion, vide Judgment pronounced on 05/03/2018 rejected the Motion moved by said Vilas Gaokar by imposing exemplary costs of Rs. 10,00,000/- on the said Vilas Gaokar. However, while rejecting the Notice of Motion, the learned Judge made certain observations about the petitioner which according to the petitioner are prejudicial. In the circumstances, the petitioner has filed this petition under Article 226 of the Constitution of India seeking following reliefs:*

a. To declare that the citizen whose fundamental rights are infringed by a judicial order is entitled to all legal remedies, common law, equitable and declaratory, compensation and damages, so too, even criminal action like

such infringement at the hands of legislature, executive and fellow citizens, and to assume otherwise will render

part III of the Constitution nugatory.

b. In the event of prayer (a) above being granted in favour of the Petitioner, he is entitled to initiate civil and even criminal proceedings against Respondent no. 1 (though the Petitioner intends to institute no criminal proceedings) in as much as the observations of Justice Kathawalla, one rendered behind his back is exfacie false and defamatory, even assuming that the said observations were made without any ulterior or malicious intentions.

c. To declare that no distinction can be made between subordinate judiciary and superior judiciary in so far as the prohibition contained in Article 13 (2) of the Constitution is concerned and that the superior judiciary also falls within the ambit of "State" under Article 12 just like the subordinate judiciary.

d. To grant compensation of Re. 1/- as damages, though the damage suffered by the Petitioner by virtue of the Order at Exhibit A, dated 05.03.2018 at the hands of Justice Kathawalla is irreparable and cannot be adequately compensated in terms of money.

e. Without prejudice to the reliefs (a) to (d) above and in furtherance thereof relegate the Petitioner to the civil court for the enforcement of the remedies vested in him, his fundamental rights being violated by virtue of Ex P1 at the hands of Justice Kathawalla, Respondent no. 1 above.

f. Any other order as this Hon'ble Court maydeem fit in the interest of justice."It is clear that prayers (b), (d), and (e) are clearly contemptuous, andan attempt to bring the administration of justice by a premier HighCourt of this country to a grinding halt. If lawyers can be bold enoughto file writ petitions against judges of a High Court on observationsjudicially made by a Judge of the High Court, the very independence ofthe judiciary itself comes under threat. Given the course of behaviourof Shri Nedumpara before Tribunals, the Bombay High Court, and thisCourt, it is clear that the said advocate has embarked on a course ofconduct which is calculated to defeat the administration of justice inthis country.

The abovesaid observations are in connection with the illegality committed by

Judge S.J. Kathawala in his unlawful order against Advocate Nedumpara.

66. The brief case is that Justice S.J.Kathawala passed very harsh & adverse remarks against Advocate nedumpara. Justice Kathawala is having tendency to play fraud on the Court and to pass unlawful & illegal orders by ignoring law laid down by Hon'ble Supreme Court . A detail Complaint with **'Sting Operation'** and documentary evidence is given to Hon'ble Chief Justice of India & Hon'ble President of India by **INDIAN BAR ASSOCIATION** [**Case No. PRSEC/E/2018/10792].** A copy of Complaint dated _____ is annexed herewith**. [Annexure_____]**

That Complaint is still under consideration and prayer for sanction to prosecute is not rejected by Hon'ble President of India. Therefore the "**INDIAN BAR ASSOCIATION (I.B.A)"** got **deemed sanction to prosecute the accused Judge Kathawala**. In view of law laid down by Hon'ble Supreme Court in **Vineet Narayana's case(1998) 1 SCC 226** and followed by Hon'ble High Court in **Shashikant Prasad Vs. The State Thru C.B.I., / A.C.B., Lucknow 2013 SCC OnLine 13099** The Prayer of "**INDIAN BAR ASSOCIATION**" in their Complaint before Hon'ble President of India against Justice Kathawala reads as under ;

> *" Direction to C.B.I. for taking action against Justice S. J. Kathawala under sec.166, 218, 219 r/w 120(B) & 34 of I.P.C. for acting contrary to law , and law laid by by Hon'ble Supreme Court may kindly be given.*
>
> ***OR***
>
> *i) Applicant be granted sanction/permission to launch prosecution against the Justice Kathawala in view of sec.197of Cr. P.C, and Judicial officer Protection act etc. and any law applicable thereto.*
>
> *ii) Direction to appropriate authority such as Solicitor General of India and others be given to initiate appropriate proceeding under Contempt of courts Acts against Justice S. J. Kathawala and direction for registering a Case under sec.409 etc of I.P.C. against Justice S. J. Kathawala for misappropriation of public funds for settling their personal scores, as prosecution of offender is obligation of the State / Govt.*
>
> *iii) Direction to appropriate authority to place the matter before Hon'ble Chief Justice of India in view of "In House Procedure" with a request to*

give direction Direction to Justice S. J. Kathawala to Resign from his Post as per Point No. 7(i) of In House Procedure and also in view of the mandatory Guidelines of Hon. Supreme Court in the Veerswami's Case (1991) 3 SCC 655(Constitution Bench), as the Misconduct, Criminal offences and Incapacity of Justice S. J. Kathawala is proved ex facie.

iv) Or direction to Chief Justice of Hon'ble Bombay High Court to not to assign any work to the above said judges Justice S. J. Kathawala, as gross fraud on power is ex facie proved.

v) Removal of Justice S. J. Kathawala for his proved incapacity to understand and follow the law, misbehavior and criminal offences committed by him and contempt of Hon'ble Supreme Court by him.

vi) Recovering of all the amount/ payments, salary taken by the incompetent judge. "

This being the position, and there being deemed sanction to Indian Bar Association(I.B.A) against Justice Kathawala then there was no occasion or reason for Justice Rohington Fali Nariman to make such irrelevant, unlawful and uncalled for observation. It is clear that said observations are made with ulterior motive to save his friend Justice S.J.Kathawalla and therefore Justice Rohington Fali Nariman is liable to be prosecuted under section 218 of Indian Penal Code.

Section 218 of Indian Penal Code reads as under;

218. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.—Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or

with both.

Hon'ble Bombay High Court in the case of **Anverkhan Mahamad khan Vs. Emperor 1921 SCC OnLineBom 126** it is ruled as under;

> *Indian Penal Code Section 218 – The gist of the section is the stiffening of truth and the perversion of the course of justice in cases where an offence has been committed it is not necessary even to prove the intention to screen any particular person. It is sufficient that he know it to be likely that justice will not be executed and that someone will escape from punishment.*

67. #CHARGE # INABILITY TO INTERPRET THE SUPREME COURT JUDGMENT:

In para 9 of the judgment, Justice Rohington Fali Nariman relied upon the Constitution Bench judgment in the case of **Sukhdev Singh Sodhi v. Chief Justice S. Teja Singh, 1954 SCR 454** to interpret that as per said ruling the Judge who is personally attacked has to hear the matter himself. In fact the law laid down in the said judgment is exactly contarary.

Para 9 of order by Justice Nariman reads as under;

> *9. When contempt is committed in the face of the Court, judges' hands are not tied behind their backs. The majesty of this Court as wellas the administration of justice both demand that contemptuous behavior of this kind be dealt with sternly. An early judgment of this Court in* ***Sukhdev Singh Sodhi v. Chief Justice S. Teja Singh, 1954 SCR 454proceeded cautiously, but made it clear that where a judge is personally attacked, it would be proper for the judge to deal with the matter himself, in cases of contempt in the face of the Court.***

The misinterpretation of said judgment is ex-facie proved from the same para 9 which reads the extract of ratio in ***Sukhdev Singh Sodhi v. Chief Justice S. Teja Singh, 1954 SCR 454,*** *w*here it is ruled exactly contrary to what interpreted by Justice Nariman. It is ruled by Hon'ble Supreme Court in ***Sukhdev Singh Sodhi v. Chief Justice S. Teja Singh, 1954 SCR 454*** *(Supra)* that ***a judge who has been personally attacked should not hear a contempt matter which, to that extent, concerns him personally*** :

Relevant para of Supreme Court judgment reads as under :

> *"We wish however to add that though we have no power to order a transfer in an original petition of this kind we consider it desirable on general principles of justice that* ***a judge who has been personally attacked should not as far as possible hear a contempt matter which, to that extent, concerns him personally.*** *It is otherwise when the attack is not directed against him personally. We do not lay down any general rule because there may be cases where that is impossible, as for example in a court where there is only one judge or two and both are attacked.*
>
> *Other cases may also arise where it is more convenient and proper for the Judge to deal with the matter himself, as for example in a contempt in facie curiae. All we can say is that this must be left to the good sense of the judges themselves who, we are confident, will comfort themselves with that dispassionate dignity and decorum which befits their high office and will bear in mind the oft quoted maxim that justice must not only be done but must be seen to be done by all concerned and most particularly by an accused person who should always be given, as far as that is humanly possible, a feeling of confidence that he will receive a fair, just and impartial trial by Judges who have no personal interest or concern in his case."*

This ex-facie proves very poor level of understanding of Justice Rohington Fali Nariman.

68. Furthermore, the law laid down in Sukhdev Singh's case *(Supra) was* before the enactment of Contempt of Courts Act 1971. After enactment of the Act there is specific provision under section 14(2) of the Contempt of Court's Act which reads as under;

> 14.*(2) Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the*

application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

Hon'ble Supreme Court in a similar case in the matter between **Mohd. Zahir Khan Vs. Vijay Singh & Ors. AIR 1992 SC 642** had made it clear that even if the alleged contemnor did not make application for change of the Bench i.e.trasfer of the case then it is duty of the Judge to bring it to the notice of the alleged contemnor the he has a right to get his matter transferred to other Bench. It is ruled as under;

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

But this provision and judgment was conveniently, deliberately ignored by Justice Rohington Fali Narima or he may not know this basic law which is sufficient to prove his incapacity and poor level of understanding which is sufficient to remove him forthwith from the judiciary

69. Since centuries it is settled law that the Judge /Bench who had taken Suo Motu cognizance of Contempt can not proceed with the matter. It has to be heard by different Judges .

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."***

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."*

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."*

In **Balogh Vs St. Albans Crown Court [1975] 1 QB 73** which got approved of Full Bench of Hon'ble Supreme Court of India in Vinay Chandra Mishra's case *(Supra)* it is ruled as under ;

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

dignity of the court and protect the public. The reason is that it is an inherently despotic and arbitrary power in which the judge often acts as prosecutor, witness, jury and judge.

Contempt being a criminal offence, it has to proved beyond reasonable doubt.

Interference with the administration of justice which satisfy two conditions: (1) that the contempt is clearly proved beyond a reasonable doubt, and (2) that it affects or is calculated to affect the course or outcome of judicial proceedings in being — that is, in the words of Lord Diplock in Attorney-General v. Times Newspapers Ltd. [1974] A.C. 273, 308 ***"actually proceeding or ... known to be imminent" — unless immediately stopped by the apprehension and, if necessary, the detention of the offender. These are necessary conditions for the exercise of this arbitrary power, whatever the type of contempt against which it is exercised and whether in exercising it the court is described as acting brevimanu, or immediately, or instanter, or of its own motion, or summarily.***

The reasons for so limiting the summary power are that it is arbitrary and offends the tenets of natural justice, not only because the judge plays so many roles but also because, in a matter concerning the liberty of the subject, the case may proceed without any formulation in writing of any distinct charge or giving the accused an opportunity to seek legal advice or representation. The practice also seems to contravene the European Convention on Human Rights 1950, article 6 (3) (b): see Borrie and Lowe, p. 376.

The power which the judge exercised is both salutary and dangerous: salutary because it gives those who administer justice the protection necessary to secure justice for the public, dangerous because it deprives a citizen of the protection of safeguards considered generally necessary to secure justice for him. This appeal gives an opportunity to make clear that it is a power to be used reluctantly but fearlessly when, and only when, it

is necessary to prevent justice being obstructed or undermined — even by a practical joker. That is not because judges, jurors, witnesses and officers of the court take themselves seriously: it is because justice, whose servants they are, must be taken seriously in a civilised society if the rule of law is to be maintained. It must be left to the common sense of judges of the High Court and the Crown Court to decide when they must resort to this power to deal with such contempts as are listed in the judgment which Lawton L.J. is about to deliver; but now that convictions and sentences for contempt are appealable to this court, it is for this court to interfere when this power is misused. I sympathise with the way in which the judge used it to deal with the folly of an irresponsible young man who, as a solicitor's clerk, was under a duty to help and not to hinder the due administration of justice in a serious criminal case; but nevertheless I am of opinion that the judge was wrong to deal with the appellant as he did and not to leave him to be prosecuted for a contemptible theft.

A History of English Law, vol. III (1903), pp. 391, 394 which is adopted. Rule of Ord. 52 makes plain the power of the court to act "of its own motion" where something is done and the contemnor must be dealt with immediately.

The acts done in the present case point to only one conclusion: sufficient steps had been taken to entitle the judge to find a contempt. The court should not weaken the concept of contempt but should look at the facts as a whole and ask: Do they reduce the status of the court?

Vinelott Q.C. in reply. As to whether the jurisdiction in contempt has been restricted by R.S.C., Ord. 52, r.1 (2) (a) (ii), though a rule cannot reduce the inherent jurisdiction, the rules can prescribe how it is to be exercised, and if they say: "This jurisdiction to commit is not to be exercised save on application unless it is a contempt in the face of the court."

There was thus a gradual process by which the power to make an immediate order was limited to contempt in the face of the court.

In considering in what circumstances the court can act of

its own motion two conditions should be satisfied: (1) the offence must be shown beyond reasonable doubt; (2) it must be necessary in the interests of justice and public protection that the court shall act speedily because delay might defeat the purpose of the summary proceedings. The offence may be shown beyond reasonable doubt where it took place in court or there is irrefragable evidence which carries conviction.

"If the contempt be committed in the face of the court, the offender may be instantly apprehended and imprisoned, at the discretion of the judges."In Oswald on Contempt, 3rd ed. (1910) p. 23 it is said: "Upon contempt in the face of the court an order for committal was made instanter" and not on motion. But I find nothing to tell us what is meant by "committed in the face of the court." It has never been defined. Its meaning is, I think, to be ascertained from the practice of the judges over the centuries. It was never confined to conduct which a judge saw with his own eyes. It covered all contempts for which a judge of his own motion could punish a man on the spot. So "contempt in the face of the court" is the same thing as "contempt which the court can punish of its own motion." It really means "contempt in the cognisance of the court."

Contempt of court is a criminal offence which is governed by the principles applicable to criminal offences generally.

But disruption of the court or threats to witnesses or to jurors should be visited with immediate arrest. Then a remand in custody and, if it can be arranged, representation by counsel.

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.

On that answer to the first question there is no need to answer any part of the next question: ***if the appellant was in contempt, could or should his contempt have been immediately punished by Melford Stevenson J. as a judge of the Crown Court in the***

way in which it was punished, namely, by committal to prison for six months? Again my answer is "No," and my reasons can be even more shortly stated — in two sentences. This procedure is one to which judges should resort in exceptional cases where a contempt is clearly proved and cannot wait to be punished. Here the facts alleged to constitute the contempt were admitted, but there was no need for immediate punishment.

Procedure for contempt by motion under R.S.C., Ord. 52, rr. 1 and 2 might be described as summary, but ***when a judge of the High Court or Crown Court proceeds of his own motion, the procedure is more summary still. It must never be invoked unless' the ends of justice really require such drastic means; it appears to be rough justice; it is contrary to natural justice: and it can only be justified if nothing else will do:*** *see, for instance, the judgments of Sir George Jessel M.R. in In re Clements, Republic of Costa, Rica v. Erlanger (1877) 46 L.J.Ch. 375, 383, and of Lord Russell of Killowen C.J.in Reg. v. Gray [1900] 2 Q.B. 36, 41 and the dissenting judgment of Laskin J. in the Canadian case of McKeown v. The Queen (1971) 16 D.L.R. (3d) 390, 413. But if a witness or juror is bribed or threatened in the course of a case, whether in the court or its precincts or at any distance from it, the judge must act at once against the offender and if satisfied of his offence, punish him, if necessary by committing him to prison.*

I know that legal aid is not available for contempt, but a judge can always ask counsel to represent a contemnor, as Park J. did in Moore v. Clerk of Assize, Bristol [1971] 1 W.L.R. 1669.

This appellant asked for legal representation and I am of opinion that the judge should have tried to find him counsel, although he was, as the judge said, "an articulate and highly intelligent person," who knew that he was being charged with a serious contempt, was given an opportunity to defend himself on that charge, and seems to have shown himself in no mood to listen to warnings or

to offer apologies.

The fact that judges, whether of the High Court or the Crown Court, have this summary jurisdiction does not mean that they should use it whenever opportunity offers. It is an unusual jurisdiction which has come into being to protect the due administration of justice. In Blackstone's words, it applies to any conduct which

> ***"demonstrates a gross want of that regard and respect, which when once courts of justice are deprived of, their authority (so necessary for the good order of the kingdom) is entirely lost among the people.": see Commentaries, p. 285.***

In my judgment this summary and draconian jurisdiction should only be used for the purpose of ensuring that a trial in progress or about to start can be brought to a proper and dignified end without disturbance and with a fair chance of a just verdict or judgment. Contempts which are not likely to disturb the trial or affect the verdict or judgment can be dealt with by a motion to commit under R.S.C., Ord. 52, or even by indictment.

The exercise of judicial discretion in this way can be illustrated by reference to the kinds of contempt which are most frequently witnessed by or reported to judges: witnesses and jurors duly summoned who refuse to attend court; witnesses duly sworn who refuse to answer proper questions; persons in court who interrupt the proceedings by insulting the judge, shouting or otherwise making a disturbance; persons in court who assault or attempt to assault or threaten the judge or any officers of the court whose presence is necessary; persons in or out of court who threaten those about to give evidence or who have given evidence; persons in or out of court who threaten or bribe or attempt to bribe jurors or interfere with their coming to court; persons out of court who publish comments about a trial going on by revealing a defendant's criminal record when the rules of evidence exclude it. Contempt of these kinds may well

justify the use of the summary jurisdiction; but everything will depend upon the circumstances. For example, judges from time to time have to decide what to do about a witness who refuses to answer a question, often because he cannot bring himself to state that which is obvious to both judge and jury or because the answer would cause acute personal embarrassment, as sometimes happens with doctors and ministers of religion. In many such cases a judicial admonition may be adequate if judicial comment is required at all: but when the witness refuses to answer questions because he wants to deny the court evidence which is important, the position is very different. Contempts committed or becoming known sometime after verdict or judgment as, for example, when a newspaper comments in insulting terms about the judge's decision or conduct of the trial, or it becomes known that someone on behalf of a convicted defendant attempted to bribe a juror, are best dealt with otherwise than in a summary manner by the trial judge.

If the judge is to protect effectively the proper administration of justice, he has to act at once.

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

9**. ..... **The learned Judge or the Bench could have itself taken action for the offence on the spot. Instead, the learned Judge probably thought that it would not be proper to be a prosecutor, a witness and the Judge himself in the matter and decided to report the incident to the learned Acting Chief Justice of his Court. There is nothing unusual in the course the learned Judge adopted, although the procedure adopted by the learned Judge has resulted in some delay in taking action for the contempt (see Balogh v. Crown Court at St. Albans. (1975) QB 73 : (1974) 3 All ER 283. The criminal contempt of Court undoubtedly amounts to an offence but it is an offence sui generis and hence for such offence, the procedure adopted both under the common law and the statute law even in this country has always been summary. However, the

fact that the process is summary does not mean that the procedural requirement, viz., that an opportunity of meeting the charge, is denied to the contemner. *The degree of precision with which the charge may be stated depends upon the circumstances. So long as the gist of the specific allegations is made clear or otherwise the contemner is aware of the specific allegation, it is not always necessary to formulate the charge in a specific allegation. The consensus of opinion among the judiciary and the jurists alike is that despite the objection that the Judge deals with the contempt himself and the contemner has little opportunity to defend himself,* ***there is a residue of cases where not only it is justifiable to punish on the spot but it is the only realistic way of dealing with certain offenders.*** *This procedure does not offend against the principle of natural justice, viz., Nemo judex in sua causa* ***since the prosecution is not aimed at protecting the Judge personally but protecting the administration of justice.*** *The threat of immediate punishment is the most effective deterrent against misconduct. The Judge has to remain in full control of the hearing of the case and he must be able to take steps to restore order as early and quickly as possible. The time factor is crucial. Dragging out the contempt proceedings means a lengthy interruption to the main proceedings which paralyses the Court for a time and indirectly impedes the speed and efficiency with which justice is administered. Instant justice can never be completely satisfactory yet it does provide the simplest, most effective and least unsatisfactory method of dealing with disruptive conduct in Court.* ***So long as the contemner's interests are adequately safeguarded by giving him an opportunity of being heard in 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.

Hon'ble Apex Court in the matter of **Mohd. Yanus Khan Vs. State of U.P. (2010) 10 SCC 539** has held that no person should adjudicate which he has dealt with in another capacity. The Hon'ble Supreme Court, time and again has reiterated that the contempt proceeding is sui generis. The Court is both the accuser as well as the Judge of the accusation. The principle that no man shall be the Judge of his own case, is cardinal principle of jurisprudence and the same squarely applicable in the present case. The two-fold position of a prosecutor and a Judge in one man is a manifest contradiction. The undesirability of allowing the prosecutor to be the Judge has been stated and restated in noble language of both England and this Country.

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

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

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

Sec.479. Case in which Judge or Magistrate is personally

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

71. Disqualification of Judge in trying case takes away jurisdiction:-

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

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ii) **Disqualification takes away jurisdiction**-A Judge who in consequence of a personal disqualification is forbidden by law to try a particular case though he may be authorized generally.

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

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

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

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

Same law is affirmed by Full Bench of Hon'ble Supreme Court in recent case of **Mohan Lal Vs. State of Punjab 2018 SCC OnLine SC 974.**Where it is ruled that the informant and the person enquiring should not be the same person. Justice is not only to be done but appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. The prosecution is vitiated due to conducted by same person.

So it is clear that the process of law is being grossly abused by the Justice Justice Rohington Fali Nariman & Justice Vineet Saran under impression that the Court is their personal & private property.

73. The observations of Justice Rohington Fali Nariman in para 3 & in para 15, that, Writ Petition does not lie against the Judgment of Supreme Court are also fallacious. Constitution Bench of Supreme Court in the case of **Supreme Court Bar Association Vs. Union of India (1998) 4 SCC 409** had in exercise of Writ Jurisdiction set aside the order passed by 2 Judge of Supreme Court in the matter related with Advocates. Similar is the case of **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**

Futhermore the prayer, casue & concern of petition filed by Advocate Nedumpara was totally different than that of earlier writ petition of Smt. Indira Jaising. This also makes Justice Nariman liable for prosecution under section 191,192,193, etc. of Indian Penal Code.

74. # Malice in Law #

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

> *"**Malice in law**""**A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with the innocent mind: he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of mind is concerned, he acts ignorantly, and in that sense innocently". Malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable***

cause. *See S. R. Venkataraman v. Union of India, (1979) 2 SCC 491.*

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

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

75. The order dated 12th March 2019 by Justice Rohington Fali Nariman & Justice Vineet Saran and observations made therein are therefore illegal, null & void in view of the law laid down in above paras based on the legal maxim '**Sublato Fundamento Cadit opus'** meaning thereby that Foundation had been removed structure collapses. In other words ' mother dies baby dies'

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

> In **Indirect Tax Association Vs. R.K.Jain** *(Supra),it is ruled by Hon'ble Supreme Court that;*
>
> *"Judge have their accountability to the society and their accountability must be judged by their conscience and oath of their office, that is to defend and uphold the Constitution and the laws without fear and favor with malice towards none, with charity for all,*

we strive to do the right."

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

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

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

Here Justice Rohington Fali Nariman & Justice Vineet Saran acted against Constitution of India and breached the oath taken as a Supreme Court Judge and therefore forfeited their right to continue as a Supreme Court Judge.

77. # CHARGE # JUSTICE ROHINGTON FALI NARIMAN & JUSTICE VINEET SARAN ARE BOUND TO RESIGN FROM THE POST OF SUPREME COURT JUDGE AS PER CONSTITUTION BENCH JUDGMENT IN K.VEERASWAMI VS.UNION OF INDIA (1991) 3 SCC 655

> `(53) ..... **The judiciary has no power of the purse or the sword. It survives only by public confidence and it is important to the stability of the society that the confidence of the public is not shaken. The Judge whose character is clouded and whose standards of morality and rectitude are in doubt may not have the judicial independence and may not command confidence of the public. He must voluntarily withdraw from the judicial work and administration.**
>
> (54) ..... The emphasis on this point should not appear superfluous. Prof. Jackson says "Misbehavior by a Judge, whether it takes place on the bench or off the bench, undermines public confidence in the administration of justice, and also damages public

respect for the law of the land; if nothing is seen to be done about it, the damage goes unrepaired. This a must be so when the judge commits a serious criminal offence and remains in office". (Jackson's Machinery of Justice by J.R. Spencer, 8th Edn. pp. 369-

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

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

(61) For the reasons which we have endeavored to outline and subject to the directions issued, we hold

that for the purpose of clause (c) of S. 6(1 of the Act the President of India is the authority competent to give previous sanction for the prosecution of a Judge of the Supreme court and of the High court.

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

(80) A judicial scandal has always been regarded as far more deplorable than a scandal involving either the executive or a member of the legislature. The slightest hint of irregularity or impropriety in the court is a cause for great anxiety and alarm. "A legislator or an administrator may be found guilty of corruption without apparently endangering the foundation of the State. But a Judge must keep himself absolutely above suspicion" to preserve the impartiality and independence of the judiciary and to have the public confidence thereof.

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

civilized society the law cannot be assumed to be leading to such disturbing results.

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78. OTHER UNLAWFUL CONDUCT OF JUSTICE ROHINGTON FALI NARIMAN & JUSTICE VINEET SARAN:-

That the another complaint by Human Right (N.G.O.) in other matter against Justice Rohington Fali Nariman & Justice Vineet Saran, is self-explanatory about incapacity, poor level of understanding, tendency to undermine the authority of Supreme Court and bringing the rule of law into disrepute and committing fraud on power to grant unwarranted relief to the undeserving accused and denying relief to the deserving victim woman.

79. # CHARGE # CONTEMPT OF FULL BENCH OF HON'BLE SUPREME COURT IN P.C. PURSHOTTAMA REDDIAR VS. S. PERUMAL (1972) 1 SCC 9.

That accused Judge Justice Rohington Fali Nariman & Vineet Saran in Criminal Appeal No. 387 of 2019 **[Aarish Asgar Qureshi Vs. Fareed Ahmed Qureshi 2019 SCC OnLine SC 306]** had with malafide intention to help accused had observed that police report have no evidentiary value for directing enquiry against the accused husband on the application given by wife.

Full Bench of Hon'ble Supreme Court in **P.C. Purshottama Reddiar Vs. S. Perumal(1972) 1 SCC 9** had ruled that police report had greatest value as per Section 35 of the Evidence Act.

In **Sanjeev Kumar Mittal Vs. State 2011 RCR (CRI) (7) 2111 &H.S.Bedi Vs. National Highway Authority of India (2016)1 HCC (Del) 179,** after considering all previous judgments of Hon'ble Supreme Court it is ruled that the prosecution can be ordered based on preliminary report submitted by the police. But these laws were deliberately ignored by Justice Rohington Fali Nariman with ulterior motive to help the accused.

In fact the appeal No. 387 of 2019 was filed by accused husband who was found guilty of filing false affidavit against his wife and the prosecution was ordered by Hon'ble Bombay High Court based on the police report proving falsity of the Submission on Oath.

The next observation by Justice Rohington Fali Nariman where that the affidavit is not a evidence and unless evidence is led during the trial the accused cannot be prosecuted as per provision of Section 340 of Criminal procedure Code for offences Under Section 191,193,209 etc. of Indian Penal Code.

This is again illegal observation and also against the law laid down by Full Bench of Hon'ble Supreme Court in **R. Karrupan's case (2001) 5 SCC 289** where it is ruled that the affidavit is an evidence within the meaning of Section

191 of Indian Penal Code.

80. The another grave illegality was that as per provisions of Section of Section 341 of Criminal Procedure Code no appeal lies against order by High Court but appeal can only be filed when Complaint is lodged.

Hon'ble Supreme Court in the case of **Surendra gupta Vs. Bhagwan Devi and Ors. AIR 1996 SC 509,** where it is ruled as under**;**

> *Code of Criminal Procedure Section 341, 482 - Application under Section 482, Cr.P.C. had not filed against filing of complaint but against direction to file complaint - The language of the section is plain and simple.* ***The right of appeal is conferred against filing of complaint. What is a complaint is clear from Clause (d) of Section 2 - A complaint could be filed only before the Magistrate - From the order dated 1.6.1981 it is clear that it only sent the file to the Rent Control Officer to file the complaint. The application under Section 482, Cr.P.C. was not filed against filing of complaint but against direction to file complaint. It could not be treated as complaint - The order of the Addl. Distt. & Sessions Judge thus could not be construed as complaint. No appeal could be filed against it under Section 341 Cr.P.C. - The order of the High Court is set aside.***

But accused Judges in a hurry to help accused husband entertained the appeal against the order directing the complaint and passed order in utter disregard and defiance of law laid down by Hon'ble Supreme Court and also against the statutory provisions of Section 341 of Criminal Procedure Code and acted unconstitutionally.

Justice Nariman in the order dated 26th March, 2019 had ruled that the High Court was not influenced by the false affidavit of accused while passing the order therefore no action is required against accused husband. This is also against law laid down in **Sciemed Overseas Inc. Vs. BOC India Limited 2016(3) PUNJ. L.J. 28** where it is ruled as under;

> ***The only question for our consideration is whether the High Court was correct in imposing costs of Rs. 10 lakhs on the Petitioner for filing a false or misleading affidavit in this Court - In our opinion, the imposition of costs, was fully justified- this Court had***

observed that the sanctity of affidavits filed by parties has to be preserved and protected and at the same time the filing of irresponsible statements without any regard to accuracy has to be discouraged Giving false evidenceby filing false affidavit is an evil which must be effectively curbed with a strong hand. Prosecution should be ordered

The fact of the matter is that a false or misleading statement was made before thiO09s Court and that by itself is enough to invite an adverse reaction.

30. In the ***case*** *of* ***Suo Moto Proceedings Against R. Karuppan, Advocate MANU/SC/0338/2001 : (2001) 5 SCC 289 this Court had observed that the sanctity of affidavits filed by parties has to be preserved and protected and at the same time the filing of irresponsible statements without any regard to accuracy has to be discouraged.*** *It was observed by this Court as follows:*

> *Courts are entrusted with the powers of dispensation and adjudication of justice of the rival claims of the parties besides determining the criminal liability of the offenders for offences committed against the society. The courts are further expected* ***to*** *do justice quickly and impartially not being biased by any extraneous considerations. Justice dispensation system would be wrecked if statutory restrictions are not imposed upon the litigants, who attempt to mislead the court by filingand relying upon false evidence particularly in cases, the adjudication of which is dependent upon the statement of facts. If the result of the proceedings are to be respected, these issues before the courts must be resolved to the extent possible in accordance with the truth. The purity of proceedings of the court cannot be permitted to be sullied by a party on frivolous, vexatious or insufficient grounds or relying upon false evidence inspired by extraneous considerations or revengeful desire to harass or spite his opponent. Sanctity of*

the affidavits has to be preserved and protected discouraging the filing of irresponsible statements, without any regard to accuracy.

31. Similarly, in MuthuKaruppan v. ParithiIlamvazhuthi MANU/SC/0418/2011 : (2011) 5 SCC 496 this Court expressed the view that the filing of a false affidavit should be effectively curbed with a strong hand. It is true that the observation was made in the context of contempt of Court proceedings, but the view expressed must be generally endorsed to preserve the purity of judicial proceedings. This is what was said:

> *Giving false evidenceby filing false affidavit is an evil which must be effectively curbed with a strong hand. Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent, but there must be a prima facie case of "deliberate falsehood" on a matter of substance and the court should be satisfied that there is a reasonable foundation for the charge.*

32. On the material before us and the material considered by the High Court, we are satisfied that the imposition of costs by the High Court was justified.

Hon'ble Supreme Court in the case of **Murray And Co. Vs. Ashok Kr. Newatia And Anr**.**AIR 2000 SC 833** ruled s under ;

The Contempt of Courts Act, 1971 - False statement made in the reply affidavit – Whether the respondent has obtained a definite advantage of this false statement or not is wholly immaterial in the matter of commission of offence under the Contempt of Courts Act - the respondents cannot escape the liability of being held guilty of contempt by reason of a definite and deliberate false statement. The statement on oath is a fabricated one and contrary to the facts - The statement cannot be termed to be a mere denial though reflected in the reply affidavit - Positive assertion of a fact in an affidavit known to be false cannot just be ignored. It is a deliberate act - The fact that the deponent has in fact affirmed a false affidavit before this Court is rather serious in nature and thereby rendered himself guilty of contempt of this Court as noticed hereinbefore. This Court in our view, would be failing in its duties, if the matter in question is not dealt with in a manner proper and

effective for maintenance of magesty of Courts as otherwise the Law Courts would lose its efficacy to the litigant public. It is in this perspective that we do feel it expedient to record that by mere tendering of unconditional apology to this Court would not exonerate the contemnor in the contextual facts but having regard to the nature of the act of contempt, we do deem it fit to impose a fine of Rs. 2,500 each so as to sub-serve the ends of justice against the respondent-contemnors in default of payment of which they (each of them) will suffer simple imprisonment for one month.

Respondents have averred in the petition of objection verified by an affidavit to the following effect :-

".....it is further incorrect to say that the petitioner in any manner has committed disobedience of the order passed by the Court or sold away the property or in any manner taking any steps to sell the property. The contentions to the contrary are false and fictitious....."

This statement is stated to be a deliberate falsehood and the said false statement was made wantonly as the respondents knew that the property was sold long prior thereto.

The learned Advocate appearing for the respondents, made a frantic bid to contend that the statement has been made without realising the purport of the same. We are, however, not impressed with the submission and thus unable to record our concurrence therewith. It is not a mere denial of fact but a positive assertion and as such made with definite intent to pass off a falsity and if possible to gain advantage. This practice of having a false statement incorporated in an affidavit filed before a Court should always be depre-cated and we do hereby record the same. The fact that the deponent has in fact affirmed a false affidavit before this Court is rather serious in nature and thereby rendered himself guilty of contempt of this Court as noticed hereinbefore. This Court in our view, would be failing in its duties, if the matter in question is not dealt with in a manner proper and effective for maintenance of magesty of Courts as otherwise the Law Courts would lose its efficacy to the litigant public. It is in this perspective that we do feel it expedient to record that by mere tendering of unconditional apology to this Court would not exonerate the contemnor in the contextual facts but having regard to the nature of the act of contempt, we do deem it fit to impose a fine of Rs. 2,500 each so as to sub-serve the ends of justice against the respondent-

contemnors in default of payment of which they (each of them) will suffer simple imprisonment for one month. The fine, be realised within a period of four weeks form the date of this order and shall be paid to the (Legal Service Authority of this Court) Supreme Court Legal Services Committee.

A) Contempt of Courts Act (70 of 1971), S.13- Contempt of Court - Punishment - Allegation that contemnor in his affidavit had falsely denied assertion that property was sold in disobedience of Court order - Facts of case and the stage at which affidavit was filed revealing that contemnor had not gained any advantage through his false statement - However considering the fact that statement was not mere denial of fact but positive assertion of a fact known to be false - Was made with definite intent to pass of a falsity and if possible to gain advantage - Court refused to exonerate contemnor on mere tendering of unconditional apology and imposed a fine of Rs. 2,500/-.

(B) Contempt of Courts Act (70 of 1971), S.2(c), S.13- Contempt of Court - Conviction and punishment - Considerations differ - Whether contemnor obtained certain definite advantage because of the act alleged - Would be wholly immaterial in matter of commission of offence under Act - But would be a relevant factor in context of punishment to be imposed against a contemnor - Person making definite and deliberate false statement in affidavit - Cannot escape the liability of being held guilty of contempt.

(C) Contempt of Courts Act (70 of 1971), S.2- Contempt of Court - What amounts to - Determination - Litigative spirit of complainant party - Relevancy.

Where complaint about filing of a false affidavit by a party to Court proceedings was made by the opposite party, the fact that both the parties to the proceedings disclosed litigative spirit trying to score over each other and even the contempt application had been filed in the same spirit, would not by itself, prompt the Court to come to a conclusion as regards the merits of the contentions raised in the matter.

The abovesaid case laws were given to Justice Nariman by the Counsel appearing for wife, but it were deliberately ignored by showing arrogance to send message that he is above law.

A detail Complaint is lodged on behalf of victim wife .A copy is annexed which is self explainatory. **[Case No.:-PRSEC/E/2019/05242]**

81. While delivering 2nd lecture on M.C. Setalvad Memorial Lecture Series sometime in the year 2006, the Hon'ble Mr. Justice Y.K.Sabharwal (the then CJI)expressed that –

> ***"A Judge would always be polite & considerate and imbued with a sense of humility. He would not disturb the submissions of the lawyers midway only to project a "know-all" image for himself. This also means that he would be sitting with an open mind, eager to be advised by the counsel or the parties.***

82. On the point of predictability of the outcome of a case and transparency in the judiciary, the reputed and well-known learned authors and legal experts of Bangladesh in ***"The Desired Qualities of a Good Judge"***,have expressed thus:

> ***"In all acts of judgment, the Judges should be transparent so that not only the lawyers but also the litigants can easily predict the outcome of a case. Transparency and predictability are essential for the judiciary as an institution of public credibility."***

In *"A.M. Mathur vs. Pramod Kumar Gupta; (1990) 2 SCC 533"*, it was held that –**the quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary.**

Other qualities of a good judge have been described by the said authors as under:

(i) ***A judge is a pillar of our entire justice system and the public expects highest and irreproachable conduct from anyone performing a judicial function.***

(ii) ***Judgesmust be knowledgeable about the law, willing to undertake in-depth legal research, and able to write decisions that are clear, logical and cogent. Their judgment should be sound and they should be able to make informed decisions that will stand up to close scrutiny.***

(iii) Centuries ago Justinian said that precepts of law are three in number i.e. to live honestly, to give every man his due and to injure none.

(iv) ***Judiciary as an organ of the state has to administer fair justice according to the direction of the Constitution and the mandate of law.***

(v) Every judge is a role model to the society to which he

belongs. The same are embodied in all the religious scriptures. ***Socrates once stated that a judge must listen courteously, answer wisely, considers soberly and decides impartially.***

(vi) The qualities of a good judge include patience, wisdom, courage, firmness, alertness, incorruptibility and the gifts of sympathy and insight. In a democracy, a judge is accorded great respect by the state as well as its citizens. He is not only permitted to assert his freedom and impartiality but also expected to use all his forensic skill to protect the rights of the individual against arbitrariness.

(vii) ***Simon Rifkind laid down "The courtroom, sooner or later, becomes the image of the judge. It will rise or fall to the level of the judge who presides over it... No one can doubt that to sit in the presence of a truly great judge is one of the great and moving experiences of a lifetime."***

(viii) There is no alternative of qualified and qualitative judges who religiously follow the rule of law and administer good governance.

(ix) ***The social service, which the Judge renders to the community, is the removal of a sense of injustice.***

(x) ***Judiciary handled by legal person is the custodian of life and property of the people at large,*** *and so the pivotal and central role as played by the judicial officers should endowed higher degree of qualities in consonance with the principles of "standard of care", "duty of care" and "reasonable person" as necessary with judicial functionaries.*

(xi) ***The American Bar Association once published an article called Good Trial Judges in which it discussed the difference in the qualities of a good judge and a bad judge and noted that practicing before a "good judge is a real pleasure," and "practicing before a bad judge is misery.***

(xii) ***The Judges exercise the judicial power on trust. Normally when one sits in the seat of justice,he is expected to be honest, trustworthy, truthful and a highly responsible person. The public perception of a Judge is very important. Marshal, Chief Justice of the United States Supreme Court said, "we must never forget that the only real source of power we as judges can tap is the respect of the people. It is undeniable that the Courts are acting for the people who have reposed confidence in***

them." That is why Lord Denning said, "Justice is rooted in confidence, and confidence is destroyed when the right-minded go away thinking that the Judge is biased".

(xiii) A Judge ought to be wise enough to know that he is fallible and therefore, ever ready to learn; great and honest enough to discard all mere pride of opinion, and follow truth wherever it may lead, and courageous enough to acknowledge his errors.

(xiv) Judge ought to be more learned than witty, more reverend than plausible and more advised than confident. Above all things, integrity is their portion and proper virtue. Moreover, patience and gravity of hearing is also an essential part of justice, and an over speaking Judge is known as well tuned cymbal.

(xv) ***It is the duty of the Judges to follow the law,as they cannot do anything whatever they like.*** *In the language of Benjamin N. Cardozo – "The Judge even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles".*

(xvi) ***Judges should be knowledgeable about the law, willing to undertake in-depth legal research, and able to write decisions that are clear and cogent.***

(xvii) ***If a Judge leaves the law and makes his own decisions, even if in substance they are just, he loses the protection of the law and sacrifices the appearance of impartiality which is given by adherence to the law.***

(xviii) A Judge has to be not only impartial but seen to be impartial too.

(xix) Every judge is a role model to the society to which he belongs. The judges are certainly, accountable but they are accountable to their conscience and people's confidence. As observed by Lord Atkin – "Justice is not a cloistered virtue and she must be allowed to suffer the criticism and respectful, though outspoken, comments of ordinary men".

(xx) ***With regard to the accountability of the Judges of the subordinate Courts and Tribunals it may be mentioned that the Constitution authorizes the High Court Division to use full power of superintendence and control over subordinate Courts and Tribunals. Under the Constitution, a guideline in the nature of Code of Conduct can be formulated for the Judges of the***

subordinate courts for the effective control and supervision of the High Courts Division. In this method, the judicial accountability of the Judges of the subordinate courts could be ensured.

83. In **Baradakanta Mishra Ex-Commissioner of Endowments Vs. Bhimsen Dixit, (1973) 1 SCC 446**, a member of Judicial Service of State of Orissa refused to follow the decision of the High Court. The High Court issued a notice of contempt to the appellant and thereafter held him guilty of contempt which was challenged before the Supreme Court. The Supreme Court held as under:-

"15. ***The conduct of the appellant in not following previous decisions of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of Contempt. The analogy of the inferior court"s disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of Contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly the deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court.Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court, generally, but is also likely to subvert the Rule of Law and engender harassing uncertainty and confusion in the administration of law".***

84. In the case **Justice Markandey katju Hon'ble Supreme Court issued Contempt notice in Criminal Suo Motu Contempt Petition No. 5 of 2016.**

85. In **M/s. Spencer & Co. Ltd. Vs. M/s Vishwadarshan Distributors & others (1995) 1 SCC 259** it is ruled as under**;**

CONTEMPT OF COURT BY HIGH COURT JUDGE , CONSTITUTION OF INDIA, ART.141 - Request for early

hearing by superior Court - High Court refusing early hearing on the ground of pendency of other cases - order of Supreme Court even if in the form of request is expected to be obeyed and followed by the Judges of the High Court - Language of request oftenly employed by Supreme Court is to be read by the High Court as an obligation, in carrying out constitutional mandate - If such request are flouted then Supreme Court will punish erring Judges of the High Court for contempt after initiating contempt proceeding. Conceivably our action has parameters ranging between total apathy and punishment for contempt after initiating contempt proceeding.

Order of High Court refusing early hearing is of a negative or reverse action.
courtesy is the blend of our order - Outwardly it is neither commanding in nature nor explicitly in terms of a direction. Such is not the sheen and tone of our order, meant as it was, for a high constitutional institution, being the High Court. It comes from another high constitutional institution (this Court) hierarchically superior in the corrective ladder. When one superior speaks to another it is always in language sweet, soft and melodious; more suggestive than directive. Judicial language is always chaste.

7. Traditions and norms in this regard, well-established and followed in this country since time immemorial, are best reflected in the 'Song Celestial', the Bhagavad Gita. It would for the purpose be apposite to turn to the 18th Chapter of the Bhagavad Gita, containing the concluding portion of the dialogue between Lord Krishna, the Best of Beings, (Purushotamma) and Arjuna, the Best of Humans, (Narotamma), both superiors in themselves. *Verse 73 containing the answering words of Arjuna is :O infallible one, my illusion is now gone, I have regained my memory by Your mercy, and I am now firm and free from doubt and am prepared to act according to Your instructions.(Emphasis ours)*
8. For Arjuna, the freedom given to act as he wished to, was an illusion; acting in conformity with the

instructions of Krishna a bounden duty. This message has perceptibly percolated down as part of Indian Culture, philosophy and behavioral setting the tenor in the Constitution for inter action between the high constitutional authorities and institutions. One needs only to be aware of this thought with which the Constitution is soaked.

While we certainly respect the independence of the High Court and recognise that it is a co-equal institution, we cannot but say, at the same time, that the constitutional scheme and judicial discipline requires that the High Court should give due regard to the orders of this Court which are binding on all courts within the territory of India. The request made in this case was contained in a judicial order. It does no credit to either institution that it has not been heeded to.

The afore-narrated words, we think, presently, are enough to assert the singular constitutional role of this Court, and correspondingly of the assisting role of all authorities, civil or judicial, in the territory of India, towards it, who are mandated by the Constitution to act in aid of this Court. That the High Court is one such judicial authority covered under Art. 144 of the Constitution is beyond question.The order dated 14-1-1994 of this Court was indeed a judicial order and otherwise enforceable throughout the territory of India under Art. 142 of the Constitution. The High Court was bound to come in aid of this Court when it required the High Court to have its order worked out. The language of request oftenly employed by this Court in such situations is to be read by the High Court as an obligation, in carrying out the constitutional mandate, maintaining the writ of this Court running large throughout the country.

86. Justice Rohington Nriman & Justice Vineet Saran in their judgment dated 12th March, 2019 had found that the conduct of Advocate Nedumpara is unbecoming of member of noble profession which in fact is the jurisdiction of Bar Council to decide after enquiry and not for the Judge to declare unilaterally. Hon'ble Supreme Court's 5-Judge Constitution Bench in the case of **Supreme Court Bar Association Vs.**

Union of India & Anr. (1998) 4 SCC 409, had ruled that;

> *In contempt proceeding Court cannot exercises jurisdiction under Article 129, 142 of the Constitution in disregard of the relevant statutory provisions and cannot make an order inconsistent with the express statutory provisions of substantive law, much less, inconsistent with any Constitutional provision- Court of record can not go beyond the scope of the contempt of Courts Act, 1971. No new type of punishment can be created or assumed - this Court cannot exercises jurisdiction under Article 142 of the Constitution in disregard of the relevant statutory provisions and cannot make an order plainly inconsistent with the express statutory provisions of substantive law, much less, inconsistent with any Constitutional provision. The power of Hon'ble Supreme Court cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. - This Court, therefore, in exercise of its jurisdiction under Article 129,142 cannot take over the jurisdiction of the disciplinary committee of the Bar Council of the State or the Bar Council of India to punish an advocate by suspending his licence, which punishment can only be imposed after a finding of 'professional misconduct' is recorded in the manner prescribed under the Advocates Act and the Rules framed thereunder, even though, the contempt committed by an advocate may also amount to an abuse of the privilege granted to an advocate by virtue of the licence to practice law.*

Same law is reiterated by Hon'ble Supreme Court in recent judgment in the case of **R. MuthuKrishnan 2019 SCC OnLine SC 849**. But Justice Rohington Fali Narinam acted against the said law and therefore liable for action under Contempt of Court Act.

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

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

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

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

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

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

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

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

The learned Judge has further stated:

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

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

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

And again:

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

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

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

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

88. Needless to mention that in **Medical Council of India Vs G.C.R.G. Memorial Trust & Others (2018) 12 SCC 564** Hon'ble Supreme Court condemned the Allahabad High Court Judge, Justice Shri Narayan Shukla and as per para 7(ii) of In-House procedure directed Chief Justice of High Court to take away all judicial work assigned to him and also recommended initiation of Justice Shukla's removal. (Live Law news dated 30th January 2018). The same action is needed against Justice Rohington

Fali Nariman & Justice Vineet Saran.

89. <u>REQUEST</u>:- It is therefore humbly requested that;-

I) <u>Action be taken</u> <u>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.</u>

II) Immed /iate 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 <u>K. Veeraswami Vs. Union of India (UOI) and Ors.1991 (3) SCC 655</u> as the incapacity, fraud on power and offences against administration of Justice are ex- facie proved.

<u>OR</u>

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 <u>Re: C.S. Karnan's Case (2017) 7 SCC 1,</u> Justice Markandey Katju's case & in <u>Rabindranath Singh Vs. Rajesh Ranjan (2010) 6 SCC 417</u> for wilful disregard of law laid down by Hon'ble Supreme Court in :-

<u>a) Vinay Chandra Mishra's case AIR 1995 SC 2348(Full Bench)</u>

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

<u>c) Leila David Vs. State (2009) 10 SCC 337</u>

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.

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.

iii) 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.

iv) 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 (2001) 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.

Place : Mumbai
Date:- 20/03/2019

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