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Case No. Before Hon'ble President of India :- PRSEC/E/2019/12717

Date:29.06.2019

TO,

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

With Copy to,

Hon'ble Chief Justice,

Bombay High Court,Mumbai

SUB: 1. Taking action against Shri. Justice A.S.Oka, Chief Justice Karnataka High Court & Smt. Anuja Prabhu Desai, Judge Bombay High Court as per law laid down in K.K.Dhawan's case(1993) 2 SCC 56 and direction to withdraw all judicial works by invoking provisions of para 7 (ii) of 'In-House-Procedure', as their misconduct, incapacity, breach of oath taken as a Judge, serious criminal offences against administration of justice and lack of knowledge is ex- facie proved from their act of passing various orders with ulterior motive to save the accused in utter disregard and defiance and deliberate misinterpretation of Constitution Bench's judgment of Hon'ble Supreme Court in Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah (2005) 4 SCC 370, Maria Margarida Sequeira Fernandes (2012) 5 SCC 370, Sarvapalli Radhakrushnan University 2019 SCC OnLine SC 51,Perumal Vs. Janaki (2014) 5 SCC 377, Kishore Samrite (2014)15 SCC 156, and also

acting against the judgment of co-ordinate Bench of Hon'ble Bomaby High Court in Bhavesh Doshi 2016 SCC Online Bom 12799 (D.B.), Haresh Milani 2018 SCC Online Bom 2080, Mahadeo Savla Patil 2016 ALL MR (Cri.) 344.

2. Taking action under Contempt of Courts Act against Shri. Justice A.S.Oka & Smt. Justice Anuja Prabhudesai in view of law laid down in Somabhai Patel AIR 2000 SC 1975 where it is ruled that, the misinterpretation of Supreme Court's judgement is Contempt and punish them (Justice A.S Oka and Smt Justice Anuja Prabhudesai) in view of law laid down by Costitution Bench in Re: C.S.Karnan (2017) 7 SCC m1.

3. Direction to C.B.I for registration of FIR and take action under section 109, 201, 218 , 219, 192 , 167,409, 466, 471,474, r/w 120 (B) & 34 of IPC against Shri. Justice A.S.Oka, Smt.Justice Anuja Prabhudesai, and Ors. for their abatement, conspiracy and act of commission and omission and further their involvement in serious offences against administration of justice.

4. Direction to committee under 'In-House-Procedure' to enquire the following charges against the Shri. Justice Abhay Oka & Smt. Justice Anuja Prabhudesai.

#CHARGE# 1:- Misuse of power and passing of illegal order to save influential accused and to harass Social Activist Shri. Anna Hazare:-
Justice A.S. Oka proved to be counter productive and non-conducive to the administration of Justice. He passed an illegal order to harass social activist Shri. Anna Hazare and to save influential accused like Sharad Pawar and Ajit

Pawar. In order dated 6th January, 2017 passed by Justice Oka in P.I.L (ST) No. 42 of 2016, directed Shri. Anna Hazare to approach Police and first register and then only issue for transfer to C.B.I. be considered, but said observation by Justice Oka were against the law laid down by Hon'ble Supreme Court and Hon'ble Bombay High Court more particularly by Justice Chandrachud's Division Bench in Provident Investment Co. Case MANU/MH/0054/2012 where Hon'ble Bombay High Court directed C.B.I to register F.I.R. and investigate the case, similary in Charu Kishore Mehta vs. State of Maharshtra 2011 ALL MR (Cri) 173 where it is ruled that the High Court has to direct F.I.R in such serious economic offences. It is not mandatory to go to the Police First.

But Justice Oka acted against the law and with ulterior motive to help the influenctial accused, the petition of social activist Shri. Anna Hazare was kept pending and he was asked to approach the Police. This itself reflects that Justice Oka is not interested in doing justice but misusing his position for ulterior purposes and misusing the Court machinery to help the accused and harass the victim like Shri. Anna Hazare and many others including men's right activists. Hence Justice Abhay Oka is proved to be counter productive and non conducive to the administration of justice.

#CHARGE# 2:- Deliberate misinterpration of Constitution Bench judgement in Iqbal Singh Marwah (2005) 4 SCC 370 to help accused (women), from serious offences.
Constitution Bench in M.S.Sheriff case 1954 SCR 1144 specifically laid down the ratio that, the proceedings under section 340 of Cr.P.C. has to be decided first and all other proceedings should

be stayed.

Said law is followed in Iqbal Singh Marwah Vs. Meenakshi Marwah (2005) 4 SCC 370 where in para 32 same law is approved. But Justice A.S.Oka & Justice Anuja Prabhudesai in their judgement in the case between Dr. Santosh Shetty Vs Anita Shety 2019 SCC Online Bom 99 in order to save lady from enquiry and action under perjury and contempt had passed the order by misinterpreting Iqbal Singh Marwah's judgment saying that the application under section 340 of Cr.P.C. has to be decided at the end of the case.

Hon'ble Supreme Court in Somabhai Patel's case AIR 2001 SC 1975 had ruled that misinterpretation of Supreme Court judgement by a Judge shows his mental ability and is Connitempt of Court. Such Judges need to be removed from judiciary. Here around 9 offences on different occasion are committed by Justice A.S.Oka and Smt. Justice Anuja Prabhudesai therefore they need to be removed from judiciary forthwith.

Their such conduct make them liable for offences under section 218, 219, 201, 409, 192, 167, r/w 120 (B) 34 of IPC.

#CHARGE# 3 :- OFFENCE UNDER SECTION 218, 211, 220, 219 r/w 120(B) OF I.P.C.

Unlawful order of contempt notice against social activist Vishwas Bhamburkar with ulterior motive to save influential accused in a case of corruption of around 40,000 Crores.

The PIL was filed for action against GVK for a fraud of around 40,000 Crores. The petitioner made some allegations against Judges in the year 2015. For that allegation action already action has been taken by earlier division bench

headed by Justice V.M. Kanade on 28 th June,2016. But after a perod of one year Justice A.S. Oka issued second contempt Notice on 7th June, 2017 on the same groud to social Activist Vishwas Bhamburkar.

As per Art. 20(2) of Indian Constitution and as per Section. 300 of Cr.P.C second action was totally barred. It is also an offence under section 211, 220, 218, 219 r/w 120(B) and 34 of I.P.C. on the part of Justice A.S Oka and Justice Smt. Anuja Prabhudesai.

Full Bench of Hon'ble Supreme Court in Hari Das Vs. State Case 1964 SC 1773 ruled that frivolous charge of contempt makes such person liable for action under Section 211 of I.P.C.

This ex-facie proves that Justice A.S. Oka is misuing his post as a Judge to help influential people involved in commiting fraud, misappropriation of public property of thousand of Crores.

#CHARGE 4 # Discrimination, unequal treatment, double standerd and thereby violation of Article 14 of the Constitution and also breach of Oath taken as a High Court Judge.

In Suo-Motu Contempt case No.1/2017OF Ketan Tirodkar in the order that Court will not in the order it is mentioned that Court will not term him as a Contemnor even if it is a Suo Motu case.

However in another matter in Adv. Methews Nedumpara case in SM SCN No.02 of 2017 in W.P. No. 2334 of 2013 the same Judge (Justice A.S.Oka) in order dated 3rd April, 2019 called the respondent as contemnor. This proves unequal treatment to different people and is violation of Article 14 of the Constitution which mandates for equality before law and equal protection of the law. Justice Oka is also guilty of breach of

the oath taken as a High Court Judge which mandates for doing justice without fear or favor or disfavor.

#CHARGE 5#: <u>MALICE IN LAW</u> - hearing the case where he is disqualified. Guilty of Judicial Bias and contempt of Supreme Court judgment in <u>Davinder Pal Bhullar (2011) 14 SCC 770.</u>

In W.P. NO. 2334 of 2013 (W.P. (L) No. 665 of 2013) Justice A.S. Oka vider his order dated 21st March 2013 recused himself and passed following order:

> ***"Mr. Mathews J. Nedumpara for the petitioner.***
>
> ***Mr. Ashish Kamath for the respondent***
> ***CORAM: A.S.OKA & MRS. MRIDULA BHATKAR, JJ***
> ***DATE; 21ST MARCH 2013***
> ***P.C.:***
> ***Not on board. Taken on board.***
> ***2. Not before the Bench of which one of us (A.S.Oka, J.) is a Member. Registry to take steps for placing the matter before the appropriate Bench."***

Once he recused from the case then he is disqualified to try any matter connected with that case. A law in this regard is made clear by Hon'ble Supreme Court in Davinder Pal Singh Bhullar case *(supra).* Also by Justice A.S.Oka in Suresh Ramchandra Palande 2016(2)Mh.L.J.918

But he (Justice A.S. Oka) acted in utter disregard and defiance of law laid down by Hon'ble Supreme Court and by a Bench of Hon'ble Bombay High Court headed by himself and heard the case as a Judge in SMSCN No. 02 of 2017 in same writ Petition i.e. W.P. No. 2334 of 2013.

This is gross misconduct and offence

under section 220, 219 etc. of IPC. On the part of Justice A.S. Oka.

#CHARGE 6 # <u>HEARING A CASE AS A JUDGE WHERE HE HIMSELF HAD TAKEN COGNIZANCE:-</u>

As per provisions of law and more particularly laid down by Full Bench in **<u>Vinay Chandra Mishra's case AIR 1995 SC 2348</u>** relying on **<u>Balogh *V.* St. Albans Crown Court</u> [1974] 3 WLR 314: <u>[1975] 1 QB 73</u>** ,it is trite law that the Judge who had taken the cognizance of Contempt cannot hear the case as a Judge. It is ruled as under;

> ***"9. ..... <u>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</u>. The criminal contempt of Court undoubtedly amounts to an offence but it is an offence sui generis ..."***

In the case of **<u>R.V. Lee, (1882) 9 QBD 394</u>** 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 **<u>Lession Vs. General Council of Medical Education and registration, (1889) 43 Ch. D. 366</u>** 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 pecuniary 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."

But Justice A.S.Oka acted in utter disregard of the abovesaid law on many occasion and more particularly in 2 cases.

(i) Bombay Bar Association Vs. Adv. Nilesh C. Ojha Cri. Contempt Petition No. 03 of 2019.

(ii) Suo Motu Vs. Ketan Tirodkar S.M.C.P. No. 1 of 2017.

In both the cases Justice A.S.Oka had taken the cognizance by issuing notice on 17th February 2017.

Later he (A.S.Oka) himself was a member of 5-Judge Bench formed to hear the case.

The principle that a Judge must not have an interest or bias in the subject matter of a decision us so sacrosanct that even if one of many Judges has bias it upsets the fairness of the judgement. In **R. Vs. Commissioner of pawing (1941) 1QB 467.,** William J. Observed :

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

#CHARGE# 7:- Fraud on Power:-

Deliberate ignorance of argument advanced by the advocate and they also ignored the material on record and passed the order by considering the factors which were never argued nor refelected from material on record.

They are guilty of 'Fraud on Power' and 'Malice in law & facts.

In the case of Dr.Santosh Shetty 2019 SCC OnLine Bon 99 the arguments advanced by his counsel were also published in newspaper. On 24.10.2018. The order passed on 25th January,2019 is not havingthe actual arguments but a deliberate distorted version is mentioned to suit their angle .This is a classic example of abuse of power by Justice A.S.Oka & Justice Smt Anuja Prabhudesai.

 # CHARGE 8 # Misuse of High Court machinery and process to save Justice S.J.Kathawala whose corruption in a case of around 5000 Crores is exposed in sting operation and published by 'Right Mirror'.

Justice A.S.Oka & Justice Anuja Prabhudesai liable to be prosecuted under section 409 of Indian Penal Code.

The Corrupt practices of Justice S.J.Katahwala in

not taking on record the statement of a public servant with ulterior motive to help his close parsi Adv. Aspi Chinoy and another Parsi advocate Federal Rashmikant and discrimination of non-parsi advocates was exposed by news channeal 'Right Mirror'.

Duo to which Justice Kathawala was likely to be prosecuted and removed from the post of Judge. The middleman Adv. Milind Sathe then hatched conspiracy and filed one criminal contempt petition No.3 of 2017 against Complainant , witnesses, Advocate and social activist and reporter. Justice A.S.Oka & Justice Anuja Prabhudesai joined the conspiracy and to save and suppress the corruption of Justice Kathawala deliberately not mentioned the circumtances under which interviews were given. They ,passed an order issuing notice of Contempt with ulterior motive to pressurize the witnesses and silence their voice. When Respondent No.1 filed his detail reply with proofs expossing corrupt practices of Justice Oka, the said case is not taken on board since last two years.

Adv.Nilesh Ojha wrote letter to all Judges including accused Justice A.S.Oka for early hearing of the case and granting compensation of Rs. 100 Crores but that matter is not being heard for the reason best known to them.

#CHARGE# 9 :- Justice Oka and Smt. Anuja Prabhudesai are not interested in advancement of course of justice and not passing orders for welfare of all the litigants and failed to perform their singular and paramount duty to discovery of truth but misused their power and Court machinery to pass a judgment to encourage the fraudsters and to discourge the honest litigants and therefore they are guilty of offence under section 409 of IPC.

4) Direction to Justice Oka & Smt Justice Anuja Prabhdesai to resign forthwith from their post as per law laid down by Constitution Bench in K. Veeraswami's case (1991) 3 SCC 655 and also by invoking provisions of 'In-House Procedure' as their dishonesty, incapacity, malafides, Contempt and offences against administration of justice, breach of oath taken as a Judge, violation of Art. 14 of the Constitution, double standards, conduct of giving unequal treatment to different litigants, discrimination etc. are ex-facie proved.

5) Granting sanction to the applicant to prosecute Justice A.S. Oka & Smt. Justice Anuja Prabhdesai under offences disclosed in the Complaint.

Hon'ble Sir,

1. By way of this petition, **we would like to expose the real face of Justice A.S.Oka, Chief Justice Karnataka High Court** who while working as a senior Judge of Bombay High Court tried to project himself as a honest, fair and transparent Judge.

2. The dishonesty, malafides, double standards and criminal offences against the administration of Justice by A.S Oka are capsulized as under;

3. **#CHARGE# 1:- MISUSE OF POWER TO HELP SHARAD PAWAR AND AJIT PAWAR IN A FRAUD OF AROUND 25,000 CRORES IN THE PETITION FILED BY SHRI. ANNA HAZARE**:-

Shri. Anna Hazare filed P.I.L (ST) No. 420 of 2016 demanding C.B.I. investigation in the case of a fraud of around 25,000 crores by Shri. Sharad Pawar and Shri. Ajit Pawar. When the matter came up for hearing on 6th January, 2017 before Justice A.S. Oka and Smt. Justice Anuja Prabhudesai to approach police and without which they cannot direct C.B.I. to investigate.

The prayers in the petition of Shri. Anna Hazare read as under;

PRAYER:-

"A. To direct the CBI to investigate the allegation of fraud in the governance by first burdening the Cooperative Sugar Factories with debts and thereafter selling off Cooperative Sugar Factories at throw away rates causing a loss of nearly 25,000 Crores to the Government exchequer and the Cooperative sector and the public and institute offences against all those found responsible under several Acts, by issuing a writ of mandamus or any other writ order as the case may be ;

C. To direct constitution of a Special Investigation Team to inquire into the involvement politicians in Maharashtra including of Shri. Shard Pawar and Shri. Ajit Pawar in the nearly 25,000 Crores of loss caused to the State of Maharashtra and through the disintegration of the Cooperative societies by using their power and position in destroying the cooperative movement in Maharashtra, by issuing a writ of mandamus or any other writ order as the case may be.

E. To direct the Central Bureau of Investigation to enquire into the allegations of corruption and misuse of Government and Co-operative funds in the entire scam of leasing out and sale of CSFs in Maharashtra including Shri. Sharad Pawar and Shri. Ajit Pawar, and institute offences against them, by issuing a writ of mandamus or any other writ order as the case may be. "

But Justice A.S.Oka adopted deliberate technique of misdirecting the case and passed order on **6th January 2017** as under;

1. *The learned counsel appearing for the Petitioner oninstructions, states that the Petitioner will take steps t o set the criminal law in motion by taking recourse to Section 154 of the Code of Criminal Procedure, 1973 . He seeks time of one month for that purpose.*
2. *Place the Petition under the caption of "fresh Admission" on 13th February, 2017. We permit the*

Petitioner to file additional affidavit before the next date. "

"Bombay HC refuses to order CBI probe 'at this stage' on Anna Hazare's plea in sugar scam

The court was hearing a criminal PIL filed by Anna Hazare seeking CBI inquiry into the sugar co-operative factories scam.

Mumbai: The Bombay High Court on Friday refused to order a CBI probe in a PIL filed by social activist Anna Hazare's plea into the alleged sugar cooperative factories scam involving Rs 25,000 crore in which he has named politicians including NCP president Sharad Pawar and his nephew Ajit Pawar.

The court asked Hazare to first file a police complaint and said it could not order a CBI inquiry "at this stage".

"First file a police complaint based on your allegations and if they (police) refuse to register it, then approach their higher authorities and even if that does not work out then come to us.

"At this stage, we would not order a CBI inquiry... You are asking for a CBI probe without even the offence being registered by the police. How can you ask for transfer of probe when offence has not been registered?," asked the high court.

The petitions alleged that fraud had been committed in governance by first burdening sugar co-operative factories with debts and thereafter selling these sick units at a throwaway price, causing loss of Rs 25,000 crore to the government, cooperative sector and members of the public.

The petitions also prayed to appoint a court receiver to take possession of all the properties held by persons against whom a prima facie case exists in the alleged scam.

The petitions name Sharad Pawar and his nephew and former Maharashtra minister Ajit Pawar as respondents.

The petitions also demanded setting up of a

Commission of inquiry to probe the alleged illegal sale of sugar cooperative factories in Maharashtra either by the government or the cooperative banks.

The petitions demanded an inquiry by CBI into allegations of corruption and misuse of government and cooperative funds in the scam involving lease and sale of co-operative sugar factories in Maharashtra which caused a loss of Rs 25,000 crore to the exchequer.

The petitioner stated that the statistics and facts mentioned in the petition have been collected from authorities through Right to Information Act.

Hazare pleaded that "the scam" had engulfed the entire state and pulled

it back by nearly 50 years causing losses to the government and putting the state under financial debt to the tune of hundreds of crores of rupees."

The abovesaid tactics adopted by Justice Oka were with malafide intention to harass Shri. Anna Hzare and help the accused. The law is clear that there is no bar for High Court to direct registration of F.I.R. and investigation by C.B.I. The best example is **in the case of Sohrabuddin Shaikh where Hon'ble Supreme Court on the basis of letter taken cognizance and directed C.B.I. to investigate.** In another case Justice Chandrachud's Division Bench in the case of **Provident Investment Co. Case MANU/MH/0054/2012** has passed the order and settled the law read as under:

"***21.*** *The same principles have been reiterated in a recent decision in the State of Punjab v. Davinder Pal Singh Bhullar CDJ 2011 SC 1240 We are conscious of the position in law that recourse to an investigation by the CBI is to be resorted to with caution and circumspection. The material which has been placed on the record reflects prima facie a clear attempt to obliterate every available trace pertaining to the record of the suit, be it in the form of the suit register, the original pleadings or the Minutes Books of the learned Judge who dealt with a large number of suits pertaining to the year in question. This is an exceptional situation where the Union of India, the State of Madhya Pradesh and the Provident*

Investment Company Limited, which is a body corporate owned and controlled by the State Government have joined in urging that an investigation by the CBI should be ordered. Above all and quite apart from this aspect, we are of the view that the present case raises vital issues about the sanctity and integrity of the records maintained by this Court as a constitutional Court which is entrusted with the function of acting as a Court of record. Any attempt to interfere with the position of the Court by the tampering ***or destruction of the record is a matter of grave concern and in which society and the public have a vital interest.***

22. In these circumstances, we entrust to the CBI the task of conducting an enquiry into the circumstances in which the records pertaining to Long Cause Suit 36 of 1969 have been destroyed and/ or have gone missing from the registry of this Court. The Director - CBI, shall ensure that the enquiry is conducted expeditiously.

23. *We decline to accede to the submission of the Plaintiffs that the trial of the suit should be allowed to proceed in the meantime. The basic question as to whether the suit continues to remain on the file of the Court would need a complete and thorough enquiry by the CBI. The judicial officer who was requested to conduct an enquiry by this Court has found in the course of his report that there is no trace of any record pertaining to the suit in the registry and that as a result he was unable to come to a conclusion as to whether the suit continues to remain pending on the file of the Court. In this view of the matter, unless the basic question as to whether the suit remains pending on the file of the Court is determined, it would be unsafe to proceed with the trial of the suit.*

Similarly in **Charu Kishore Mehta vs. State of Maharshtra 2011 ALL MR (Cri) 173** it is ruled by Division Bench of Justice Khanwilkar as under;

A1:- ***Accusations of fraud, embezzlement etc. that too in relation to a public trust property ought not to have been taken lightly by EOW. We therefore***

think it necessary to invoke extra-ordinary writ jurisdiction under Article 226 of the Constitution of India so as to direct the respondent police in this case to record FIR, register a criminal case, investigate it and file a final report in respect thereof in the competent criminal court, in accordance with law.

22. In the result, the Writ petition is allowed. Rule is made absolute accordingly. Criminal Application No.308 of 2010 is also disposed of."

A2:- ***When the grievance or complaint pertains to serious economic offences in relation to public trust, interrogation of accused or suspects as permissible according to law may become sine qua non to unearth the crime and to bring real offenders to justice. The function of investigation is of executive nature reserved for the police subject to superintendence by the State Government. The Executive limb of the Government is responsible to maintain law and to prevent as well as investigate serious crimes so as to book the real culprits.***

A3:- ***. In our opinion there was no reason for EOW to ignore accusations in the complaint when the complainant narrated how the Public Trust had been deprived of huge property for private gains by the accused. What is more surprising is that no inquiry was even attempted in this case in respect of manner of disposal of the property of the Trust allegedly by the accused persons. The investigating officer could have interrogated each of the accused even for the purpose of preliminary inquiry.***

We cannot countenance the fact as to why police did not record the FIR though it was their mandatory duty under section 154 of the Code and furthermore, why no investigation was undertaken despite a detailed statement sent by the complainant Petitioner. There was no excuse for Police to kill time and then merely say that it was a civil dispute, despite serious nature of accusations made in the complaint. Deliberate

inaction or shoddy approach or failure to complete full and proper investigation can only help the real culprits to go scot free. The provisions referred to above occurring in Chapter XII of the Code show that detailed and elaborate provisions have been made for securing that an investigation takes place regarding an offence of which information has been given and the same is done in accordance with the provisions of the Code.

"*19. It is no doubt true that normal/general rule is to leave the party to adopt remedy available under the Code, but this Court is not powerless to issue an appropriate writ when police have failed or avoided to use their powers available under the code to unearth serious economic crimes complained of, if evasiveness to book the real culprits is apparent in the facts and circumstances of the case. In the present case, the petitioner had sent a typed and detailed communication addressed to Shri Rakesh Maria I.P.S., heading Economic Offences Wing, Crime branch C.I.D. in Police Commissioners Compound Annex -1 Building, 2nd floor opp. Mahatma Phule Market at Mumbai -1. In view of the accusations made in details, in our view it was not a case of preliminary inquiry at all considering the38 WP1937.10.doc serious nature of the accusations. The case, obviously, was not covered within the excepted category so as to resort to preliminary enquiry before registration of FIR. The police were duty bound to register the FIR and to proceed with the investigation, in the facts and circumstances of the case.*

Economic offences wing did not, except making few diary entries, bother to inquire with the suspects. Dilly-dallying tactics and evasiveness of police is apparent to us, while we went through diary entries of EOW with the help of Learned Addl. Public Prosecutor. Preliminary inquiry in this case did not really move further except for stopping at mere reference made to the Charity Commissioner, Mumbai. Even assuming that preliminary enquiry in this case has rightly been resorted to, even then the police machinery was expected to delve into details in respect of accusations made by the complainant to make it a

real, effective, meaningful preliminary inquiry to summon & inquire with persons acquainted with facts of the case. In our opinion, the preliminary inquiry herein was to do mere paper compliance so as to record that the nature of complaint is a civil dispute. Notably, for the nature of allegations were serious such as fabrication of record, criminal breach of trust, fraud, criminal conspiracy etc., by no stretch of imagination all of them can be passed off as a civil dispute.

20. It is well settled that the High Court in exercise of its power under Article 226 of the Constitution of India can always issue appropriate directions at the instance of an aggrieved person if it is convinced that the power of investigation has been exercised by an Investigating Officer mala fide. The malafide exercise of power need not be malafide in fact. It can be a case of malafide in law. We are conscious that this power is to be exercised in exceptional and rarest of the rare cases where a clear case of abuse of power and non-compliance with the provisions falling under Chapter XII of the Code is clearly made out requiring the interference of the High Court. It is true that in such cases*.*

21. The Petitioner in this case was simply informed by the police authority that the preliminary inquiry in to the written complaint sent by the Petitioner has been closed. Further, the complaint petition was being forwarded to the Charity Commissioner, Worli at Mumbai for necessary action in the matter. In our opinion although under these circumstances, it is open for the Petitioner, if she is dissatisfied by the said police inaction to avail of an alternative remedy to lodge a private complaint by moving the competent criminal court as indicated in Hari Singh's case or in Aleque Padamsee's case(Supra) under the circumstances mentioned we hold that in the fact situation of the present case interference by this Court is inevitable in view of the finding that the police machinery acted malafide. It had lawful means at its command to inquire and investigate more effectively against the accused on the basis of FIR and material which can be collected by them by interrogating the suspects, if necessary, by custodial interrogation, as may be

permissible. Moreso when the grievance or complaint pertains to serious economic offences in relation to public trust, interrogation of accused or suspects as permissible according to law may become sine qua non to unearth the crime and to bring real offenders to justice. The function of investigation is of executive nature reserved for the police subject to superintendence by the State Government. The Executive limb of the Government is responsible to maintain law and to prevent as well as investigate serious crimes so as to book the real culprits. We are of the opinion that the inaction/failure by the police in this case is lamentable because specific detailed serious accusations of forgery, criminal breach of Trust, fabrication of record, swindling of Trust funds of the Trust were made by the complainant. The police ought to have followed the mandate of law to record FIR, and to register a criminal case and investigate it instead of passing it off merely as a civil dispute. That is nothing short of colourable exercise of power, as rightly criticized by Mr. Jethmalani. For the reasons stated, ***therefore, we do find this as an exceptional case with a valid ground made out to entertain the petition in the facts and circumstances stated by the Petitioner. It is noteworthy that in this case, the police acted from the day one as if no offence was committed. The police did not register any FIR. It is stated that a preliminary inquiry was made.*** *However, the result of that inquiry has not been disclosed in the record as to what inquiry was made, from whom it was made and what was the conclusion of this inquiry made by Police. The stand taken by the police that it was a civil dispute only and therefore the matter was refereed to the Charity Commissioner, Mumbai is not acceptable as it smacks of malafides and evasive of duty to investigate completely and fully. We consider that the whole effort of the Police had been to find an excuse for not investigating in to accusations made and it is for this reason that the statement made by complainant petitioner remained unheeded for long. If the complainant had made a statement on 25th April, 2008, there was no reason why this statement was not brought on record by registering a case at the police station concerned in any manner. No*

FIR was recorded on the basis of statement of complainant. In our opinion there was no reason for EOW to ignore accusations in the complaint when the complainant narrated how the Public Trust had been deprived of huge property for private gains by the accused. What is more surprising is that no inquiry was even attempted in this case in respect of manner of disposal of the property of the Trust allegedly by the accused persons. The investigating officer could have interrogated each of the accused even for the purpose of preliminary inquiry.

We cannot countenance the fact as to why police did not record the FIR though it was their mandatory duty under section 154 of the Code and furthermore, why no investigation was undertaken despite a detailed statement sent by the complainant Petitioner. There was no excuse for Police to kill time and then merely say that it was a civil dispute, despite serious nature of accusations made in the complaint. Deliberate inaction or shoddy approach or failure to complete full and proper investigation can only help the real culprits to go scot free. The provisions referred to above occurring in Chapter XII of the Code show that detailed and elaborate provisions have been made for securing that an investigation takes place regarding an offence of which information has been given and the same is done in accordance with the provisions of the Code. Where the involvement of persons comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the information received. It is their duty to investigate and submit a report to the Magistrate upon the innocence or involvement of the persons concerned. Every police-officer, to the best of his ability, should collect and obtain evidence concerning the commission of cognizable offences or designs to commit such offences and lay such information and take such other steps consistent with law and with the orders of his superiors, as shall be best calculated to bring offenders to justice. This duty of police to investigate includes, in our opinion, the duty and authority conferred by the section 156 of the Code of Criminal Procedure. Section 156, therefore, is wide, and

any officer in charge of a Police station may without the order of a Magistrate may investigate any cognizable case within the local area limits of the police station and the court concerned. The proceedings of the police officer shall not be called in question on the ground that such police officer was not empowered to investigate under this section. Section 159 of the Code defines the powers of a Magistrate, which he can exercise on receiving a report from the police of the cognizable offence under section 157 of the Code. In our opinion, section 159 is intended to give power to the Magistrate to ensure that the police shall investigate all cognizable offences and do not refuse to do so by abusing the right granted for certain limited cases of not proceeding with the investigation of the offence. Section 2(h) Cr.P.C. defines "investigation"

and it includes all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf. It ends with the formation of the opinion as to whether on the material collected, there is a case to place the accused before a Magistrate for trial and if so, taking the necessary steps for the same by filing of a charge-sheet under Section 173.

45 WP1937.10.doc Chapter XII of the Code of Criminal Procedure deals with "Information to the Police and Their Powers to Investigate". Section 154 provides that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf (in the present case detailed typewritten complaint was sent in respect of the commission of serious economic offences).

Accusations of fraud, embezzlement etc. that too in relation to a public trust property ought not to have been taken lightly by EOW. We therefore think it necessary to invoke extra-ordinary writ jurisdiction under Article 226 of the Constitution of India so as to direct the respondent police in this case to record FIR, register a criminal case,

investigate it and file a final report in respect thereof in the competent criminal court, in accordance with law.

22. In the result, the Writ petition is allowed. Rule is made absolute accordingly. Criminal Application No.308 of 2010 is also disposed of."

Hence it is clear that the procedure adopted by Justice A.S Oka was with an intention to save the accused and an attempt to harass Shri. Anna Hazare who was fighting for the welfare of State and exposed the fraud of around 25,000 crores. This itself is sufficient to prosecute Justice A.S Oka and Smt. Justice Anuja Prabhudesai under Section. 218 and 219 of I.P.C.

Sec 218 of I.P.C. 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.

The other citation are as under:-

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

Girdhari Lal,(1886) 8 All 633.

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(II) The section is concerned with bringing erring public servants to book for falsifying the public records in their charge. The essence of the offence under section 218 is intent to cause loss or injury to any public or person or thereby save any person from legal punishment or save any property from forfeiture or any other charge.

Biraja Prosad Rao Vs. Nagendra Nath, (1985) 1 Crimes 446 (Ori.)

Actual commission of offence not necessary:-

(III) The actual guilt or innocence of the alleged offender is immaterial if the accused believes him guilty and intends to screen him.

Hurdut Surma, (1967) 8 WR (Cr.) 68.

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

Narapareddi Seshareddi, In Re, AIR 1938 Mad 595.

(V) Where the accused increased the marks of particular persons for pecuniary benefits during the course of preparing final record for appointment as physical education teacher, it was held that the offence alleged is clearly made out.

Rakesh Kumar Chhabra Vs. State of H.P., 2012 CrLJ 354(HP)

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

Moti Ram Vs. Emperor, AIR 1925 Lah 461.

(VII) The Supreme Court has held that if a police officer has made a false entry in his diary and manipulated other records with a view to save the accused was subsequently acquitted of the offence cannot make it any the less an offence under this section.

Maulud Ahmad Vs. State of U.P.,(1964) 2 CrLJ 71 (SC).

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

Madanlal Vs Inderjit, AIR (1970) Punj 200.

(IX) Corruptly or maliciously committing any person for trial or confinement. The foundation of an action for malicious prosecution lies in abuse of the process of Court by wrongfully setting the law in motion and it is designed to discourage the perversion of the machinery of justice for an improper purpose.

Shri Lakhan Lal Misra Vs Kashi Nath Dube, AIR 1960 MP 171.

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

Afzalur Rahmman Vs Emperor, AIR 1943 FC 18.

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

Mansharam Gianchand Vs Employee 1942 Cri. LJ. 460.

(XII) But compelling the victim to alight from a bus and taking him to a nearby street by accused amounts to wrongful restraint

Suryamoorathi Vs Govindswami AIR 1989 SC 1410.

Sec 219 of I.P.C. 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

4. **#CHARGE# 2:-** Illegalities committed in the case of **Dr. Santosh Shetty in Civil Application No. 72 of 2017 reported in 2019 SCC Online Bom 99** are explained in following paras :-

4.1 That it was a case for enquiry of falsity of affidavit filed by wife demanding enhancement of the maintainance Justice Oka being aware of the consequences tried to misdirect the case and rejected the application by deliberate misinterpretation of Hon'ble Supreme Court judgement in para 29 of the impugned order, Justice A.S.Oka & Smt.Justice Anuja Prabhudesai with ulterior motive to avoid prosecution of a lady has relied upon the judgment in **Iqbal Singh Marwah and Anr. Vs Meenakshi Marwah and Anr.(2005) 4 SCC 370** with a specific reference of Paragraph 24 of the said Judgment. It is the view /interpretation of Justice A.S. Oka & Smt. Justice Anuja Prabhudesai that Constitution Bench laid down the law that the proceeding Under Section 340 of Criminal Procedure Code should be decided at the end of the main proceedings. The misinterpreted observations by Justice A.S Oka in its order dated 25th January, 2019 reads as under;

> ***"29.*** *The Constitution Bench of the Apex Court in the case of Iqbal Singh Marwah (supra) interpreted section 340. Paragraphs 23 and 24 of the said decision reads thus:—*
>
> *"23.* ***In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195 (1)(b), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case****. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b).* ***This expediency will normally be judged by the court by weighing not the magnitude of injury***

suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint*. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded.*

24. There is another consideration which has to be kept in mind. Sub-section (1) of Section 340 CrPC contemplates holding of a preliminary enquiry. ***Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the court and this is done at the stage when the proceeding is concluded and the final judgment is rendered.*** *Section 341 provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the appeal is bound to take time. Section 343(2) confers a discretion upon a court trying the complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in matters arising out of civil suits where decisions are challenged in successive appellate fora*

which are time-consuming. It is also to be noticed that there is no provision of appeal against an order passed under Section 343(2), whereby hearing of the case is adjourned until the decision of the appeal. These provisions show that, in reality, the procedure prescribed for filing a complaint by the court is such that it may not fructify in the actual trial of the offender for an unusually along period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This important consideration dissuades us form accepting the broad interpretation sought to be placed upon clause (b)(ii).”

However in para 32 of the **Iqbal Singh Marwah and Anr. Vs Meenakshi Marwah and Anr.(2005) 4 SCC 370** judgment it has been held as under;

“32. *Coming to the last contention that an effort should be made to* ***avoid conflict of findings between the civil and criminal Courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given.*** *There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section 476 of old Code,* ***the following observations made by a Constitution Bench in M.S. Sheriff v. State of Madras MANU/SC/0055/1954 : [1954]1 SCR 1144 give a complete answer to the problem posed :***

(15) “As between the civil and the criminal proceedings we are of the opinion that the

criminal matters should be given precedence. *There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal Courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.*

(16) Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. ***The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial.*** *Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.*

This, however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under S. 476. But ***in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished."***

In concluding para Apex Court relied on earlier Judgment of Constitution Bench of Hon'ble Supreme Court in **M.S. Sheriff Vs. State of Madras AIR 1954 SC 397**, where it is clearly ruled that whenever in any civil proceedings an Application under section 340 of Cr.P.C. is filed then as being criminal

proceeding it should be given precedence and civil proceedings be stayed till criminal proceedings are finalised. Criminal proceedings should be decided urgently. But Justice Oka committed a deliberate gross error in placing reliance only on para 24 and not considering para 32 of **Iqbal Singh Marwah's** case *(Supra).*

In **M.S.Sheriff Vs. State of Madras 1954 SCR 1144** It is ruled as under;

> ***14.****We were informed at the hearing that two further sets of proceedings arising out of the same facts are now, pending against the appellants. One is two civil suits for damages for wrongful confinement. The other,is two criminal prosecutions under section 344, Indian Penal Code, for wrongful confinement, one against each Sub-Inspector. It was said that the simultaneous prosecution of these, matters will embarrass the accused. But after the hearing of the appeal we received information that the two criminal prosecutions have been closed with liberty to file fresh complaints when the papers are ready, as the High Court records were not available on the application of the accused As these prosecutions are not pending at the moment, the objection regarding them does not arise but we can see that the simultaneous prosecution of the present criminal proceedings out of which this appeal arises and the civil suits will embarrass the accused. We have therefore to determine which should be stayed.*
>
> ***15.****As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule ban. be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.*

> ***16.*** *Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things glide till memories have grown too dim to trust. This,however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so hear its end as to make it inexpedient to stay it in order to give precedence to a prosecution order of under section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished.*
>
> ***17.*** *The result is that the appeal fails and is dismissed but with no order about costs. Civil Suits Nos. 311 of 1951 to 314 of 1951, in the Court of the Subordinate Judge, Coimbatore, will be stayed till the conclusion of the prosecution under section 193, Indian Penal Code. As the plaintiffs there are parties here, there is no difficulty about making such an order.*

6. Needless to mention that, in various cases Hon'ble Supreme Court has ruled that whenever any of the party before the court object the claim of opposite party claiming it to be false, frivolous and based on suppression etc. then Court has to enquire into the said allegations and call for enquiry report or conduct enquiry itself and based on the enquiry report, or enquiry by the court the final decision on the merits of the case has to be taken and all the advantages taken by the guilty party should be taken back. This means that the enquiry under section 340 of Cr.P.C. has to be done first.

Relied on:

6.1) Dr.Sarvepalli Radhakrishnan University and Another Vs. Union of India andOthers 2019 SCC Online SC 51 (Full Bench)

In this case, Full Bench of Hon'ble Supreme Court appointed committee to enquire rival allegation and based on the report of the committee dismissed the petition and directed prosecution of perjury against the Petitioner.

6.2) Same law is laid down by Hon'ble Bombay High Court in **Union of India Vs. Haresh Milani 2018 SCC Online 2080** where relying on Apex Court judgments in **Kishor Samrite Vs. State of U.P & Anr. MANU/SC/0892/2012, Dilip Singh Vs. State of Uttar Pradesh & Ors.(2010) 2 SCC 114 & Ram Chandra Singh Vs. Savitri Devi (2003) 8 SCC 319**.

It is ruled that the proceedings under Section. 340 of Cr.P.C =. Should be decided first.

It is ruled by Hon'ble Bombay High Court in **Harish Milani's Case *(Supra)* 2018 SCC Online Bom 2080** as under;

"1. Heard learned counsel for the petitioner and respondent, on a very short point, as to whether the Civil Application No. 2939 of 2017, filed by respondent under Section 340 of the Code of Criminal Procedure, has to be decided and enquired into first before the Writ Petition filed by petitioner under Article 227 of the Constitution of India, which is challenging the order of amendment in the plaint, allowed by the trial Court.

2. According to learned counsel for respondent, as some false and misleading statements are made by the petitioner, to their own knowledge, in the Writ Petition, therefore, respondent has moved this Civil Application for taking action against the petitioner under Section 340 Cr.P.C. It is submitted that the writ petition can be decided as per law, only on the basis of result of the enquiry under Section 340 Cr.P.C. and therefore, this Application should be decided first.

3. Learned counsel for the petitioner, has however, denied that any false averments are made in the writ petition and submitted that the writ petition needs to be heard first as the proceeding before the trial Court are unnecessarily stalled. It is submitted that fling of such Civil Application is an attempt on the part of respondent to continue to be in

unlawful possession of the suit land, as respondent knows that the hearing of the application filed under Section 340 Cr.P.C. which is though baseless and false, is going to consume time of this Court.

4. Learned counsel for respondent has, in support of his submission relied upon the judgment of Allahabad High Court, in the case of Syed Nazim Husain v. The Additional Principal Judge Family Court and Anr.in Writ Petition No. (M/S) of 2002, wherein also similar point was raised as to whether the application under Section 340 Cr.P.C., has to be decided first before adjudicating the proceeding in which the said application was filed. By it's order, Allahabad High Court has directed the trial Court to dispose of the application moved by petitioner under Section 340 Cr.P.C., before proceeding further in accordance with law.

5. Learned counsel for respondent has also relied upon the order dated 15th December, 2017, passed by this Court [Coram: A.S. Gadkari, J.], in Criminal Application No. 728 of 2017; wherein also this Court has recorded the submission of learned counsel for respondent that his application preferred under Section 340 Cr.P.C, be heard first in point of time and accordingly adjourned the matter to 2nd February, 2018.

6. Learned counsel for respondent has then relied upon the judgments of Hon'ble Apex Court, in the cases of i] Dalip Singh v. State of Uttar Pradesh [MANU/SC/1886/2009 : (2010} 2 SCC 114], ii] Rameshwari Devi v. Nirmala Devi [MANU/SC/0714/2011 : (2011) 8 SCC 249, and iii] Kishore Samrite v. State of Uttar Pradesh[MANU/SC/0892/2012 : (2013) 2 SCC 398], holding that, ***"It is very well settled that a person whose case is based on falsehood has no right to approach the Court and he is not entitled to be heard on merits and he can be thrown out at any stage of the litigation.***

7. In my considered opinion, having regard to the above said legal position spelt out by learned counsel for respondent, ***it would be just and proper to hear C.A.***

No. 2939 of 2017 filed by respondent under Section 340 Cr.P.C. before deciding the Writ Petition*."*

6.3) That, similar ratio is laid down by co - ordinate Division Bench of Hon'ble Bombay High Court in **Bhavesh Doshi Vs. Mamta Bhavesh Doshi 2016 SCC OnLine Bom 12799.** The same judegment was relied by counsel and referred by Justice Oka in Para 17 of the judgment but for ulterior purposes the ratio laid down in Bhavesh Doshi's case was misinterpreted and conveniently ignored.

The ratio laid down in **Bhavesh Doshi's case (supra)** is that when husband says he has no income and deliberately leaves the job to avoid maintainance and in such cases enquiry should be ordered,**and based on the said enquiry decision can be taken whether prosecution for perjury should be initiated against the accused party for suppressing facts.**

The relevant part of the judgment reads as under;

2*. We direct the ZCL Chemicals Ltd. to keep its responsible senior officer present in this court on 30th November, 2016 alongwith the relevant records and also file an affidavit whether in fact the services of the appellant are terminated or not.*

3*. We have noticed in several cases that whenever an application for maintenance is filed by wife and maintenance is awarded to the wife and the children, suddenly the husband either losses his job or if he is a businessman, starts incurring losses. This is obviously because they do not wish to pay maintenance to the wife and the children.* ***We are of the view that some kind of mechanism should be evolved in such cases to find out the truthfulness of the statement made by the husband on oath. In our view, if such statement is found to be incorrect, for this, a perjury proceeding should be initiated against such husband.***

6. We are of the view that some agency also can be directed to make a discrete inquiry against such a husband, who claims to have no income, either by the police or by some other private agency so that the said agency can submit a report to this court regarding truthfulness made by the husband on oath. Such agency can be directed to find out his social

status and his standard of living. All these aspects will be considered by us on the next date.

However, this important ratio and binding precdent was deliberately ignored, misinterpreted and given a go-bye by **Justice A.S. Oka & Smt. Anuja Prabhudesai** in their judgment dated 25th January 2019, the observation by Justice Oka are as under;

> *"17. By way of illustration,* ***he relied upon an order of this Court in the case of Mr. Bhavesh Dinesh Doshi Vs. Mamta Bhavesh Doshi (*****2016 SCC Online*****). He pointed out that this Court directed discreet enquiry into a claim made by the husband who contended that he had no income****. He relied upon the decision of this Court on anticipatory bail application in the case of Ashok Motilal Saraogi Vs. State of Maharashtra.*
>
> But Justice Oka did not mentioned or uttered a single word about the exact ratio laid down in the said case of Bhavesh Doshi *(Supra)* nor given any reasoning as to why said case law is not applicable.

6.6) Hon'ble Supreme Court in **Promotee Telecom Engineers Forum Vs. D.S. Mathur, Secretary, Department of Telecommunications (2008) 11 SCC 579**,had 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.*

This deliberate interpretation and dishonest concealment of legal ratio will lead to two conclusions that Justice A.S.Oka is actuated with corrupt and oblique motive and/or don't know the appreciation of law. In both the situation he not only liable to be removed from judiciary but also liable for

action under Contempt of Courts Act.

Hon'ble Supreme Court in **Superintendent of Central Excise and others Vs. Somabhai Ranchhodhbhai Patel (2001) 5 SCC 65 have ruled as under;**

> *"(A) Contempt of Courts Act (70 of 1971), S.2 – The level of judicial officer's understanding can have serious impact on other litigants- We do not know whether present is an isolated case of such an understanding? We do not know what has been his past record? In this view, we direct that a copy of the order shall be sent forthwith to the Registrar General of the High Court.*
>
> *Misinterpretation of order of Supreme Court - Civil Judge of Senior Division erred in reading and understanding the Order of Supreme Court - Contempt proceedings initiated against the Judge - Judge tendered unconditional apology saying that with his limited understanding, he could not read the order correctly. While passing the Order, he inadvertently erred in reading and understanding the Order of Supreme Court - Supreme Court issued severe reprimand – Held, The officer is holding a responsible position of a Civil Judge of Senior Division. Even a new entrant to judicial service would not commit such mistake assuming it was a mistake - It cannot be ignored that the level of judicial officer's understanding can have serious impact on other litigants. There is no manner of doubt that the officer has acted in most negligent manner without any caution or care whatsoever- Without any further comment, we would leave this aspect to the disciplinary authority for appropriate action, if any, taking into consideration all relevant facts. We do not know whether present is an isolated case of such an understanding? We do not know what has been his past record? In this view, we direct that a copy of the order shall be sent forthwith to the Registrar General of the High Court."*

6.7. Hon'ble Supreme Court in **Union of India Vs. K. K. Dhawan (1993) 2 SCC 56 (Full Bench)** it is ruled as under;

> *"If any Judge acts negligently or recklessly or in order*

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

*"**28.** Certainly, therefore, the officer who exercises judicial or quasi - judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:*

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

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

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

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

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

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

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

"If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal.

That misconduct, according to my view, need not be misconduct in the carrying on of the service of the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant."

#CHARGE# 7:- <u>CONTEMPT OF LAW LAID DOWN BY CO-ORDINATE BENCH</u>:-

Apart from Contempt of Supreme Court judgment in Iqbal Singh Marwah's case *(Supra),* Justice A.S Oka and Smt. Justice Anuja Prabhudesai are also guilty of Contempt of Co-ordinate Bench.

The Division Bench in **<u>Bhavesh Doshi Vs. Mamta Bhavesh Doshi 2016 SCC OnLine Bom 12799,</u>** laid down the law and ratio regarding enquiry and action of perjury against husband, there was no discretion for Justice A.S.Oka & Smt.Justice Anuja Prabhudesai to not to pass order directing enquiry. But Justice A.S.Oka acted against the law laid down by Co-ordinate Bench. This amounts to judicial impropriety as Court is bound by the judgment of co-ordinate Bench.

Hon'ble Supreme Court in **<u>Santlal Gupta Vs.Modern Co-operative Group Housing Society Ltd. and Ors.(2010) 13 SCC 336</u>** had ruled as under;

"A bench must follow the decision of a coordinate bench and take the same view as has been taken earlier. The earlier decision of the coordinate bench is binding upon any latter coordinate bench deciding the same or similar issues. If the latter bench wants to take a different view than that taken by the earlier bench, the proper course is for it to refer the matter to a larger bench."

In **<u>Vijay Laxmi Sadho Vs. Jagdish AIR 2001 SC 600,</u>** where it is ruled as under;

"Courts of Co–ordinate jurisdiction should have consistency. The quality of certainity will not appear if Co-ordinate benches overrules each other decisions"

In **<u>Thirani Chemicals Ltd. Vs. Dy. Commissioner of Income Tax</u>**

MANU/DE/9380/2006,where it is ruled as under;

> ***"DISAGREEMENT WITH DECISION RENDERED BY EARLIER BRANCH - in light of concession made by parties? - Held, a concession made by parties cannot give authority to Coordinate Bench to differ with views taken by an earlier Coordinate Bench as that would play havoc with principles of judicial discipline and certainty - Parties by consent cannot confer authority or jurisdiction on Coordinate Bench to differ with view taken by an earlier Coordinate Bench."***

6.9. Justice A.S.Oka and Smt Justice Anuja Prabhudesai failed to call an enquiry report for bringing the truth to surface as has been done by Hon'ble Supreme Court an Hon'ble High Court in the landmark judgments like ;

> **a) Sarvapalli Radhakrushanan Vs. Union of India 2019 SCC OnLine SC 61**
> **b) Saint Asaram Bapu Vs.State of RajasthanAIR 2017 SC 726,**
> **c) Maria Margarida AIR 2012 SUPREME COURT 1727**
> **d) Afzal Vs. State AIR 1996 SC 2326,**
> **e) M.P.Dwivedi AIR 1996 SC 2299 ,**
> **f) Kishor Samrite Vs. State MANU/SC/0892 /2012**
> **g)Pushpadevi M. Jatia Vs. M.L. Wadhavan, Addl. Secretary AIR 1987 SC 1748.**
> **h) M.S. Sheriffs Vs State Of Madras AIR 1954 SC 397(Constitutional Bench)**
> **i) Harish Milani Vs.Union of India 2018 SCC OnLine Bom 2080.**
> **j) Bhavesh Doshi Vs. Mamta Doshi 2016 SCC OnLine Bom 12799.**

Thus, from the above judgments it is clear that, whenever there is an allegation of fraud on Court, the Court is expected to call for enquiry report either from Police, C.B.I. or any committee to find out the truth and based on that report decides the case and the allegations of perjury. But justice Oka deliberately ignored the said ratio and acted against the accepted canons of judicial system.

7) Justice A.S.Oka and Smt Jusice Anuja Prabhudesai failed to exercise their jurisdiction in judicious manner and resorted to an unjust exercise of discretion. They failed to take into consideration that, in the matters of committing fraud on the process of the courts of law, there is no absolute discretion vested with the judicial authority and appropriate necessary legal corollary of calling enquiry report should follow whenever such fraud is brought to the forefront.

8) 'Discretion of Judges' is capsulized as under :-

> ***DUTY OF COURT TO DISCOVER TRUTH. TRUTH SHOULD BE THE GUIDING STAR IN THE ENTIRE JUDICIAL PROCESS.***
>
> ***11.11*** *In Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria, (2012) 5 SCC 370, the Supreme Court again highlighted the significance of truth and observed that the truth should be the guiding star in the entire legal process and it is the duty of the Judge to discover truth to do complete justice. The Supreme Court stressed that Judge has to play an active role to discover the truth and he should explore all avenues open to him in order to discover the truth. The Supreme Court observed as under:*
>
> *"32. In this unfortunate litigation, the Court's serious endeavour has to be to find out where in fact the truth lies.*
>
> *33. The truth should be the guiding star in the entire judicial process.Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.*
>
> *xxx xxx xxx*
>
> ***35. What people expect is that the Court should discharge its obligation to find out where in fact the truth lies. Right from inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.***
>
> *xxx xxx xxx*
>
> ***39. ...A judge in the Indian System has to be regarded as failing to exercise its jurisdiction and thereby discharging its judicial duty, if in the guise of remaining neutral, he***

opts to remain passive to the proceedings before him. He has to always keep in mind that "every trial is a voyage of discovery in which truth is the quest". I order to bring on record the relevant fact, he has to play an active role; no doubt within the bounds of the statutorily defined procedural law.

41. World over, modern procedural Codes are increasingly relying on full disclosure by the parties. Managerial powers of the Judge are being deployed to ensure that the scope of the factual controversy is minimised.

xxx xxx xxx

42. ***In civil cases, adherence to Section 30 CPC would also help in ascertaining the truth. It seems that this provision which ought to be frequently used is rarely pressed in service by our judicial officers and judges....."***

xxx xxx xxx

52. Truth is the foundation of justice. It must be the endeavour of all the judicial officers and judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth."

(Emphasis supplied)

11. In Ved Parkash Kharbanda v. Vimal Bindal, 198 (2013) DLT 555, this Court considered a catena of judgments in which the Supreme Court held that the truth is the foundation of justice and should be the guiding star in the entire judicial process. This Court also discussed the meaning of truth and how to discover truth. Relevant portion of the said judgment is reproduced hereunder:

"11.Truth should be the Guiding Star in the Entire Judicial Process 11.1 Truth is the foundation of justice. Dispensation of justice, based on truth, is an essential feature in the justice delivery system. People would have faith in Courts when truth alone triumphs. The justice based on truth would establish peace in the society.

11.2 Krishna Iyer J. in Jasraj Inder Singh v. Hemraj Multanchand, (1977) 2 SCC 155 described truth and justice as under:

"8. ...Truth, like song, is whole, and half-truth can be noise! Justice is truth, is beauty and the strategy

of healing injustice is discovery of the whole truth and harmonising human relations. Law's finest hour is not in meditating on abstractions but in being the delivery agent of full fairness. This divagation is justified by the need to remind ourselves that the grammar of justice according to law is not little litigative solution of isolated problems but resolving the conflict in its wider bearings."

11.3 In Union Carbide Corporation v. Union of India, (1989) 3 SCC 38, the Supreme Court described justice and truth to mean the same. The observations of the Supreme Court are as under:

"30. ...when one speaks of justice and truth, these words mean the same thing to all men whose judgment is uncommitted. Of Truth and Justice, Anatole France said : "Truth passes within herself a penetrating force unknown alike to error and falsehood. I say truth and you must understand my meaning. ***For the beautiful words Truth and Justice need not be defined in order to be understood in their true sense. They bear within them a shining beauty and a heavenly light. I firmly believe in the triumph of truth and justice. That is what upholds me in times of trial...."***

11.4 In Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271, the Supreme Court observed that the presiding officer of a Court should not simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost and that there is a legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice.

11.5 In Chandra Shashi v. Anil Kumar Verma, (1995) 1 SCC 421, the Supreme Court observed that to enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, pre-variation and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in Courts when they would find that truth alone triumphs in Courts.

11.6 In A.S. Narayana Deekshitulu v. State of A.P., (1996) 9 SCC 548, the Supreme Court observed that from the ancient times, the constitutional system depends on the foundation of truth. The Supreme Court referred to Upanishads, Valmiki Ramayana and Rig Veda.

11.7 In Mohan Singh v. State of M.P., (1999) 2 SCC 428 the Supreme Court held that effort should be made to find the truth; this is the very object for which Courts are created. ***To search it out, the Court has to remove chaff from the grain. It has to disperse the suspicious, cloud and dust out the smear of dust as all these things clog the very truth. So long chaff, cloud and dust remains, the criminals are clothed with this protective layer to receive the benefit of doubt. So it is a solemn duty of the Courts, not to merely conclude and leave the case the moment suspicions are created. It is onerous duty of the Court, within permissible limit to find out the truth. It means, on one hand no innocent man should be punished but on the other hand to see no person committing an offence should get scot free****. There is no mathematical formula through which the truthfulness of a prosecution or a defence case could be concretised. It would depend on the evidence of each case including the manner of deposition and his demeans, clarity, corroboration of witnesses and overall, the conscience of a judge evoked by the evidence on record.* ***So Courts have to proceed further and make genuine efforts within judicial sphere to search out the truth and not stop at the threshold of creation of doubt to confer benefit of doubt.***

11.8 In Zahira Habibullah Sheikh v. State of Gujarat, (2006) 3 SCC 374, the Supreme Court observed that right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying existence of Courts of justice.

11.9 In Himanshu Singh Sabharwal v. State of Madhya Pradesh, (2008) 3 SCC 602, ***the Supreme Court held that the trial should be a search for the truth and not a bout over technicalities.*** *The Supreme Court's observation are as under:*

"5. ... 31. In 1846, in a judgment which Lord Chancellor Selborne would later describe as ***'one of the ablest judgments of one of the ablest judges who ever sat in this Court'****, Vice-Chancellor Knight Bruce said [Pearse v. Pearse, (1846) 1 De G&Sm. 12 : 16 LJ Ch 153 : 63 ER 950 : 18 Digest (Repl.) 91, 748] : (De G&Sm. pp. 28-*

29):

"31. The discovery and vindication and establishment of truth are main purposes certainly of the existence of courts of justice; still,

for the obtaining of these objects, which, however valuable and important, cannot be usefully pursued without moderation, cannot be either usefully or creditably pursued unfairly or gained by unfair means, not every channel is or ought to be open to them. The practical inefficacy of torture is not, I suppose, the most weighty objection to that mode of examination,... Truth, like all other good things, may be loved unwisely--may be pursued too keenly--may cost too much.

xxx xxx xxx

35. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice--often referred to as the duty to vindicate and uphold the 'majesty of the law'.

xxx xxx xxx

38. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty."

(Emphasis Supplied)

11.10 In Ritesh Tewari v. State of U.P., (2010) 10 SCC 677, the Supreme Court reproduced often quoted quotation: 'Every trial is voyage of discovery in which truth is the quest'

11.12 In A. Shanmugam v. Ariya Kshatriya, (2012) 6 SCC 430, ***the Supreme Court held that the entire journey of a judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of justice delivery system. The Supreme Court laid down the following principles:***

"43. On the facts of the present case, following principles emerge:

43.1. ***It is the bounden duty of the Court to uphold the truth and do justice.***

43.2. Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts.

43.3. The ultimate object of the judicial proceedings is to discern the truth and do justice. It is imperative that pleadings and all other presentations before the court should be truthful.

43.4. Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrong doer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.

43.5. It is the bounden obligation of the Court to neutralize any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process."

(Emphasis supplied) 11.13 In Ramesh Harijan v. State of Uttar Pradesh, (2012) 5 SCC 777, the Supreme Court emphasized that it is the duty of the Court to unravel the truth under all circumstances. 11.14 In Bhimanna v. State of Karnataka, (2012) 9 SCC 650, the Supreme Court again stressed that the Court must endeavour to find the truth. The observations of the Supreme Court are as under:

"28. The court must endeavour to find the truth. ***There would be "failure of justice" not only by unjust conviction but also by acquittal of the guilty, as a result of unjust failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and safeguarded but they should not be overemphasised to the extent of forgetting that the victims also have rights."***

11.15 In the recent pronouncement in Kishore Samrite v. State of U.P., (2013) 2 SCC 398, the Supreme Court observed that truth should become the ideal to inspire the Courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. The observations of Supreme Court are as under:

"34. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.

35. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own,

independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. ***The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs."*** *(Emphasis supplied)*

12.4Indian Evidence Act does not define 'truth'. It defines what facts are relevant and admissible; and how to prove them. The proviso to Section 165 provides that the judgment must be based on duly proved relevant facts. Section 3, 114 and 165 of the Indian Evidence Act lay down the important principles to aid the Court in its quest for duly proved relevant fact..."

Aid of Section 165 of the Indian Evidence Act in discovery of truth

12. In Ved Parkash Kharbanda v. Vimal Bindal (supra), this Court also examined the scope ofSection 165 of the Indian Evidence Act, 1872 to discover the truth to do complete justice between the parties. This Court also discussed the importance of Trial Courts in the dispensation of justice. Relevant portion of the said judgment is reproduce hereunder:

"15. Section 165 of the Indian Evidence Act, 1872

15.1 Section 165 of the Indian Evidence Act, 1872 invests the Judge with plenary powers to put any question to any witness or party; in any form, at any time, about any fact relevant or irrelevant.Section 165 is intended to arm the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this section is that in order to get to the bottom of the matter before it, the Court will be able to look at and inquire into every fact

and thus possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible. The Court is not, however, permitted to found its judgment on any but relevant statements. 15.2 Section 165 of the Indian Evidence Act, 1872 reads as under:

"Section 165. Judge's power to put questions or order production.-

The Judge may, in order to discover or obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question: Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved: Provided also that this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149 ; nor shall he dispense with primary evidence of any document, except in the cases herein before excepted." 15.3 The object of a trial is, first to ascertain truth by the light of reason, and then, do justice upon the basis of the truth and the Judge is not only justified but required to elicit a fact, wherever the interest of truth and justice would suffer, if he did not.

15.4 The Judge contemplated by Section 165 is not a mere umpire at a wit-combat between the lawyers for the parties whose only duty is to enforce the rules of the game and declare at the end of the combat who has won and who has lost. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth and to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or willfully avoided. A Judge, who at the trial merely sits and records evidence without caring so to conduct the examination of the witnesses that every point is brought out, is not fulfilling his duty. 15.5 The framers of the Act, in the Report of the Select Committee published on 31st March,

1871 along with the Bill settled by them, observed:

"In many cases, the Judge has to get at the truth, or as near to it as he can by the aid of collateral inquiries, which may incidentally tend to something relevant; and it is most unlikely that he should ever wish to push an inquiry needlessly, or to go into matters not really connected with it. We have accordingly thought it right to arm Judges with a general power to ask any questions upon any facts, of any witnesses, at any stage of the proceedings, irrespectively of the rules of evidence binding on the parties and their agents, and we have inserted in the Bill a distinct declaration that it is the duty of the Judge, especially in criminal cases, not merely to listen to the evidence put before him but to inquire to the utmost into the truth of the matter." 15.6 Cunningham, Secretary to the Council of the Governor - General for making Laws and Regulations at the time of the passing of the Indian Evidence Act stated: "It is highly important that the Judge should be armed with full power enabling him to get at the facts. He may, accordingly, subject to conditions to be immediately noticed, ask any question he pleases, in any form, at any stage of the proceedings, about any matter relevant or irrelevant, and he may order the production of any document or thing. No objection can be taken to any such question or order, nor are the parties entitled, without Court's permission to cross-examine on the answers given."

15.7 The relevant judgments relating to Section 165 of the Indian Evidence Act, 1872 are as under:- 15.7.1 The Supreme Court in Ram Chander v. State of Haryana, (1981) 3 SCC 191 observed that under Section 165, the Court has ample power and discretion to control the trial effectively. While conducting trial, the Court is not required to sit as a silent spectator or umpire but to take active part within the boundaries of law by putting questions to witnesses in order to elicit the truth and to protect the weak and the innocent. It is the duty of a Judge to discover the truth and for that purpose he may "ask any question, in any form, at any time, of any witness, or of the parties, about any fact, relevant or irrelevant".

15.7.2 In Ritesh Tewari v. State of Uttar Pradesh, (2010) 10 SCC 677, the Supreme Court held that every trial is a voyage of discovery in which truth is the quest. The power under Section 165 is to be exercised with the object of subserving the cause of justice and public interest, and for getting the evidence in aid of a just decision and to uphold

the truth. It is an extraordinary power conferred upon the Court to elicit the truth and to act in the interest of justice. The purpose being to secure justice by full discovery of truth and an accurate knowledge of facts, the Court can put questions to the parties, except those which fall within exceptions contained in the said provision itself.

15.7.3 In Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158, the Supreme Court held that Section 165 of the Indian Evidence Act and Section 311 of the Code of Criminal Procedure confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process. The Judge can control the proceedings effectively so that ultimate objective i.e. truth is arrived at. The power of the Court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The Section consists of two parts i.e. (i) giving a discretion to the Court to examine the witness at any stage and (ii) the mandatory portion which compels the Courts to examine a witness if his evidence appears to be essential to the just decision of the Court. The second part of the section does not allow any discretion but obligates and binds the Court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case, essential to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the Section is to enable the Court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. Though justice is depicted to be blind-folded, as popularly said, it is only a veil not to see who the party before it is while pronouncing judgment on the cause brought before it by enforcing law and administering justice and not to ignore or turn the mind/attention of the Court away from the truth of the cause or lis before it, in disregard of its duty to prevent miscarriage of justice. Doing justice is the paramount consideration and that duty cannot be abdicated or diluted and diverted by manipulative red herrings.

15.7.4 In State of Rajasthan v. Ani, (1997) 6 SCC162, the Supreme Court held thatSection 165 of the Indian Evidence Act confers vast and unrestricted powers on theCourt to elicit truth. Reticence may be good in many circumstances, but a Judge remaining mute during trial is not an ideal situation. A taciturn Judge may be the model caricatured in public mind. But there is

nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. A Judge is expected to actively participate in the trial to elicit necessary materials from witnesses in the appropriate context which he feels necessary for reaching the correct conclusion. 15.7.5 In Mohanlal Shamji Soni v. Union of India, 1991 Supp. (1) SCC 271, referring to Section 165 of the Indian Evidence Act and Section 311 of the Code of Criminal Procedure, the Supreme Court stated that the said two sections are complementary to each other and between them, they confer jurisdiction on the Judge to act in aid of justice. It is a well-accepted and settled principle that a Court must discharge its statutory functions - whether discretionary or obligatory - according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done.

15.7.6 In Jamatraj Kewalji Govani v. State of Maharashtra, AIR 1968 SC 178, the Supreme Court held that Section 165 of the Indian Evidence Act and Section 540 of the Code of Criminal Procedure, 1898 confer jurisdiction on the Judge to act in aid of justice. In criminal jurisdiction, statutory law confers a power in absolute terms to be exercised at any stage of the trial to summon a witness or examine one present in Court or to recall a witness already examined, and makes this the duty and obligation of the Court provided the just decision of the case demands it.

15.7.7 In Sessions Judge Nellore Referring Officer v. Intha Ramana Reddy, 1972 CriLJ 1485, the Andhra Pradesh High Court held that every trial is a voyage of discovery in which truth is the quest. ***It is the duty of a presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. For that purpose he is expressly invested by Section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may ask any question he pleases, in any form at any time, of any witness, or of the parties about any fact, relevant or irrelevant.***

16. Importance of Trial Courts The Law Commission of India headed by H.R. Khanna, J. in its Seventy Seventh Report relating to the 'Delays and Arrears in Trial Courts' dealt with the importance of Trial Courts in the justice delivery system. The relevant portion of the said Report is reproduced as under:

-"If an evaluation were made of the importance of the role of the different functionaries who play their part in the administration of justice, the top position would necessarily have to be assigned to the Trial Court Judge. He is the key- man in our judicial system, the most important and influential participant in the dispensation of justice. It is mostly with the Trial Judge rather than with the appellate Judge that the members of the general public come in contact, whether as parties or as witnesses. ***The image of the judiciary for the common man is projected by the Trial Court Judges and this, in turn depends upon their intellectual, moral and personal qualities."***

- Personality of Trial Court Judges "Errors committed by the Trial Judge who is not of the right caliber can sometimes be so crucial that they change the entire course of the trial and thus result in irreparable miscarriage of justice. Apart from that, a rectification of the error by the appellate Court which must necessarily be after lapse of a long time, can hardly compensate for the mischief which resulted from the error committed by the Trial Judge."

(i) In Sundarjas Kanyalal Bhathija Vs. The Collector, Thane, Maharashtra AIR 1990 SC 261 it is ruled as under;

"Constitution of India, Art.141- PRECEDENTS - ***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 - where a single judge or a Division Bench does not agree with the decision of a Bench of co-ordinate jurisdiction, the matter shall be referred to a larger Bench. It is a subversion of judicial process not to follow this procedure -*** *it is the duty of judges of superior courts and tribunals to make the law more predictable. The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective as a guide to behaviour. It must be determined with reasons which carry convictions within the Courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients. Sub-ordinate courts would find themselves in an embarrassing position to choose between the conflicting*

opinions. The general public would be in dilemma to obey or not to obey such law and it ultimately falls into disrepute- One must remember that pursuit of the law, however glamorous it is, has its own limitation on the Bench."

(ii) In Medical Council of India Vs. G.C.R.G. Memorial Trust and Ors. (2018) 12 SCC 564

"A Judge cannot think in terms of "what pleases the Prince has the force of law". A 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 inspiration from consecrated principles the Respondent-institution directed to pay Rs. 10,00,000/- to each of the students. costs of Rs. 25 lacs to be deposited before Court within eight weeks. 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, ostracize 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.

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.

The judicial propriety requires judicial discipline. A 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."

(iii) In Authorized Officer, State Bank of Travancore and Ors. Vs. Mathew K.C. 2018 (3) SCC 85

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

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

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

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

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

(iv) In Prof. Ramesh Chandra Vs. State of Uttar Pradesh MANU/UP/0708/2007 where it is ruled as under;

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

means or otherwise than those means.

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

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

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

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

B) 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.

C) 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.

E) 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 Dwarka Dass 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.

Mandal Vikas 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 Sayeedur Rehman 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.

'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 "Expressio unius est exclusio alterius", 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 Haresh Dayaram Thakur v. State of Maharashtra and Ors (AIR 2000 SC 266)."

8. #CHARGE#:- <u>PASSING AN ORDER IN IGNORANCE OF LAW.</u>

Justice A.S.Oka passed the order in ignorance of the law laid down by Hon'ble Supreme Court in various cases which are referred in Sanjeev Mittal's case for the reason best known to them. **(A.S.Oka And Smt. Justice Anuja Prabhudesai)** and unknown to Petitioner/ Applicant.

In the said case of **<u>Sanjeev Mittal Vs. The State 2011 (7) 2111</u>** it is ruled as under;

<u>"INQUIRY INCLUDES INVESTIGATION"</u>

12. Case law on ordering investigation by the Police

12.1. The next question is whether as part of the Preliminary Inquiry under Section 340 Cr.P.C., an investigation by the Police or any other State Agency can be ordered. On this aspect too, the learned amicus curiae, Dr. Arun Mohan, made detailed submissions and cited following judgments:-

12.1.1. In Pushpa Devi Jatia v. M.L. Wadhavan, Additional Secretary, Government of India, AIR 1987 SC 1156, the Hon'ble Supreme Court while dismissing SLP and Writ Petition on 19.12.1986 held:

—3. We have also heard learned Counsel for the parties on the application made by the Union Government under Section 340 of the Cr.P.C., 1973 for prosecution of the persons responsible for forging the documents purporting to be the alleged representation made by the detenu under Section 8 (b) of the COFEPOSA on April 15, 1985 as, in fact, no such representation was ever made, and for making alleged interpolations in the relevant records. We reserve our orders thereon.

4. Accordingly, the Special Leave Petition and the Writ Petition are dismissed. The detailed reasons for the Judgment and the consequential directions, if any, shall follow.

12.1.2. In the same case, Pushpadevi M. Jatia v. M.L.

Wadhavan later on 29th April, 1987 and reported as (1987) 3 SCC 367,'400 : AIR 1987 SC 1748, the Hon'ble Supreme Court observed:

—35. We feel fully persuaded to hold that this is a fit case in which the detenu, his wife (petitioner herein), Ashok Jain and all other persons responsible for the fabrication of false evidence should be prosecuted for the offence committed by them. Nevertheless we wish to defer the passing of the final order on the application made under S.340 of the Code of Criminal Procedure, 1973 by the Union of India at this stage because of the fact the Central Bureau of Investigation is said to be engaged in making a through investigation of the matter so that suitable action could be taken against all the perpetrators of the fraudulent acts and the offences. As such the launching of any prosecution against the detenue and his set of people at this stage forthwith may lead to a permanent closure of the investigation resulting in the Central Bureau of Investigation being unable to unearth the full extent of the conspiracy. Such a situation should not

come to pass because the manipulations of the detenue and his agents on the one hand and the connivance of staff in the President's Secretariat on the other cannot be treated as innocuous features or mere coincidence and cannot, therefore, be taken lightly or viewed leniently. On the contrary they are matters which have to be taken serious note of and dealt with a high degree of vigilance, care and concern.

Consequently, while making known our opinion of the matter for action being taken under S.340 of the Code of Criminal Procedure we defer the passing of final orders on the application under S.340 till the investigation by the Central Bureau of Investigation is completed. The respondents are permitted to move the Court for final orders in accordance with our directions.‖The order passed by Supreme Court three days later, i.e., on 1st May, 1987 (unreported), reads as under:

—We direct the Director the Central Bureau of Investigation to take up the investigation into the matter. If during the course of such investigation, the C.B.I requires inspection of the records of the Supreme Court, the Registrar (Judicial) shall permit such inspection as and when required. The director of the investigation shall submit his report to the Government of India, Ministry of Home Affairs, New Delhi for necessary action.‖ Thereafter, on 20.07.1994, the Hon'ble Supreme Court in Criminal Miscellaneous Petition No.464 of 1986 in WP (Criminal) 363 / 1986 ordered:

— ... We thus order the Registrar General of this court to prepare a complaint as expeditiously as possible in the light of all concerned orders in terms of Section 195 read with Section 340 of the Criminal Procedure Code and file it before a competent criminal court against the aforesaid six persons. ...‖ The Complaint was filed and registered as —Supreme Court of India v. Milap Chand Jagotra‖ Complaint No. 58/1 of 1998.

12.1.3. Shabbir Hasan v. Emperor, AIR 1928 Allahabad 21-

—2. ...Under S.476 {of the earlier Cr.P.C.} an inquiry has to

be made by the Civil Court. If the civil Court so desires, an inquiry may be ordered by the police, but in that case when the police papers arrive the civil Court has to determine whether it is necessary to take action against particular persons under S.476. A finding has to be recorded to the effect against each individual person specifically. ...‖

12.2. Thus, the law is settled that the Court has a power to direct the police to investigate and report, which power has been readily exercised by the Courts whenever they felt that the facts of the case so warranted.

12.3. Often, the facts are such on which a private party cannot be expected to itself investigate, gather the evidence and place it before the Court. It needs a State agency exercising its statutory powers and with the State machinery at its command to investigate the matter, gather the evidence, and then place a report before the Court along with the evidence that they have been able to gather. *Moreover, the offence(s) may be a stand-alone or as a carefully devised scheme. It may be by a single individual or it may be in conspiracy with others. There may be conspirators, abettors and aiders or those who assisted, who are not before the Court, or even their identity is not known.*

12.4. Where the facts are such on which the Court (or a subordinate officer) can conduct the inquiry, it will be so conducted, but where the facts are such which call for tracing out other persons involved, or collection of other material, or simply investigation, it is best carried out by a State agency. ***The Court has not only the power but also a duty in such cases to exercise this power.*** *However, it may be clarified that a party cannot ask for such direction as a matter of routine. It is only when the Court is prima facie satisfied that there seems to have been wrongdoing and it needs investigation by the State agency that such a direction would be given.*

In Arun Dhawan's case it is read as under ;

"*9.* ***What constitutes the offence?***

9.1. In as much as on a complaint of Respondent No. 2, a prosecution of the Petitioner is pending before the Metropolitan Magistrate, the question also arises as to what constitutes the offence because it may be said that since prosecution is pending, why should a second inquiry or prosecution be called for. On the face, such a contention appears attractive, but there are more compelling reasons why the Court must take cognizance and proceed as per law.

9.2. The learned amicus curiae, Dr. Arun Mohan has submitted that the two offences are separate and are to be prosecuted and tried separately. According to him, the first offence was of forging the document and then using it before the DDA in order to cause injury to the Respondent No. 2. It was carried out by and before 12th March, 2004 when public notice was also published by Sanjeev Kumar Mittal.

9.3. The complaint of 21st March, 2004 by Respondent No. 2 was in relation to that offence. If the matter had rested there, it would have been one thing, but on 12th April, 2004, when the present petition containing false averments and relying on forged documents (which were also filed) was filed, a second offence stood committed. That second offence was of: (1) making a false averment in the petition duly verified and filing the same in Court; and (2) asking the Court for a judgment on the basis of false averments and forged documents.

9.4. The learned amicus curiae submits that if a person prepares a petition containing false averments, relying on forged documents, and signs and verifies it, and then comes to the Court, but on seeing the building, develops cold feet and returns home, the second offence would not have been committed. But when he presents these papers at the filing counter, it is filing in Court. The moment they cross the window at the filing counter is precisely the point of time when the second offence stands committed.

9.6 The rationale will equally apply to a situation where, as here, the complaint will be in respect of subsequent and independent offences, i.e., filing before a Court of law, pleadings containing false averments and also filing of

documents that were forged as distinct from forgery at home. It will also be contempt of Court.

This Court has thus held that even if a document was tampered/forged prior to institution of the legal proceedings, the Court will have jurisdiction to entertain an application under section 340 of the Code if the document has been produced in Court proceedings. Further it is laid down that making of false averment in the pleading pollutes the stream of justice. It is an attempt at inviting the Court into passing a wrong judgment and that is why it must be treated as an offence. Where a verification is specific and deliberately false, there is nothing in law to prevent a person from being proceeded for contempt.

The Supreme Court affirmed the decision in the case of SACHIDANAND SINGH wherein it was pointed out that, if an enlarged interpretation were given, there may be a situation where after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. The Supreme Court held that such an interpretation would be highly detrimental to the interest of the society at large."

8. #CHARGE# Deliberate defiance of Law laid down by Hon'ble Supreme Court in Sciemed Overseas Inc .Vs. BOC India Limited and Ors. 2016(3) PUNJ L J 28 to help the accused and save her from punishment under contempt that Hon'ble Supreme Court in Schiemed (*Supra)* had rules that whenever it is found that a flase affidavit is filed then as a rule such accused should be punished under Contempt of Courts Act and even if she or he tenders apology then also action needs to be taken. It is read 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 this 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 Muthu Karuppan v. Parithi Ilamvazhuthi 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 had made it mandatory that when falsity of affidavit is brought to the notice then Court as a rule, bound to take action under Contempt but **Justice A. S. Oka And Anuja Prabhudesai,JJ.** acted against the settled legal position**.** Therefore they are liable for action Under Section 218, 201, 219, etc of IPC

In **Murray & Company Vs. Ashok K.R. Newatia & Anr. (2000) 2 SCC**

367 it is read as 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/-. (Para 27)

(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. (Paras 19 20)

(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. ***(Para 9)***

7.3 Uttar Pradesh Residents Employees Co-Operative House B. Society Vs. New Okhla Industrial Development Authority it is ruled as under ;

(A) Contempt of Courts Act 1971 – S.2 (c) – Criminal contempt – Filing of false affidavit intentionally – Held, amounts to contempt of court – On facts held, P by making a false statement on affidavit with the intention of inducing the Supreme Court not to pass any adverse order against Noida Authorities had committed contempt of court. (Para 7)

(B) Contempt of Courts Act , 1971 – S.12 – P filing false affidavit intentionally – He submitting that apology tendered should be accepted and/or in any event fine would suffice – Held on facts , apology tendered was worthless since it was not genuine and bona fide and was tendered only after it was found that false statement had been made on oath –P did

not on his own point it out- Further held , it was only an attempt to get out of consequences of having been caught – Hence , sentence of simple imprisonment for one week imposed. (Paras 9 to 11)

But Justice A.S Oka and Smt. Justice Anuja Prabhudesai acted against the abovesaid laws and direction laid down by Hon'ble Supreme Court and therefore they are liable for action under Section 218, 219, 201 r/w 120(B) of I.P.C.

7.4 Hon'ble Supreme Court in **Prabha Sharma Vs. Sunil Goyal and Ors. (2017) 11 SCC 77** had 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."

In Sunil Goyal MANU/RH/1195/2011 it is read as under:-

"POOR LEVEL OF UNDERSTANIG OF JUDGE - first appellate court without considering the ratio laid down in the above referred judgments, made distinction in a cursory manner, which is not proper for a Judicial Officer - The wrong interpretation or distinction of a judgment of Hon'ble Supreme Court and this Court by subordinate court amounts to disobedience of the order of Hon'ble Supreme Court and this Court, therefore, the impugned order passed by first appellate court is contemptous. It also shows that legal knowledge or appreciation of judgment of Hon'ble Apex Court, of the first appellate court is very poor. The distinction

made by first appellate court that Hon'ble Apex court has passed the order in S.L.P. is also not proper. The Apex Court, under Article 136 of the Constitution of India may, in its discretion grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India. Learned first appellate court has also committed an illegality in making a distinction for not following the judgments of this Court on the ground that the orders have been passed in second appeal whereas it was dealing first appeal.

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

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

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

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

8.#CHARGE# <u>FAILED TO DISCHARGE THEIR DUTY AS A JUDGE AS MANDATED BY HON'BLE SUPREME COURT. IN K.D. Sharma Vs.Steel Authorities Of India Ltd.& Anr. (2008) 12 SCC 481:-</u>

That, Hon'ble Supreme Court in **<u>K.D. Sharma Vs.Steel Authorities Of India Ltd.& Anr. (2008) 12 SCC 481</u>** had ruled that ;

"*27. In Kensington Income Tax Commissioner, Viscount Reading, C.J. observed:*

"Where an ex parte application has been made to this Court for a rule nisi or other process, ***<u>if the Court comes to the conclusion that the affidavit in support of the applicant was not candid and did not fairly state the</u>***

facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. *This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived.* ***Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts.*** *But if the result of this examination and hearing is to leave no doubt that this Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit".*

(emphasis supplied)

29. If the primary object as highlighted in Kensington Income Tax Commissioners is kept in mind, ***an applicant who does not come with candid facts and `clean breast' cannot hold a writ of the Court with `soiled hands'. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the Court, the Court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the Court does not reject the petition on that ground, the Court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of Court for abusing the process of the Court.***

45. Yet in another case in Vijay Syal & Anr. v. State of Punjab & Ors., (2003) 9 SCC 401; this Court stated;

"In order to sustain and maintain sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters are either mistaken or lightly taken instead of learning proper lesson. ***Hence there is a compelling need to take serious view in such matters to ensure expected purity and grace in the administration of justice.***

In H.S Bedi's case 2016 it is read as under ;

DUTY OF COURT TO DISCOVER TRUTH. TRUTH SHOULD BE THE GUIDING STAR IN THE ENTIRE JUDICIAL PROCESS.

11.11 *In Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria, (2012) 5 SCC 370, the Supreme Court again highlighted the significance of truth and observed that the truth should be the guiding star in the entire legal process and it is the duty of the Judge to discover truth to do complete justice. The Supreme Court stressed that Judge has to play an active role to discover the truth and he should explore all avenues open to him in order to discover the truth. The Supreme Court observed as under:*

"32. In this unfortunate litigation, the Court's serious endeavour has to be to find out where in fact the truth lies.

33. The truth should be the guiding star in the entire judicial process.Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth.

That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.

xxx xxx xxx

35. What people expect is that the Court should discharge its obligation to find out where in fact the truth lies. Right from inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.

xxx xxx xxx

39. …A judge in the Indian System has to be regarded as failing to exercise its jurisdiction and thereby discharging its judicial duty, if in the guise of remaining neutral, he opts to remain passive to the proceedings before him. He has to always keep in mind that "every trial is a voyage of discovery in which truth is the quest". I order to bring on record the relevant fact, he has to play an active role; no doubt within the bounds of the statutorily defined procedural law.

41. World over, modern procedural Codes are increasingly relying on full disclosure by the parties. Managerial powers of the Judge are being deployed to ensure that the scope of the factual controversy is minimised.

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42. ***In civil cases, adherence to Section 30 CPC would also help in ascertaining the truth. It seems that this provision which ought to be frequently used is rarely pressed in service by our judicial officers and judges….."***

xxx xxx xxx

52. Truth is the foundation of justice. It must be the endeavour of all the judicial officers and judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to

ascertain the truth."

(Emphasis supplied)

11. In Ved Parkash Kharbanda v. Vimal Bindal, 198 (2013) DLT 555, this Court considered a catena of judgments in which the Supreme Court held that the truth is the foundation of justice and should be the guiding star in the entire judicial process. This Court also discussed the meaning of truth and how to discover truth. Relevant portion of the said judgment is reproduced hereunder:

"11.Truth should be the Guiding Star in the Entire Judicial Process 11.1 Truth is the foundation of justice. Dispensation of justice, based on truth, is an essential feature in the justice delivery system. People would have faith in Courts when truth alone triumphs. The justice based on truth would establish peace in the society.

11.2 Krishna Iyer J. in Jasraj Inder Singh v. Hemraj Multanchand, (1977) 2 SCC 155 described truth and justice as under:

"8. ...Truth, like song, is whole, and half-truth can be noise! Justice is truth, is beauty and the strategy of healing injustice is discovery of the whole truth and harmonising human relations. Law's finest hour is not in meditating on abstractions but in being the delivery agent of full fairness. This divagation is justified by the need to remind ourselves that the grammar of justice according to law is not little litigative solution of isolated problems but resolving the conflict in its wider bearings."

11.3 In Union Carbide Corporation v. Union of India, (1989) 3 SCC 38, the Supreme Court described justice and truth to mean the same. The observations of the Supreme Court are as under:

"30. ...when one speaks of justice and truth, these words mean the same thing to all men whose judgment is uncommitted. Of Truth and Justice, Anatole France said : "Truth passes within herself a penetrating force unknown alike to error and falsehood. I say truth and you must

understand my meaning. ***For the beautiful words Truth and Justice need not be defined in order to be understood in their true sense. They bear within them a shining beauty and a heavenly light. I firmly believe in the triumph of truth and justice. That is what upholds me in times of trial...."***

11.4 In Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271, the Supreme Court observed that the presiding officer of a Court should not simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost and that there is a legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice.

11.5 In Chandra Shashi v. Anil Kumar Verma, (1995) 1 SCC 421, the Supreme Court observed that to enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, pre-variation and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in Courts when they would find that truth alone triumphs in Courts.

11.6 In A.S. Narayana Deekshitulu v. State of A.P., (1996) 9 SCC 548, the Supreme Court observed that from the ancient times, the constitutional system depends on the foundation of truth. The Supreme Court referred to Upanishads, Valmiki Ramayana and Rig Veda.

11.7 In Mohan Singh v. State of M.P., (1999) 2 SCC 428 the Supreme Court held that effort should be made to find the truth; this is the very object for which Courts are created. ***To search it out, the Court has to remove chaff from the grain. It has to disperse the suspicious, cloud and dust out the smear of dust as all these things clog the very truth. So long chaff, cloud and dust remains, the criminals are clothed with this protective layer to receive the benefit of doubt. So it is a solemn duty of the Courts, not to merely conclude and leave the case***

the moment suspicions are created. It is onerous duty of the Court, within permissible limit to find out the truth. It means, on one hand no innocent man should be punished but on the other hand to see no person committing an offence should get scot free*. There is no mathematical formula through which the truthfulness of a prosecution or a defence case could be concretised. It would depend on the evidence of each case including the manner of deposition and his demeans, clarity, corroboration of witnesses and overall, the conscience of a judge evoked by the evidence on record.* ***So Courts have to proceed further and make genuine efforts within judicial sphere to search out the truth and not stop at the threshold of creation of doubt to confer benefit of doubt.***

11.8 In Zahira Habibullah Sheikh v. State of Gujarat, (2006) 3 SCC 374, the Supreme Court observed that right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying existence of Courts of justice.

11.9 In Himanshu Singh Sabharwal v. State of Madhya Pradesh, (2008) 3 SCC 602, ***the Supreme Court held that the trial should be a search for the truth and not a bout over technicalities.*** *The Supreme Court's observation are as under:*

"5. ... 31. In 1846, in a judgment which Lord Chancellor Selborne would later describe as ***'one of the ablest judgments of one of the ablest judges who ever sat in this Court'****, Vice-Chancellor Knight Bruce said [Pearse v. Pearse, (1846) 1 De G&Sm. 12 : 16 LJ Ch 153 : 63 ER 950 : 18 Digest (Repl.) 91, 748] : (De G&Sm. pp. 28-*

29):

"31. The discovery and vindication and establishment of truth are main purposes certainly of the existence of courts of justice; still, for the obtaining of these objects, which, however valuable and important, cannot be usefully pursued without moderation, cannot be either usefully or creditably pursued unfairly or gained by unfair means, not every channel is or ought to be open to them. The practical

inefficacy of torture is not, I suppose, the most weighty objection to that mode of examination,... Truth, like all other good things, may be loved unwisely--may be pursued too keenly--may cost too much.

xxx xxx xxx

35. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice--often referred to as the duty to vindicate and uphold the 'majesty of the law'.

xxx xxx xxx

38. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty."

(Emphasis Supplied)

11.10 In Ritesh Tewari v. State of U.P., (2010) 10 SCC 677, the Supreme Court reproduced often quoted quotation: 'Every trial is voyage of discovery in which truth is the quest'

11.12 In A. Shanmugam v. Ariya Kshatriya, (2012) 6 SCC 430, ***the Supreme Court held that the entire journey of a judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of justice delivery system. The Supreme Court laid down the following principles:***

"43. On the facts of the present case, following principles emerge:

43.1. ***It is the bounden duty of the Court to uphold the truth and do justice.***

43.2. Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts.

43.3. The ultimate object of the judicial proceedings is to discern the truth and do justice. It is imperative that pleadings and all other presentations before the court

should be truthful.

43.4. Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrong doer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.

43.5. It is the bounden obligation of the Court to neutralize any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process."

(Emphasis supplied) 11.13 In Ramesh Harijan v. State of Uttar Pradesh, (2012) 5 SCC 777, the Supreme Court emphasized that it is the duty of the Court to unravel the truth under all circumstances. 11.14 In Bhimanna v. State of Karnataka, (2012) 9 SCC 650, the Supreme Court again stressed that the Court must endeavour to find the truth. The observations of the Supreme Court are as under:

"28. The court must endeavour to find the truth. ***There would be "failure of justice" not only by unjust conviction but also by acquittal of the guilty, as a result of unjust failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and safeguarded but they should not be overemphasised to the extent of forgetting that the victims also have rights."***

11.15 In the recent pronouncement in Kishore Samrite v. State of U.P., (2013) 2 SCC 398, the Supreme Court observed that truth should become the ideal to inspire the Courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. The observations of Supreme Court are as under:

"34. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.

35. With the passage of time, it has been realised that

people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. ***The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs."*** *(Emphasis supplied)*

12.4Indian Evidence Act does not define 'truth'. It defines what facts are relevant and admissible; and how to prove them. The proviso to Section 165 provides that the judgment must be based on duly proved relevant facts. Section 3, 114 and 165 of the Indian Evidence Act lay down the important principles to aid the Court in its quest for duly proved relevant fact..."

Aid of Section 165 of the Indian Evidence Act in discovery of truth

12. In Ved Parkash Kharbanda v. Vimal Bindal (supra), this Court also examined the scope ofSection 165 of the Indian Evidence Act, 1872 to discover the truth to do complete justice between the parties. This Court also discussed the

importance of Trial Courts in the dispensation of justice. Relevant portion of the said judgment is reproduce hereunder:

"15. Section 165 of the Indian Evidence Act, 1872

15.1 Section 165 of the Indian Evidence Act, 1872 invests the Judge with plenary powers to put any question to any witness or party; in any form, at any time, about any fact relevant or irrelevant.Section 165 is intended to arm the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this section is that in order to get to the bottom of the matter before it, the Court will be able to look at and inquire into every fact and thus possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible. The Court is not, however, permitted to found its judgment on any but relevant statements.

15.2 Section 165 of the Indian Evidence Act, 1872 reads as under:

"Section 165. Judge's power to put questions or order production.-

The Judge may, in order to discover or obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question: Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved: Provided also that this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149 ; nor

shall he dispense with primary evidence of any document, except in the cases herein before excepted." 15.3 The object of a trial is, first to ascertain truth by the light of reason, and then, do justice upon the basis of the truth and the Judge is not only justified but required to elicit a fact, wherever the interest of truth and justice would suffer, if he did not.

15.4 The Judge contemplated by Section 165 is not a mere umpire at a wit-combat between the lawyers for the parties whose only duty is to enforce the rules of the game and declare at the end of the combat who has won and who has lost. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth and to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or willfully avoided. A Judge, who at the trial merely sits and records evidence without caring so to conduct the examination of the witnesses that every point is brought out, is not fulfilling his duty. 15.5 The framers of the Act, in the Report of the Select Committee published on 31st March, 1871 along with the Bill settled by them, observed:

"In many cases, the Judge has to get at the truth, or as near to it as he can by the aid of collateral inquiries, which may incidentally tend to something relevant; and it is most unlikely that he should ever wish to push an inquiry needlessly, or to go into matters not really connected with it. We have accordingly thought it right to arm Judges with a general power to ask any questions upon any facts, of any witnesses, at any stage of the proceedings, irrespectively of the rules of evidence binding on the parties and their agents, and we have inserted in the Bill a distinct declaration that it is the duty of the Judge, especially in criminal cases, not merely to listen to the evidence put before him but to inquire to the utmost into the truth of the matter." 15.6 Cunningham, Secretary to the Council of the Governor - General for making Laws and Regulations at the time of the passing of the Indian Evidence Act stated: "It is highly important that the Judge should be armed with full power enabling him to get at the facts. He may, accordingly, subject to conditions to be immediately

noticed, ask any question he pleases, in any form, at any stage of the proceedings, about any matter relevant or irrelevant, and he may order the production of any document or thing. No objection can be taken to any such question or order, nor are the parties entitled, without Court's permission to cross- examine on the answers given."

15.7 The relevant judgments relating to Section 165 of the Indian Evidence Act, 1872 are as under:- 15.7.1 The Supreme Court in Ram Chander v. State of Haryana, (1981) 3 SCC 191 observed that under Section 165, the Court has ample power and discretion to control the trial effectively. While conducting trial, the Court is not required to sit as a silent spectator or umpire but to take active part within the boundaries of law by putting questions to witnesses in order to elicit the truth and to protect the weak and the innocent. It is the duty of a Judge to discover the truth and for that purpose he may "ask any question, in any form, at any time, of any witness, or of the parties, about any fact, relevant or irrelevant".

15.7.2 In Ritesh Tewari v. State of Uttar Pradesh, (2010) 10 SCC 677, the Supreme Court held that every trial is a voyage of discovery in which truth is the quest. The power under Section 165 is to be exercised with the object of subserving the cause of justice and public interest, and for getting the evidence in aid of a just decision and to uphold the truth. It is an extraordinary power conferred upon the Court to elicit the truth and to act in the interest of justice. The purpose being to secure justice by full discovery of truth and an accurate knowledge of facts, the Court can put questions to the parties, except those which fall within exceptions contained in the said provision itself.

15.7.3 In Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158, the Supreme Court held that Section 165 of the Indian Evidence Act and Section 311 of the Code of Criminal Procedure confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials

by playing an active role in the evidence collecting process. The Judge can control the proceedings effectively so that ultimate objective i.e. truth is arrived at. The power of the Court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The Section consists of two parts i.e. (i) giving a discretion to the Court to examine the witness at any stage and (ii) the mandatory portion which compels the Courts to examine a witness if his evidence appears to be essential to the just decision of the Court. The second part of the section does not allow any discretion but obligates and binds the Court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case, essential to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the Section is to enable the Court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. Though justice is depicted to be blind-folded, as popularly said, it is only a veil not to see who the party before it is while pronouncing judgment on the cause brought before it by enforcing law and administering justice and not to ignore or turn the mind/attention of the Court away from the truth of the cause or lis before it, in disregard of its duty to prevent miscarriage of justice. Doing justice is the paramount consideration and that duty cannot be abdicated or diluted and diverted by manipulative red herrings.

15.7.4 In State of Rajasthan v. Ani, (1997) 6 SCC162, the Supreme Court held thatSection 165 of the Indian Evidence Act confers vast and unrestricted powers on theCourt to elicit truth. Reticence may be good in many circumstances, but a Judge remaining mute during trial is not an ideal situation. A taciturn Judge may be the model caricatured in public mind. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. A Judge is expected to actively participate in the trial to elicit necessary materials from witnesses in the appropriate context which he feels necessary for reaching the correct conclusion. 15.7.5 In

Mohanlal Shamji Soni v. Union of India, 1991 Supp. (1) SCC 271, referring to Section 165 of the Indian Evidence Act and Section 311 of the Code of Criminal Procedure, the Supreme Court stated that the said two sections are complementary to each other and between them, they confer jurisdiction on the Judge to act in aid of justice. It is a well-accepted and settled principle that a Court must discharge its statutory functions - whether discretionary or obligatory - according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done.

15.7.6 In Jamatraj Kewalji Govani v. State of Maharashtra, AIR 1968 SC 178, the Supreme Court held that Section 165 of the Indian Evidence Act and Section 540 of the Code of Criminal Procedure, 1898 confer jurisdiction on the Judge to act in aid of justice. In criminal jurisdiction, statutory law confers a power in absolute terms to be exercised at any stage of the trial to summon a witness or examine one present in Court or to recall a witness already examined, and makes this the duty and obligation of the Court provided the just decision of the case demands it.

15.7.7 In Sessions Judge Nellore Referring Officer v. Intha Ramana Reddy, 1972 CriLJ 1485, the Andhra Pradesh High Court held that every trial is a voyage of discovery in which truth is the quest. ***It is the duty of a presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. For that purpose he is expressly invested by Section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may ask any question he pleases, in any form at any time, of any witness, or of the parties about any fact, relevant or irrelevant.***

16. Importance of Trial Courts The Law Commission of India headed by H.R. Khanna, J. in its Seventy Seventh Report relating to the 'Delays and Arrears in Trial Courts' dealt with the importance of Trial Courts in the justice delivery

system. The relevant portion of the said Report is reproduced as under:

-"If an evaluation were made of the importance of the role of the different functionaries who play their part in the administration of justice, the top position would necessarily have to be assigned to the Trial Court Judge. He is the key-man in our judicial system, the most important and influential participant in the dispensation of justice. It is mostly with the Trial Judge rather than with the appellate Judge that the members of the general public come in contact, whether as parties or as witnesses. ***The image of the judiciary for the common man is projected by the Trial Court Judges and this, in turn depends upon their intellectual, moral and personal qualities."***

- Personality of Trial Court Judges "Errors committed by the Trial Judge who is not of the right caliber can sometimes be so crucial that they change the entire course of the trial and thus result in irreparable miscarriage of justice. Apart from that, a rectification of the error by the appellate Court which must necessarily be after lapse of a long time, can hardly compensate for the mischief which resulted from the error committed by the Trial Judge."

The same law has been followed in **New Delhi Municipal Council Vs. M/S Prominent Hotels Limited2015 SCC Online Del 11910**

9. #CHARGE#:- DELIBERATE RELIANCE ON PER INCURIAM JUDGMENT AT ITS OWN AND WITHOUT NOTIFYING IT TO THE ADVOCATE FOR PETITIONER :-

That as per principles of natural justice and as per law laid down in **Som Mittal Vs. Government of Karnataka (2008) 3 SCC 574** , **State Vs. Mohammad Naim AIR 1964 SC 703**,**Mohinder Singh Vs State AIR 1953 SC 415** any Judge has to pass order as per submission in open Court. If Judge has to take any case law at his own then it is duty of the Judge to notify it to the party/advocate and then after giving the advocate an opportunity to counter it the Judge can decide the case.

But in para 24 of impugned judgment, **Justice A.S. Oka And Smt. Justice Anuja Prabhudesai** quoted the para from **Sergi Transformer Explosion**

Vs. CTR Manufacturing Industries Ltd (2016) 12 SCC 713, pointing out that the Court should have considered the explanation and defence by accused. This and some other case laws were cited by Justice Oka at his own and behind back of the Advocate for the party without giving him opportunity to counter it.

Furthermore the reliance placed by Justice Oka on **Sergi Transformer case** *(Supra)* is misplaced. It is against the law laid down by Full Bench of Supreme Court in **Pritish Vs State (2002) 1 SCC 253.** Which is referred by Justic Oka in para 17 of the impugned Judgment.

> Furthermore, Justice Oka, after relying on Pritesh judgment and after ruling in Para 15 that the accused has no right to participate into the enquiry under section 340, contrary explanation has been made by the Court referring to a per- incurim judgment in Sergi's case (Supra). This observation is perverse.
>
> Justice Oka has given perverse and contrary findings relying upon the per in-curium judgment.

That it is settled law that in criminal proceedings and more particularly in the proceeding Under Section 340 of Criminal Procedure code the Court cannot take the defence of the accused into consideration. It is beyond the perview of enquiry Judge.

[vide: Manharibhai Muljibhai Kakadia and Anr Vs. Shaileshbhai Mohanbhai Patel and Ors. 2013 Cri.L.J.144 (Full Bench of Hon'ble Supreme Court), Devinder Mohan Zakhmi Vs Amritsar Improvement Trust, Amritsar & Ors 2002 Cri.L.J. 4485., M/S One Industries Vs. Shri D.P. Garg 1999 Cr.L.J. 4743, Ramesh Sobat Vs State of West Bengal and Another2017 SCC OnLine Cal 8424, Shri. Virendra Singh Vs. State of Jharkhand & others 2004 Cr. L.J. 1913, M. Narayandas Vs. State 2004 Cr. L.J. 822 (Supreme Court)]

10. #CHARGE#:- OBSERVATION ABOUT CONDUCT OF THE PETITIONER AGAINST THE GUIDLINES OF HON'BLE SUPREME COURT IN M. NARAYANDAS VS. STATE 2004 CR.L.J. 822:-

In para 32 of the impugned order, **(Justice A. S. Oka and Justice Anuja Prabhudesai** has mentioned about the conduct of the Petitioner which is unlawful and against the law laid down in **M. Narayandas Vs. State 2004 Cr.L.J. 822** by Hon'ble Supreme Court wherein it was ruled that the conduct of the Applicant is not relevant for enquiry into forgery and falsity of accused and on the basis of any conduct of the party Court cannot drop enquiry/investigation against accused.

It is ruled as under;

***9**. It was next submitted that on the material placed before it the High Court was right in concluding that the complaint was false, frivolous and vexatious. It was to be noted that the High Court arrived at this conclusion on the basis of unsubstantiated allegations made by the Respondents. How Courts should deal with such allegations is set out in para 108 of **Bhajan Lal's case (supra).** Para 108 read as follows:*

*"108. No doubt, there was no love lost between Shri Bhajan Lal and Dharam Pal. Based on this strained relationship, it has been then emphatically urged by Mr. K. Parasaran that the entire allegations made in the complaint due to political vendetta are not only scurrilous and scandalous but also tainted with mala fides, vitiating the entire proceedings. **As it has been repeatedly pointed out earlier the entire matter is only at a premature stage and the investigation is not yet proceeded with except some preliminary effort taken on the date of the registration of the case that is on November 21, 1987. The evidence has to be gathered after a thorough investigation and placed before the Court on the basis of which alone the Court can come to a conclusion one way or the other on the plea of mala fides.** If the allegations are bereft of truth and made maliciously, we are sure, the investigation will say so. **At this stage, when there are only allegations and recriminations but on evidence, this Court cannot anticipate the result of the investigation and render a finding on the question of mala fides on the materials at present available.** Therefore, we are unable to see any force in the contention that the complaint should be thrown overboard on the mere unsubstantiated plea of mala fides. **Even assuming that Dharam Pal has laid the complaint only on account of his personal animosity that, by itself, will not be a ground to discard the complaint containing serious allegations which have to be tested and weighed after the evidence is collected."***

11. Justice A. S. Oka and Justice Anuja Prabhudesai, JJ.has relied upon Additional case laws without bringing them to the notice of the Advocate. This amount to contempt of Hon'ble Supreme Court's judgment in the case of **Som Mittal Vs. Government of Karnataka (2008) 3 SCC 574** where it has 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."

11.#CHARGE# FRAUD ON POWER :- DELIBERATE IGNORANCE OF MATERIAL ON RECORD:-

That, while passing the abovesaid order, dated in **Dr. Santosh Shetty's case Justice A. S. Oka and Smt. Justice Anuja Prabhudesai,** did not cited/ mentioned the ratio of important judgment relied by the Applicant.

In para 25 Hon'ble Court **(CORAM:Justice A.S.Oka and Smt. Justice Anuja Prabhudesai)** referred to judgment of Full Bench of Supreme Court **Maria Margarida Sequeira Fernandes Vs. Erasmo Jack De Sequeira (2012) 5 SCC 370,** but conveniently ignored the law and ratio which was relied by the Applicant. The para 25 of the judgement in Amita Shetty's case by Justice Oka reads as under;

> ***25.*** *He urged that it is the duty of the Courts to ascertain the truth. He relied upon the decision of the Apex Court in the case of Maria Margarida Sequeira Fernandes v. Erasmo Jack De Sequeira[15]. He relied upon the guidelines laid down by Delhi High Court in the case of Kusum Sharma v. Mahinder Sharma[16]. The learned counsel submitted that the offending statements made by the first respondent are only for the purposes of getting favourable order from the Court which are made without any supporting evidence. He submitted that all that the applicant is seeking is holding of a preliminary enquiry so that the Court can come to a conclusion whether a case is made out to direct filing of a complaint. He submitted that either this Court can hold an enquiry or can direct any other authority to hold an enquiry. He submitted that there are litigants such as the wife in this case who have no regard for the truth and therefore, it is all the more necessary for this Court to order enquiry.*

This ex-facie shows that Justice A.S. Oka deliberately ignored the ratio which is against the accused wife.

The ratio laid down by Hon'ble Supreme Court in **Maria Margarida Sequeira Fernandes *(Supra)*** is;

"***52**. Truth is the foundation of justice.* ***<u>It must be the endeavour of all the judicial officers and judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth."</u>***

The ratio laid down by the Apex Court mandates every Hon'ble Court to conduct enquiry in discovering to the 'Truth' , however, **Justice A.S.Oka And Anuja Prabhudesai,** has failed to act in compliance of the settled law. Hence it is ex-facie clear that the Justice A.S.Oka for the reason not on record and not known to applicant has passed the order by ignoring material on record and considering irrelevant, unlawful & illegal factors for the reasons best known to themselves.

11.2. In **<u>Dattani and Co. Vs. Income Tax Officer 2013 SCC OnLine Guj 8841</u>** it is ruled as under;

<u>Precedents - Applicabilty of case Law</u> *- Held, whenever any decision has been relied upon and/or cited by any party, the authority/tribunal is bound to consider and/or deal with the same and opine whether in the facts and circumstances of the particular case, the same will be applicable or not.*

In the instant case, the tribunal has failed to consider and/or deal with the aforesaid decision cited and relied upon by the assessee. Under the circumstances, all these appeals are required to be remanded to the tribunal.

11.2. In **<u>Adarsh Gramin Sahakari Pat Authorised Person Shri Rajesh Janardhan Rinke Vs. Shri Dattu Ramdasji Paithankar 2010 SCC OnLine Bom 53</u>** where it is ruled as under;

***<u>COURT BOUND TO EXPLAIN RATIO DECIDENDI NOT FOLLOWING RATIO IN THE CITATION IS ILLEGAL</u>* -** *Simply listing judgment without going through ratio decidendi is illegal.*

11.3. Full Bench of Hon'ble Supreme Court in **<u>Dawrikesh Sugar Industries Vs.Prem Heavy Engineering Works (P) Ltd., and another AIR 1977 SC 2477</u> ,** had ruled as under;

JUDICIAL ADVENTURISM - *When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the*

subordinate Courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position - It should not be permitted to Subordinate courts including High Courts to not to apply the settled principles and pass whimsical orders granting wrongful and unwarranted relief to one of the parties to act in such a manner - The judgment and order of the High Court is set aside - The appellant would be entitled to costs which are quantified at Rs. 20,000.00.

It is unfortunate that the High Court did not consider it necessary to refer to various judicial pronouncements of this Court in which the principles which have to be followed while examining an application for grant of interim relief have been clearly laid down. The observation of the High Court that reference to judicial decisions will not be of much importance was clearly a method adopted by it in avoiding to follow and apply the law as laid down by this Court.

11.5. In **The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Ors. 2003 ACJ 1775** where it ruled as under;

The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. ***Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative.***

While applying the decision to a later case, the Court dealing with it should carefully try to ascertain the principle laid down by the previous decision. A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be expended unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as measure of social justice. Precedents sub silentio and without argument are of no moment. Mere casual expression carry no weight at all. Nor every passing expression of a Judge,

however eminent, can be treated as an ex cathedra statement having the weight of authority."

11.6. In **Union of India (UOI) and Ors. Vs. K.S. Subramanian (1976) 3 SCC 677**, it is ruled as under;

DIFFERENT VIEWS OF SUPREME COURT :- The proper course for a High Court, in such a case, is to try to find out and follow the opinions expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court. That is the practice followed by this Court itself. The practice has now crystallized into a rule of law declared by this Court.

We do not think that the difficulty before the High Court could be resolved by it by following what it considered to be the view of a Division Bench of this Court in two cases and by merely quoting the views expressed by larger benches of this Court and then observing that these were insufficient for deciding the point before the High Court. It is true that in each of the cases cited before the High Court, observations of this Court occur in a context different from that of the case before us. But, we do not think that the High Court acted correctly in skirting the views expressed, by larger benches of this Court in the manner in which it had done this. The proper course for a High Court, in such a case, is to try to find out and follow the opinions expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court. That is the practice followed by this Court itself. The practice has now crystallized into a rule of law declared by this Court. If, however, the High Court was of opinion that the views expressed by larger benches of this Court were not applicable to the facts of the instant case it should have said so giving reasons supporting its point of view"

11.7. In **Pradip J. Mehta Vs. Commissioner of Income-tax, Ahmedabad (2008)14 SCC 283** where it is ruled as under;

Precedent - View taken by other High Court though not binding have persuasive value - Another High Court would be within its right to differ with the view taken by the other High Courts, but, in all fairness, the High Court should record its dissent with reasons therefor. Thus, the

judgment of the other High Court, though not binding, have persuasive value which should be taken note of and dissented from by recording its own reasons. (Para 24)

24*. Although the judgments referred to above, were cited at the bar in the High Court, which were taken note of by the learned Judges of the Bench of the High Court, but without either recording its agreement or dissent answered the two questions referred to it in favour of the Revenue. Judicial decorum, propriety and discipline required that the High Court should, especially in the event of its contra view or dissent, have discussed the aforesaid judgments of the different High Courts and recorded its own reasons for its contra view. We quite see the fact that the judgments given by a High Court are not binding on the other High Court(s), but all the same, they have persuasive value. Another High Court would be within its right to differ with the view taken by the other High Courts but, in all fairness, the High Court should record its dissent with reasons therefor. The judgment of the other High Court, though not binding, have persuasive value which should be taken note of and dissented from by recording its own reasons.*

11.8. But **Justice Shri. A.S.Oka and Justice Smt. Anuja Probhudesai** did not followed the above principle and directions of Hon'ble Supreme Court.

11.9. The Counsel for applicant relied on **H.S.Bedi Vs. Natitional Highway Authority of India 2015 SCC OnLine Del 9524, Kusum Sharma Vs. Mohinder Kumar Sharma 2017 SCC OnLine Del 12534,**

But surprisinglywhat is the ratio in said judgments and how they are applicable or not is nowhere discussed in the entire judgment.

Hon'ble Delhi High Court in **H.S.Bedi Vs. Natitional Highway Authority of India 2015 SCC OnLine Del 9524** following directions were passed:

16. Conclusions :

16.1 Section 209 of the Indian Penal Code, is a salutary provision enacted to preserve the sanctity of the Courts and to safeguard the administration of law by deterring the litigants from making the false claims. However, this provision has been seldom invoked by the Courts. The disastrous result of not invoking Section 209 is that the litigants indulge in false claims because of the confidence that no action will be taken.

16.2 Making a false averment in the pleading pollutes the

stream of justice. It is an attempt at inviting the Court into passing a wrong judgment and that is why it has been be treated as an offence.

16.3 False evidence in the vast majority of cases springs out of false pleading, and would entirely banish from the Courts if false pleading could be prevented.

16.4 Unless the judicial system protects itself from such wrongdoing by taking cognizance, directing prosecution, and punishing those found guilty, it will be failing in its duty to render justice to the citizens.

16.5 The justice delivery system has to be pure and should be such that the persons who are approaching the Courts must be afraid of making false claims.

16.6 To enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like false claims have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail.

16.7 Whenever a false claim is made before a Court, it would be appropriate, in the first instance, to issue a show cause notice to the litigant to show cause as to why a complaint be not made under Section 340 Cr.P.C. for having made a false claim under Section 209 of the Indian Penal Code and a reasonable opportunity be afforded to the litigant to reply to the same. The Court may record the evidence, if considered it necessary.

16.8 If the facts are sufficient to return a finding that an offence appears to have been committed and it is expedient in the interests of justice to proceed to make a complaint under Section 340Cr.P.C., the Court need not order a preliminary inquiry. But if they are not and there is suspicion, albeit a strong one, the Court may order a preliminary inquiry. For that purpose, it can direct the State agency to investigate and file a report along with such other evidence that they are able to gather.

16.9 Before making a complaint under Section 340 Cr.P.C., the Court shall consider whether it is expedient in the interest of justice to make a complaint.

16.10 Once it prima facie appears that an offence under Section 209 IPC has been made out and it is expedient in the interest of justice, the Court should not hesitate to make a complaint under Section

340 Cr.P.C.

15. Summary of Principles

15.1. Section 209 of the Indian Penal Code makes dishonestly making a false claim in a Court as an offence punishable with imprisonment upto two years and fine.

15.2. The essential ingredients of an offence under Section 209 are:

(i)The accused made a claim; (ii)The claim was made in a Court of Justice; (iii) The claim was false, either wholly or in part; (iv)That the accused knew that the claim was false; and (v)The claim was made fraudulently, dishonestly, or with intent to injure or to annoy any person.

15.3. A litigant makes a 'claim' before a Court of Justice for the purpose of Section 209 when he seeks certain relief or remedies from the Court and a 'claim' for relief necessarily impasses the ground for obtaining that relief. ***The offence is complete the moment a false claim is filed in Court.***

*15.4****. The word "claim" in Section 209 of the IPC cannot be read as being confined to the prayer clause. It means the "claim" to the existence or non-existence of a fact or a set of facts on which a party to a case seeks an outcome from the Court based on the substantive law and its application to facts as established. To clarify, the word "claim" would mean both not only a claim in the affirmative to the existence of fact(s) as, to illustrate, may be made in a plaint, writ petition, or an application; but equally also by denying an averred fact while responding (to the plaint/petition, etc.) in a written statement, counter affidavit, a reply, etc. Doing so is making a "claim" to the non-existence of the averred fact. A false "denial", except when the person responding is not aware, would constitute making a "claim" in Court under Section 209 IPC.***

15.5. The word 'claim' for the purposes of Section 209 of the Penal Code would also include the defence adopted by a defendant in the suit. The reason for criminalising false claims and defences is that the plaintiff as well as the defendant can abuse the process of law by deliberate falsehoods, thereby perverting the course of justice and undermining the authority of the law.

15.6. The words "with intent to injure or annoy any person" in Section 209 means that the object of injury may be to defraud a third party,

which is clear from the Explanation to Clause 196 in the Draft Code namely: "It is not necessary that the party to whom the offender intends to cause wrongful loss or annoyance should be the party against whom the suit was instituted."

15.7. Section 209 uses the words 'Court of Justice' as distinguished from a "Court of Justice having jurisdiction." It is therefore immaterial whether the Court in which the false claim was instituted had jurisdiction to try the suit or not.

15.8. The prosecution has to prove that the accused made a false claim. A mere proof that the accused failed to prove his claim in the civil suit or that Court did not rely upon his evidence on account of discrepancies or improbabilities is not sufficient.

15.9. This section is not limited to cases where the whole claim made by the defendant is false. It applies even where a part of the claim is false. In Queen-Empress v. Bulaki Ram (supra), the accused brought a suit against a person to recover Rs. 88-11-0 alleging that the whole of the amount was due from the defendant. The defendant produced a receipt for a sum of Rs. 71-3-3, and this amount was proved to have been paid to the accused. The accused was thereupon prosecuted and convicted under this section. It was contended on his behalf that because a part of the accused's claim was held to be well-founded and due and owing, he could not be convicted under this section. It was held that the conviction was right. Straight J., said: ... "if that view were adopted, a man having a just claim against another for Rs. 5, may make claim for Rs. 1,000, the Rs. 995 being absolutely false, and he may escape punishment under this section." The law never intended anything so absurd. These provisions were made by those who framed this most admirable Code, with full knowledge that this was a class of offences very common in this country. 15.10. The Law Commission gave the following illuminating examples of what they regarded to be "false" claims (Indian Law Commission's Report at p 98):

"A lends Z money. Z repays it. A brings an action against Z for the money, and affirms in his declaration that he lent the money, and has never been repaid. On the trial A's receipt is produced. It is not doubted, A himself cannot deny, that he asserted a falsehood in his declaration. Ought A to enjoy impunity? Again: Z brings an action against A for a debt which is really due. A's plea is a positive averment that he owes Z nothing. The case comes to trial; and it is proved by overwhelming evidence that the debt is a just debt. A does not even attempt a defence. Ought A in this case to enjoy impunity? If, in either

of the cases which we have stated, A were to suborn witnesses to support the lie which he has put on the pleadings, every one of these witnesses, as well as A himself, would be liable to severe punishment. But false evidence in the vast majority of cases springs out of false pleading, and would be almost entirely banished from the Courts if false pleading could be prevented."

15.11. In both examples, it is obvious that the claims made by A were entirely without factual foundation. In the first example, there was no factual basis for A to claim for the money, as it had already been repaid. In the second example, there was absolutely no factual basis raised by A to support his positive averment that he owed Z nothing. It is clear from these examples cited by the Law Commission that the mischief that the drafters intended to address under Section 209 of the Indian Penal Code was that of making claims without factual foundation.

15.12. Whether the litigant's 'claim' is false, is not considered merely from whatever he pleads (or omits to plead): that would be to elevate form over substance. To make out the offence, the Court does not merely inspect how a litigant's pleadings have been drafted or the case has been presented. The real issue to be considered is whether, all said and done, the litigant's action has a proper foundation which entitles him to seek judicial relief.

15.13. The Law Commission used the term "no just ground" in characterising a false claim, meaning thereby that the substance of a party's claim is crucial. The critical question, accordingly, is whether there are any grounds, whether in law or in fact, to make a claim even if they are not revealed in the pleadings itself. 15.14. There is distinction between claims that may be regarded as being legally hopeless and claims that are false. For example, one may characterise a claim that is based entirely on love and affection as consideration as being hopeless in the light of the current state of contract law, but one certainly cannot say that such a claim is false because only the Courts can determine what constitutes good and valuable consideration (or, more fundamentally, whether consideration is necessary under contract law). This category of claims, like many types of claims involving elements of illegality, often involve closely intertwined, and often inseparable, issues of fact and law. A Court should be slow to label these problematic cases as false even if they are ultimately found to be hopeless. 15.15. Section 209 was enacted to preserve the sanctity of the Court of Justice and to safeguard the due administration of law by

deterring the deliberate making of false claims. Section 209 was intended to deter the abuse of Court process by all litigants who make false claims fraudulently, dishonestly, or with intent to injure or annoy.

15.16. False claims delay justice and compromise the sanctity of a Court of justice as an incorruptible administrator of truth and a bastion of rectitude.

15.17. False claims cause direct injury to honest litigants. But this injury appears to us to be only part, and perhaps not the greatest part, of the evil engendered by the practice. ***If there be any place where truth ought to be held in peculiar honor, from which falsehood ought to be driven with peculiar severity, in which exaggerations, which elsewhere would be applauded as the innocent sport of the fancy, or pardoned as the natural effect of excited passion, ought to be discouraged, that place is Court of Justice.***

15.18. The Law Commission considered punishing false claims as indispensably necessary to the expeditious and satisfactory administration of justice. The Law Commission, in this report, observed that the litigants come before the Court, tell premeditated and circumstantial lies before the Court for the purpose of preventing or postponing the settlement of just demand, and that by so doing, they incur no punishment whatever. Public opinion is vitiated by this vicious state of the things. Men who, in any other circumstances, would shrink from falsehood, have no scruple about setting up false pleas against just demands. There is one place, and only one, where deliberate untruths, told with the intent to injure, are not considered as discreditable and that place is Court of Justice. ***Thus, the authority of the Courts operate to lower the standard of morality, and to diminish the esteem in which veracity is held and the very place which ought to be kept sacred from misrepresentations such as would elsewhere be venial, becomes the only place where it is considered as idle scrupulosity to shrink from deliberate falsehood.***

15.19. The Law Commission further observed that false claims will be more common if it is unpunished than if it is punished appears as certain as that rape, theft, embezzlement, would, if unpunished, be more common than they now are. ***There will be no more difficulty in trying charge of false pleading than in trying charge of false evidence. The fact that statement has been made in pleading will generally be more clearly proved than the fact that***

statement has been made in evidence.

15.20. Section 209 was not intended to operate as a trap for lawyers or litigants who may inadequately or incorrectly plead their case. ***However, a lawyer having actual knowledge about the falsity of a client's claim (or after he subsequently acquires that knowledge), is not supposed to proceed to make that claim in Court and thereby, allow the client to gain something that he is not legally entitled to, or causes the adversary to lose something which he is legally entitled to. A lawyer should decline to accept instructions and/or doubt his client's instructions if they plainly appear to be without foundation (eg, lacking in logical and/or legal coherence).*** *However, a lawyer is not obliged to verify his client's instructions with other sources unless there is compelling evidence to indicate that it is dubious. The fact that the opposing parties (or parties allied to them) dispute the veracity of his client's instructions is not a reason for a lawyer to disbelieve or refuse to act on those instructions, and a lawyer should not be faulted if there are no reasonable means of objectively assessing the veracity of those instructions.*

15.21. Filing of false claims in Courts aims at striking a blow at the rule of law and no Court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false claims.

15.22. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. More often than not, process of the Court is being abused. Property- grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court-process a convenient lever to retain the illegal gains indefinitely. A person, who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

15.23. The disastrous result of leniency or indulgence in invoking Section 209 is that it sends out wrong signals. It creates almost a licence for litigants and their lawyers to indulge in such serious malpractices because of the confidence that no action will result.

15.24. Unless lawlessness which is all pervasive in the society is

not put an end with an iron hand, the very existence of a civilized society is at peril if the people of this nature are not shown their place. Further if the litigants making false claims are allowed to go scot free, every law breaker would violate the law with immunity. Hence, deterrent action is required to uphold the majesty of law. The Court would be failing in its duties, if false claims are not dealt with in a manner proper and effective for maintenance of majesty of Courts as otherwise the Courts would lose its efficacy to the litigant public.

15.25. Truth is foundation of Justice. Dispensation of justice, based on truth, is an essential and inevitable feature in the justice delivery system. Justice is truth in action.

15.26. It is the duty of the Judge to discover truth to do complete justice. The entire judicial system has been created only to discern and find out the real truth.

15.27. The Justice based on truth would establish peace in the society. For the common man truth and justice are synonymous. So when truth fails, justice fails. People would have faith in Courts when truth alone triumphs.

15.28. Every trial is a voyage of discovery in which truth is the quest. Truth should be reigning objective of every trial. The Judge has to play an active role to discover the truth and he should explore all avenues open to him in order to discover the truth. 15.29. The object of a trial is, first to ascertain truth by the light of reason, and then, do justice upon the basis of the truth and the Judge is not only justified but required to elicit a fact, wherever the interest of truth and justice would suffer, if he did not.

15.30. Section 165 of the Indian Evidence Act, 1872 invests the Judge with plenary powers to put any question to any witness or party; in any form, at any time, about any fact relevant or irrelevant. Section 165 is intended to arm the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this Section is that in order to get to the bottom of the matter before it, the Court will be able to look at and inquire into every fact and thus possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible. The Court is not, however, permitted to found its judgment on any but relevant statements. 15.31. The Judge contemplated by Section 165 is not a mere umpire at a wit-combat between the lawyers for the parties whose only duty is to enforce the rules of the game and declare at the end of the combat who has won

and who has lost. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth and to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or wilfully avoided. A Judge, who at the trial merely sits and records evidence without caring so to conduct the examination of the witnesses that every point is brought out, is not fulfilling his duty.

15.32. The Trial Judge is the key-man in the judicial system and he is in a unique position to strongly impact the quality of a trial to affect system's capacity to produce and assimilate truth. The Trial Judge should explore all avenues open to him in order to discover the truth. Trial Judge has the advantage of looking at the demeanour of the witnesses. In spite of the right of appeal, there are many cases in which appeals are not filed. It is mostly with the Trial Judge rather than with the appellate Judge that the members of the general public come in contact, whether as parties or as witnesses.

11.10. In **Kusum Sharma Vs. Mohinder Kumar Sharma 2017 SCC OnLine Del 12534** following was the law points;

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21. *The affidavit of assets, income and expenditure of both the parties is useful to determine the income of the parties in all matrimonial cases. Applying the principles laid down in Section 10(3) of the Family Courts Act, 1984 read with Section 165 of the Indian Evidence Act, relating to the duty of the Court to ascertain the truth and Section 106 of the Indian Evidence Act relating to the duty of the parties to disclose their income, this Court has formulated the format of the affidavit of assets, income and expenditure attached hereto as '**Annexure A1**'. The documents required to be filed along with the affidavit are prescribed in the format of the affidavit.*

22. *The affidavit of assets, income and expenditure is to be treated as guidelines to determine the true income of the parties. The Courts is at liberty to determine the nature and extent of information/documents necessary and shall direct the parties to disclose such relevant information and documents to determine their true income. The Courts are at liberty to pass appropriate directions as may be considered necessary to do complete justice between the*

parties and in appropriate cases, such as the cases belonging to the lowest strata of the society or case of a litigant who is a permanently disabled/paralytic, the Court may, for reasons to be recorded, dispense with the requirement of the filing of the affidavit or modify the information required.

23. *While formulating the affidavit -* ***Annexure A1****, this Court considered Best International Practises mentioned in para 18 of the judgement dated 14th January, 2015. However, this Court has only incorporated important questions and documents though many more questions and documents were considered, which would have complicated the affidavit and caused inconvenience to the litigants. The Courts are at liberty to consider Best International Practises mentioned in para 18 of the judgement dated 14th January, 2015 as the guidelines for seeking relevant information and documents.*

24. *Upon completion of the pleadings in the maintenance application, the Court shall fix the date for reconciliation and direct the parties to file their affidavits of their assets, income and expenditure simultaneously at the commencement of the reconciliation. It is clarified that the filing of the affidavit of assets, income and expenditure is no more mandatory to be filed along with the petition and the written statement, as directed earlier.The Court shall also direct the party seeking maintenance to produce the passbook of his/her savings bank account in which maintenance can be deposited/transferred.*

25. *The Court shall simultaneously take on record the affidavit of assets, income and expenditure of both the parties. If the affidavit of a party is not accompanied with all the relevant documents, the Court may take the affidavit on record and grant reasonable time to file the relevant documents.*

26. *In the event of the failure of the reconciliation efforts, the Court shall grant time to the parties to respond to the affidavit of the opposite party and list the case for hearing on the maintenance application.*

27. *In pending cases of maintenance, the Court may direct the parties to file the affidavit of their assets, income and expenditure, if the parties have not already disclosed their true income.*

28. *If a party makes concealment or false statement in his/her affidavit, the opposite party shall disclose the particulars of the same in his/her response to the affidavit along with the material to show concealment or false statement. The aggrieved party may seek permission of the Court to serve interrogatories and seek production of relevant documents from the opposite party under Order XI of the Code of Civil Procedure.*

29. *The Court shall ensure that the filing of the affidavits by the parties is not reduced to a mere ritual or a formality. Whenever the opposite party discloses sufficient material to show concealment or false statement in the affidavit, the Court may consider examining the deponent of the affidavit under Section 165 of the Evidence Act to elicit the truth. The principles relating to the scope and powers of the Court under Section 165 of the Evidence Act have been summarized in Ved Prakash Kharbanda v. Vimal Bindal, (2013) 198 DLT 555 which may be referred to. In appropriate cases, the Court may direct a party to file an additional affidavit relating to his assets, income and expenditure at the time of marriage and/or one year before separation and/or at the time of separation.*

30. *If the statements made in affidavit of assets, income and expenditure are found to be incorrect, the Court shall consider its effect while fixing the maintenance. However, an action under Section 340 Cr.P.C. is ordinarily not warranted in matrimonial litigation till the decision of the main petition.*

31. *At the time of issuing notice the maintenance application, the Court shall consider directing the petitioner to deposit such sum, as the Court may consider appropriate for payment to the respondent towards interim litigation/part litigation expenses. However, in cases such as divorce petition by the wife who unable to support herself and is claiming maintenance from the respondent husband,*

it may not be appropriate to direct the petitioner-wife to pay the litigation expenses to the respondent-husband.

32. *The interim litigation expenses directed by the Court at the stage of issuing notice, does not preclude the respondent from seeking further litigation expenses incurred by the respondent at a later stage. The Court shall consider the respondent's claim for litigation expenses and pass an appropriate order on the merits of each case.*

33. *If the disposal of maintenance application is taking time and the delay is causing hardship, ad-interimmaintenance be granted to the claimant spouse on the basis of admitted income of the respondent.*

34. *In respect of the claims of permanent alimony under Section 25 of the Hindu Marriage Act, the Court may direct the parties to file affidavits of their assets, income and expenditure, if the same has not already been filed by the parties.*

35. *The aforesaid directions/guidelines be followed in all matrimonial cases including cases under Hindu Marriage Act, 1955, Protection of Women from Domestic Violence Act, 2005, Section 125 Cr.P.C, Hindu Adoption and Maintenance Act, 1956, Special Marriage Act, 1954, Indian Divorce Act, 1869, Guardians and Wards Act, 1890 and Hindu Minority and Guardianship Act, 1956.*

11.11. However **Justice Shri. A.S.Oka and Justice Smt. Anuja Probhudesai, failed to decide the serious issue which is regularly affecting the most of the Courts.**

Hon'ble Supreme Court in **Sundarjas Bhathija Vs. The Collector, Thane, Maharashtra AIR 1990 SC 261 had directed all Judges that "The question raised in the petition cannot be decided with apologetic approaches "it is ruled as under;**

In our system of judicial review which is a part of our Constitutional scheme, we hold it to be the duty of judges of superior Courts and Tribunals to make the law more predictable. ***The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective as a guide to behaviour. It must be determined with reasons which carry convictions within, the Courts, profession and public.*** *Otherwise,*

the lawyers would be in a predicament and would not know how to advise their clients. Subordinate 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.

21. Judge learned Hand has referred to the tendency of some judges "who win the game by sweeping all the chessmen off the table". (The Spirit of liberty by Alfred A. Knopf, New York (1953) p. 131). This is indeed to be deprecated. 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. *But certitude is not the test of certainty and consistency does not mean that there should be no word of new content. The principle of law may develop side by side with new content but not inconsistencies. There could be waxing and waning the principle depending upon the pragmatic needs and moral yearnings. Such development of law particularly, is inevitable in our developing country. In Raghubir Singh case, learned Chief Justice Pathak had this to say ((1989) 2 SCC 754 at p. 767: (AIR 1989 SC 1933 at p. 1939)) :*

"Legal compulsions cannot be limited by existing legal propositions, because, there will always be, beyond the frontiers of the existing law, new areas inviting judicial scrutiny and judicial choice-making which could well affect the validity of existing legal dogma. ***The search for solutions responsive to a changed social era involves a search not only among competing propositions of law, or competing versions of a legal proposition, or the modalities of an indeterminacy such as "fairness" or "reasonableness", but also among propositions from outside the ruling law, corresponding to the empirical knowledge or accepted values of present time and place, relevant to the dispensing of justice within the new parameters.***

The universe of problems presented for judicial choice-making at the growing points of the law is an expanding universe. The areas brought under control by the accumulation of past judicial choice may be large. Yet the areas newly presented for still further choice, because of changing social, economic and technological conditions are far from

inconsiderable. It has also to be remembered, that many occasions for new options arise by the mere fact that no generation looks out on the world from quite the same vantage-point as its predecessor, nor for that matter with the same perception. A different vantage point or a different quality of perception often reveals the need for choice-making where formerly no alternatives, and no problems at all, were perceived".

Holmes tells us:

"The truth is, that the law is always approaching, and never reaching, consistency. It is forever adopting new principles from life at the end, and it always retains old ones from history at the other, which have not yet been absorbed or sloughed off. It will become entirely consistent only when it ceases to -row." (Holmes The Common Law, p. 36 (1881)). 22. Apart from that the judges with profound responsibility could ill-afford to take stolid satisfaction of a single postulate past or present in any case. We think, it was Cicero who said about someone "He saw life clearly and he saw it whole". The judges have to have a little bit of that in every case while construing and applying the law.

12. Fraud On Power:- The impugned judgment is passed by giving a go bye to the settled legal principles and ignoring material on record and also considering the extraneous factors. Full Bench of Hon'ble Supreme Court in **Vijay Shekhar Vs Union of India (2007) 14 SCC 568,** had termed such conduct of a Judge as 'Fraud on Power'. The judgment reads as under;

> *"**A) FRAUD ON POWER BY JUDGE – MISUSE OF POWER BY THE MAGISTRATE -** Magistrate issud process and baillable warrents on a fraud complaint - the complaint in question is a product of fraud and a total abuse of the process of court. there is also serious doubt whether the procedure required under the code of criminal procedure was really followed by the magistrate at all while taking cognizance of the offence alleged. - the same is liable to be quashed based on the legal principle that an act in fraud is ab initio void.- this principle applies to judicial acts also.*
>
> ***B) FRAUD ON POWER VOIDS THE ORDER if it is not exercised bona fide for the end design. -** there is a distinction between exercise of power in good faith and misuse in bad faith. - when an authority misuses its power in breach of law, say, by taking into account, some extraneous matters or by ignoring relevant matters. that*

would render the impugned act or order ultra vires. it would be a case of fraud on powers. the misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a party - a power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise.- use of a power for an 'alien' purpose other than the one for which the power is conferred is mala fide use of that power. same is the position when an order is made for a purpose other than that which finds place in the order. - and any action proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative." - "no judgment of a court, no order of minister, can be allowed to stand if it has been obtained by fraud. fraud unravels everything." (emphasis supplied) see also, in lazarus case at p. 722 per lord parker, c.j. : "'fraud' vitiates all transactions known to the law of however high a degree of solemnity."

C) "FRAUD AS IS WELL KNOWN VITIATES EVERY SOLEMN ACT. - *fraud and justice never dwell together. fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter. it is also well settled that misrepresentation itself amounts to fraud. indeed, innocent misrepresentation may also give reason to claim relief against fraud. a fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. it is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. an act of fraud on court is always viewed seriously. a collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. fraud and deception are synonymous. although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable*

doctrine including res judicata."

12.1. In **Prof Ramesh Chandra Vs. State MANU/UP/0708/2007** it is ruled as under;

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

C) 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.

D) 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."

E) 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.

F) 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 Dwarka Dass 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:

> ***"<u>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</u>. (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.

Mandal Vikas 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 Sayeedur Rehman 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 Channabasappa 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 "Expressio unius est exclusio alterius", 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 Haresh Dayaram 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 Neeraj Tripathi 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 Neeraj Tripathi, learned Counsel for the Chancellor that even in such situation, the order should not be set aside as the petitioner has not been able to substantiate that prejudice had been caused to him for not observing the principles of natural justice cannot also be accepted. In the first instance, as seen above, prejudice had been caused to the petitioner in the absence of a regular enquiry but even otherwise, the Supreme Court in State Bank of Patiala and Ors. v. S.K. Sharma [(1996) IILLJ 296 SC] had observed that if the complaint made is regarding the mandatory facet of the principles of

natural justice, then proof of prejudice is not required.

In Dr. Bool Chand v. The Chancellor Kurukshetra University ((1968) II LLJ 135 SC), the Hon'ble Supreme Court examined a similar case wherein there was no procedure prescribed for removal of the Vice Chancellor under the Act applicable therein. After examining the statutory provisions applicable therein, the Court lime to the following conclusion:

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

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.

12.2. Hon'ble Bombay High Court in the case of **Formac Engineering Ltd. Vs. Municipal Corporation 2011 (3) ALL MR 135** had 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,***

<u>then, unless it is possible to exclude or separate the relevant and the irrelevant or non-existent, the final conclusion cannot be upheld.</u>

<u>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.</u>

<u>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 not 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.</u>

12.3. Hon'ble Supreme Court in **<u>Kalabharati Advertising Vs. Hemant Vimalnath Narichania And Ors. (2010) 9 SCC 437,</u>**has ruled as under;

> "***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."*

12.4. In <u>State of West Bengal Electricity Board Vs.Dilip Kumar Ray(2007) 14 SCC 568</u> it is ruled as under ;

"Malice in law. "Malice in law" is however, quite different. Viscount Haldane described it in Shearer Shields, (1914) AC 808 as : "*A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with the innocent mind: he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of mind is concerned, he acts ignorantly, and in that sense innocently". Malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause."*

13. Hon'ble Supreme Court in **Perumal Vs. Janaki (2014) 5 SCC 377** relied upon judgment of Constitution Bench of Hon'ble Supreme Court in the case of **Iqbal Singh Marwah Vs. Meenakshi Marwah (2005) 4 SCC 370** and passed strictures against the High Court for not conducting enquiry in to the application Under Section 340 of Criminal Procedure Code by a man falsely implicated by women. **Perumal Vs. Janaki (2014) 5 SCC 377** It is ruled as under;

False charge – I.P.C. 211 against IO, Sub-Inspector in an All-Women Police Station – Duty and obligation of High Court to order enquiry under sec. 340 of Cr.P.C. - *when the appellant alleges that he had been prosecuted on the basis of a palpably false statement coupled with the further allegation in his complaint that the respondent did so for extraneous considerations,* ***it is an appropriate case where the High Court ought to exercise the jurisdiction under Section 195 Cr.P.C. - The High Courts not only have the authority to exercise such jurisdiction but also an obligation to exercise such power*** *- the Appellant / accused alleged enticed the de-facto complainant of marrying her and had sexual interaction several times in the nearby jungle and on account of which the complainant became pregnant - The appellant was tried for the offences - The Magistrate acquitted the appellant of both the charges - the said judgment has become final - In spite of the definite medical opinion that Nagal was not pregnant, the respondent chose to file a charge-sheet with an allegation that Nagal became pregnant. Therefore, according to the appellant,* ***the charge-sheet was filed with a deliberate false***

statement - *The appellant, therefore, prayed in his complaint to, try the accused U/s. 193 I.P.C. - The learned Magistrate dismissed the complaint on the ground that section 195 of the Cr.P.C. bars criminal courts to take cognizance of an offence under section 193 of the I.P.C. except on the complaint in writing of that Court - The High Court declined to interfere with the matter in exercise of its revisional jurisdiction, by observing that the respondent had not in any manner tampered with the medical record so as to mulct the petitioner with criminal liability. The wording in the final report informing of the de facto complainant having been pregnant can in the facts and circumstances of the case, be seen only as a mistake.*

Passing strictures against High Court and allowing appeal, Supreme Court observed as under;

Held, we regret to place on record that at every stage of this matter the inquiry was misdirected- . *The abovementioned indisputable facts, in our opinion, prima facie may not constitute an offence under section 193 I.P.C. but may constitute an offence under section 211 I.P.C. We say prima facie only for the reason this aspect has not been examined at any stage in the case - section 211 of the I.P.C. deals with an offence of instituting or causing to be instituted any criminal proceeding or falsely charging any person of having committed an offence even when there is no just or lawful ground for such proceeding to the knowledge of the person instituting or causing the institution of the criminal proceedings- the High Court, in our view, is not justified in confining itself to the examination of the correctness of the order of the magistrate dismissing the said private complaint. Both Section 195 (1) and Section 340 (2) Cr.P.C. authorize the exercise of the power conferred under Section 195(1) by any other court to which the court in respect of which the offence is committed is subordinate to - High Courts may exercise such power either on an application made to it or suo moto whenever the interests of justice demand.*

The High Courts not only have the authority to exercise such jurisdiction but also an obligation to exercise such power in appropriate cases. ***- any interpretation which leads to a situation where a victim of crime is rendered remediless, has to be discarded. The power of superintendence like any other power impliedly carries an obligation to exercise***

powers in an appropriate case to maintain the majesty of the judicial process and the purity of the legal system. Such an obligation becomes more profound when these allegations of commission of offences pertain to public justice.

28. In the case on hand, when the appellant alleges that he had been prosecuted on the basis of a palpably false statement coupled with the further allegation in his complaint that the respondent did so for extraneous considerations, we are of the opinion that it is an appropriate case where the High Court ought to have exercised the jurisdiction under Section 195 Cr.P.C. The allegation such as the one made by the complainant against the respondent is not uncommon. ***As was pointed earlier by this Court in a different context "there is no rule of law that common sense should be put in cold storage". Our Constitution is designed on the theory of checks and balances. A theory which is the product of the belief that all power corrupts - such belief is based on experience.*** But Justice Oka acted against it.

14. # CHARGE # DELIBERATES IGNORANCE AND SELECTIVE APPRECIATION OF ARGUMENTS TO HELP THE ACCUSED WIFE:-

The factual and legal points advanced by the counsel for Applicant were twisted to help the accused which is clear from the impugned order. The entire argument advanced by the advocate for Petitioner was published by **"Lawlex"** on **31st Day of October 2018** and it is also witnessed by various advocates.

The true and actual arguments advanced by the Advocate for the Petitioner were as under;

"During the final hearing on 24/10/2018 the following directions were sought by Adv. Nilesh Ojha

1. *Direction to all Courts and police for prosecution of wives who file false cases, false affidavits in cases under Maintenance, Domestic Violence Act and 498-A.*
2. *Similar action be taken against the husband if his submission is found to be false.*
3. *Statistic shows that around 15 husbands are committing suicide per hour. Something needs to be done urgently to avert such tragedies.*

The final hearing in the most awaited case wherein it is

sought that directions be given to all Courts to make it mandatory to apply the provisions of Sec.340 of Cr.P.C. for conducting enquiry into a false affidavit filed by the wife in a sections191,192,193,199,200,211,465,466,
471,474 etc. of Indian Penal Code, 1860 and also action under Contempt of Courts Act, 1971, is completed today. After hearing Adv. Nilesh C.Ojha, Counsel for petitioner, the special constituted Bench of Justice A.S. Oka and Smt. Justice Anuja Prabhudesai, on 24th October 2018 reserved the matter for order, which is likely to be pronounced soon.
Adv. Nilesh C. Ojha pointed out that 'On one hand women are claiming as equals and seeking right to equality and on the other hand, they are taking shelter under the laws where she is protected as being weaker sex such as 498-A, 376, 354, 509 etc. of the Indian Penal Code, maintenance under Section.125 of the Criminal Procedure Code, Domestic Violence Act etc.

Apart from the above contrast, the wives/women are using the judicial process and safeguards to harass their husband and in-laws. Ironically they are also harassing other women in the family i.e. mother in laws, sister, sister in law etc.

The victim husbands, without any protection from legal process are being harassed and tortured by the police and even by some Judges like done by the Trial Judge in Dr.Shetty's case.

The Ld. Trial Judge in the present case granted maintenance by ignoring Income Tax Returns of the husband and selectively relying on the submission of the wife on a false affidavit.

The version set out by wife is that that her husband i.e. Dr.Santosh Shetty is a partner in TATA Hospital and Orbit Hospital, and based on this submission she claimed that she is entitled for maintenance of Rs.6,00,000/- per month.

Advocate Nilesh C. Ojha sought orders calling for investigation by exercising powers under section 340 of the

Criminal Procedure Code and submitted that based on the inquiry report it can be decided whether the maintenance granted earlier of ***Rs.60,000/-*** *per month should be withdrawn or enhanced further. If her submission on oath is found to be false, then, apart from cancelling the order of maintenance, she should be committed to custody as per Sec.340(1)(d) of Cr.P.C. and further prosecution be ordered by directing Registrar Judicial of this Court to register a case against wife before such Magistrate having jurisdiction to try such cases. Additionally, action be taken under Contempt of Courts Act, 1981 for perjury.*

Mr.Ojha further submitted that, apart from the present case there are several husbands who are victims of misuse of judicial process, many families are ruined because of unjustified support and protection to such undeserving wives. As per statistics, around 15 married men in India commit suicide every hour. The husband is someone's son, someone's brother, someone's father.

Just because he is perceived to be stronger as compared to a woman (so called weaker sex) it doesn't mean that he has a heart of stone or has no emotions, no self respect, no feelings. Atleast he has to be treated as a human being ***(Mard ko bhi dard hota hai) (मर्द को भी दर्द होता है).*** *Article 14 of the Constitution of India mandates equal Protection of law for everyone. It should be followed in letter and spirit.*

Mr. Ojha further stated that he did not mean to say that every husband is right or every wife is wrong but his only concern was that ***no innocent should be penalized and no guilty should be allowed*** *to eat the fruit of illegality and certainly should not be allowed to go scot-free but must face prosecution.*

The legislature in its wisdom has made provisions of section 340 in the Criminal Procedure Code and also the Full Bench of Hon'ble Supreme Court in ***Maria Margarida's Case (2012) 5 SCC 370*** *has ruled that* ***'any trial is a discovery of truth and truth is the only guiding star for any Court'*** *and Judge is not expected to sit as a mute spectator or hearing machine or to act as a post office.*

Judge should take active part by exercising power under section 30 of Civil Procedure Code by putting questions, summoning witnesses etc. to find out the truth.

Similar powers are conferred to the Court under Section 165 of the Indian Evidence Act, 1872 and under section 311 of the Criminal Procedure Code, 1973. But unfortunately, judges are not following the said guidelines because there is no fear in their minds of punitive action for wilful negligence in performing their duties. Hence Mr. Ojha prayed to the Court to issue guidelines for mandatory use of Section 340 of Criminal Procedure code by presiding officers of the Court and in case of failing to do so, action be taken against such erring presiding officers under Contempt and also under section 218, 219 etc. of the Indian Penal Code for failing to perform their duty to find out the truth.

Division Bench of Bombay High Court in ***State Of Maharashtra vs.F Nandram Bhavsar 2002 ALL MR (Cri.) 2640*** *had taken action against Magistrate, Public Prosecutor, Investigation Officer and Advocate for the accused, by exercising power under section 344 of the Criminal Procedure Code.*

Mr. Ojha also prayed for giving directions to all Courts in Maharashtra as done by the Hon'ble Delhi High Court in ***H.S. Bedi's case 2015 SCC OnLineDel 9524*** *and in* ***KusumSharma Vs. Mahider Kumar Sharma 2017SCC OnLine Del 12534***

At this juncture, Justice Shri. Oka asked Mr. Ojha ;

"Whether judgment of Delhi High Court is binding on us?"

Adv. Ojha responded;

" As per Supreme Court in ***Pradeep Mehta's Case in (2008) 14 SCC 283***

It has persuasive value *and if this court wants to take contrary view or dissent then you are bound to explain why you are disagreeing with the view taken by the Hon'ble Delhi High Court. Para 24 of theSupreme Court judgment rules as under;*

*"…****PRECEDENT –*** *View taken by other High Court though*

not binding but, have persuasive value – Another High Court would be within its right to differ with the view taken by the other High Courts, but, in all fairness, the High Court should record its dissent with reasons therefor. Thus, the judgment of the other High Court, though not binding, have persuasive value which should be taken note of and dissented from by recording its own reasons. (Para 24) "

Justice Shri. Oak further asked ;

" The Judgment in Kusum Sharma's Case in Para 28 had observed that the 340 Application in family court cases be decided at the end of the Trial"

Adv. Ojha replied to this question as;

"That point is not correct law. It is well settled that section 340 of the Criminal Procedure Code should be decided first.The correct view is taken by the Hon'ble Bombay High Court in ***Union of India Vs. Haresh Milani's Case 2018 SCC online 2080****. Where relying on various judgments of Hon'ble Supreme Court and Hon'ble Allahabad High Court,* ***Syednazim Hussain vs The Additional Principle Judge Family Court & Another 2003 SCC OnLine ALL 2358,*** *it is ruled that first the enquiry under section 340 of Cr. P.C. has to be conducted and based on the said enquiry report, if the claim of a person is found to be false then such case/ Claim/ Petition should be thrown out at any stage.*

The Constitution Bench of the Hon'ble Supreme Court in ***Iqbal Singh Marwah & Anr. Vs Meenakshi Marwah & Anr.(2005) 4 SCC 370,*** *has ruled that the* ***340 should be decided first*** *and till that time civil proceedings be stayed.*

Justice Shri. Oak asked ;

"Mr.Ojha First look at the conduct of your client, who had not paid earlier arrears of the maintenance and still he is blaming his wife How you can justify it."

Adv. Ojha Replied;

"The basic order of maintenance is based on the false submission of wife which itself is null and void and today she is asking for enhancement of maintenance from ***60,000/- to 6 lacs per month*** *by saying that her husband is a partner in TATA Hospital and Orbit Hospital etc. So let us call the enquiry report from any agency and if*

it is found that my client is at fault, then the Court may prosecute him and if the wife is found to be false and lying, then she should be prosecuted.

The law is clear in this regard as has been ruled by the Supreme Court in many cases and followed by this Hon'ble Court in Haresh Milani's Case 2018 SCConline 2080.

What is the harm in directing an inquiry?

Justice Oka:

"Whether it is mandatory in every matter to conduct inquiry under section 340 of Criminal Procedure Code ?"

***Adv. Nilesh C. Ojha**:*

*"Yes, it is mandatory as per Full Bench of Hon'ble Supreme Court in **Maria Margarida's case (2012) 5 SCC 370,** which ruled that it is mandatory duty of every judge to try to discover the truth.*

51. ***In the administration of justice, judges and lawyers play equal roles. Like judges, lawyers also must ensure that truth triumphs in the administration of justice.***
52. ***Truth is the foundation of justice. It must be the endeavour of all the judicial officers and judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth.***

42.In civil cases, adherence to Section 30 CPC would also help in ascertaining the truth. It seems that this provision which ought to be frequently used is rarely pressed in service by our judicial officers and judges.

*43."Satyameva Jayate" (Literally: "Truth Stands Invincible") is a mantra from the ancient scripture Mundaka Upanishad**.***

Upon independence of India, it was adopted as the national motto of India. It is inscribed in Devanagari script at the base of the national emblem. The meaning of full mantra is as follows:

"Truth alone triumphs; not falsehood. Through truth the divine path is spread out by which the sages whose desires

have been completely fulfilled, reach where that supreme treasure of Truth resides."

45. *In Chandra Shashi v. Anil Kumar Verma(1995) 1 SCC 421 to enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, pre-variation and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in Courts when they would find that truth alone triumphs in Courts.*

46. *Truth has been foundation of other judicial systems, such as, the United States of America, the United Kingdom and other countries.*

47. *The obligation to pursue truth has been carried to extremes. Thus, in United States v. J.Lee Havens 446 U.S.620, 100 St.Ct.1912, it was held that the government may use illegally obtained evidence to impeach a defendant's fraudulent statements during cross-examination for the purpose of seeking justice, for the purpose of "arriving at the truth, which is a fundamental goal of our legal system".*

*Secondly, in **Perumal Vs. Janaki (2014) 5 SCC 377**, Hon'ble Supreme Court made it mandatory. Hon'ble Supreme Court had passed strictures against a High Court Judge for not directing an inquiry under section 340 of Cr.P.C. in a case of false charge of rape. Hon'ble Supreme Court relying on the Constitution Bench's Judgment in **Iqbal Singh Marwah's case (2005) 4 SCC 370**, had ruled that, "Court cannot draw any interpretation which makes the victim of crime remediless, so if High Court do not pass order directing inquiry then my client will be remedy less and it will be against law laid down by Supreme Court.*

Supreme Court in Para 22 of Perumal Vs Janki Case had criticized the High Court Judge saying that, the High Court Judge had put his common sense in cold storage, by not ordering inquiry in an application under section 340 of Cr.P.C and also observed that the absolute power corrupts

meaning thereby that the High Court which is having Constitutional Authority acted with corrupt motive to dismiss the proceedings under section 340 of Cr.P.C."

That Dawood Ibrahim will never come to the Court saying that he is falsely implicated in the case. The person who comes to the Court and asks for inquiry is primarily a person whose case is based on strong foundation and inquiry will bring the truth to the surface.

That as per the statistics of a survey conducted after passing directions in Arnesh Kumar's case, it was found that the cases reduced to 1,10,378 in the year 2016 as compared to 1,22,877 in the year 2014.

This shows that if some checks and balances are in place, then frivolous cases will be reduced and the wastage of time and money from public funds will be saved. The time of Court which is wasted in undeserving cases can be utilized in deciding the genuine cases and this in turn would reduce the pendency of the cases in courts.

One of my friends, a High Court Judge, was amongst the group of High Court Judges visiting England. When they visited Court in London there was no Judge present. Surprisingly they asked the staff there the reason for judge not being present in the Court. The concerned officer replied that there is no case for hearing and hence there wasn't any judge present. When any case would come up, we will call up judge over phone and request him to come to the Court.

Judges from India were surprised. They realised that due to strict provisions to punish those guilty of providing false and misleading submissions, there were hardly any cases lined up for hearing in the Court. That also implied that even their society will not respect a person lying in Court.

Here when any litigant and advocate lies, then inaction on the part of the Court would encourage the dishonest litigant ***"Evil tolerated is evil propagated"*** *and also* ***" A***

stitch in time will saves nine"

Justice Oak further asked:

"Why directions with contempt are needed ?

Adv. Nilesh Ojha responded :-

"I have gone through the judgement passed by Justice G.S. Patel in ***Heena Dharia's case 2016 SCC OnLineBom 9859***

There is a reference about a case of your Honour Justice A.S.Oak when he was working as an Advocate. Adv A.S. Oak gave a citation to the Court, which was against his client. You performed your duty as an officer of the Court. But many advocates may not adopt such foot-prints. SO if they are having fear of being prosecuted under Contempt then only the chances of playing fraud upon the court be minimized.

Supreme Court in ***Indirect Tax Practitioners Association Vs. R.K.Jain (2010) 8 SCC 281*** *had observed as under;*

Para 27. *……*

18……..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. ***(Para 27)***

I being an advocate, being an officer of the Court and being a responsible citizen of this Country performing my duty as enshrined under Article 51–(A) (h) of the Constitution of India.

Now I expect this Hon'ble Court which is the highest Constitutional Court in the State to take note of it and pass

the direction as needed.

Supreme Court ***Maria Margarida's case (2012) 5 SCC 370****,Praduman Bhist* ***2017 (4) Crimes 283 (SC),*** *& Delhi High Court In* ***H.S.Bedi Vs. National Highway Authority of India 2016(I) AD DELHI 661****referred to a book" Justice, Court and delays" written by Dr.Arun Mohan*
This Hon'ble Court may take aid of that.

I have myself drafted a ***"FAIR AND FAST JUSTICE BILL 2016"*** *of which Hon'ble Prime-Minister of India has taken a note of and has forwarded the same to the Law Commission of India.*
Hon'ble Court may take points /recommendations from it .

In the case of ***Re: M.P. Dwivedi case AIR 1996 SC 2299,*** *Hon'ble Supreme Court punished police officer and Judge for not protecting the rights of a person. Supreme Court observed that when ignorance of law is no excuse for a common man, then a Judge certainly cannot take a defence that he did not know the law.*
In a recent judgment Hon'ble Supreme Court in ***Authorized Officer, State bank Of Travancore&Ors Vs. Mathew K.C(2018) 3 SCC 85*** *it is ruled that the Court has to apply correct law even if it is not raised by the party.*
So only when a Trial Court Judge has a fear of punishment, for not applying the correct law, the rights of husband and wife shall be protected as mandated by the Constitution of India.

This will reinforce the faith and respect of a common man in the judicial system and therefore, in the interest of justice, appropriate guidelines be issued.

Before issuing guidelines, the Court if thinks it fit, may appoint an Amicus Curiae or seek inputs from NGO's like Vaastav Foundation, Men's Right Society and also from NGOs working for women."
The argument was hereby concluded by Adv. Nilesh Ojha. The Hon'ble Bench has reserved the order.

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Adv. Nilesh Ojha was assisted by following Advocates:

1. *Vijay Kurle*
2. *Parthasarathy Sarkar*
3. *Iswarlal Agrawal*
4. *Tanveer Nizam*
5. *Shashikala Chauhan*
6. *Shweta Doshi*
7. *Tanvi Kambli*
8. *Jay Shah*
9. *Reena Rana*
10. *Madhuri Gamre*

14.1. The judgment dated 25th Januray, 2019 in **Dr. Shetty's case**, if read would ex-facie expose the dishonesty and corrupt motives of Justice A.S.Oka that he twisted suppressed and conviniently ignored the above arguments and created his own version and tried put in the mouth of counsel for the Petitioner, which was not the core issue and this was done with sole intention to save the asscused wife.

The act of ignoring arguments and citations and considering irrelevant things and extraneous materials makes Justice A.S.Oka & Smt. Anuja Prabhudesai liable for prosecution under section 192,218,201,219,466,167,r/w 120(B) & 34 of IPC.

In **Dhanubhen Patel Vs. Oil And Natural Gas Corporation Of India2014 SCC OnLine Guj 15949 it** is ruled as under;

REASONED ORDER :

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

reasoning is to give it a value of precedent which can help in reduction of frivolous litigation.

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

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

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

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

such as to justify his selection was not contemplated and thus was not legal.

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

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

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

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

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

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

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

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

19. ***The Court cannot lose sight of the fact that a losing litigant has a cause to plead and a right to challenge the order if it is adverse to him. Opinion of the Court alone can explain the cause which led to passing of the final order. Whether an argument was rejected validly or otherwise, reasoning of the order alone can show. To evaluate the submissions is obligation of the Court and to know the reasons for rejection of its contention is a legitimate expectation on the part of the litigant. Another facet of providing reasoning is to give it a value of precedent which can help in reduction of frivolous litigation.Paul D. Carrington, Daniel J Meador and Maurice Rosenburg, Justice on Appeal 10 (West 1976), observed as under:-***

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

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

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

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

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

22. Clarity of thought leads to proper reasoning and proper reasoning is the foundation of a just and fair decision. In Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 ICR 120, the Court went to the extent of observing that "Failure to give reasons amounts to denial of justice". Reasons are really linchpin to administration of justice. They are link between the mind of the decision taker and the controversy in question. To justify our conclusion, reasons are essential. Absence of reasoning would render the judicial order liable to interference by the higher Court. Reasons are the soul of the decision and its absence would render the order open to judicial chastism. The consistent judicial opinion is that every order determining rights of the parties in a Court of law ought not to be recorded without supportive reasons. Issuing reasoned order is not only beneficial to the higher Courts but is even of great utility for C/LPA/1190/2013 ORDER providing public understanding of law and imposing self- discipline in the Judge as their discretion is controlled by well established norms. The contention raised before us that absence of reasoning in the impugned order would render the order liable to be set aside, particularly, in face of the fact that the learned Judge found merit in the writ petition and issued rule, therefore, needs to be accepted. We have already noticed that orders even at interlocutory stages may not be as detailed as judgments but should be supported by reason howsoever briefly stated.

Absence of reasoning is impermissible in judicial pronouncement. It cannot be disputed that the order in question substantially affect the rights of the parties. There is an award in favour of the workmen and the management had prayed for stay of the operation of the award. The Court has to consider such a plea keeping in view the provisions of Section 17-B of the Industrial Disputes Act,

where such a prayer is neither impermissible nor improper. The contentions raised by the parties in support of their respective claims are expected to be dealt with by reasoned orders. We are not intentionally expressing any opinion on the merits of the contentions alleged to have been raised by respective parties before the learned single Judge. Suffice it to note that the impugned order is silent in this regard. According to the learned Counsel appearing for the appellant, various contentionsC/LPA/1190/2013 ORDER were raised in support of the reliefs claimed but all apparently, have found no favour with the learned Judge and that too for no reasons, as is demonstrated from the order impugned in the present appeals."

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

"20. Therefore, the law on the issue can be summarized to the effect that, while deciding the case, court is under an obligation to record reasons, however, brief, the same may be as it is a requirement of principles of natural justice. Nonobservance of the said principle would vitiate the judicial order. Thus, in view of the above, the judgment and order of the High Court impugned herein is liable to be set aside."

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

"9. There is no quarrel with the well- settled proposition of law that an order passed by a public authority exercising administrative/executive or statutory powers must be judged by the reasons stated in the order or any record or file contemporaneously maintained. It follows that the infirmity arising out C/LPA/1190/2013 ORDER of the absence of reasons cannot be cured by the authority passing the order stating such reasons in an affidavit filed before the Court where the validity of any such order is

under challenge. The legal position in this regard is settled by the decisions of this Court in Commissioner of Police, Bombay v. Gordhandas Bhanji (AIR 1952 SC16) wherein this Court observed :

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

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

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

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

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

25. In Secretary and Curator, Victoria Memorial Hall v.

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

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

27. In Director, Horticulture Punjab & Ors. v. Jagjivan Parshad 2008 (5) SCC 539, the recording of reasons was held to be indicative of application of mind specially when the order is amenable to further avenues of challenge.

PROCEDURE FOR PROSECUTING SUCH JUDGES

19. In <u>State Vs. Kamlakar Nandram Bhavsar</u> 2002 ALL MR (Cri.) 2640 it is ruled as under;

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

Issue show cause notice to Mr. B.J. Abhyankar, Advocate for the accused, Mr. B.A. Pawar, Additional Public Prosecutor, Dr. Narayan Manohar Pawar, Civil Hospital, Nashik, PSI Ramesh Manohar Patil, Yeola Police Station, and Mr. RS. Baviskar, Special Judicial Magistrate, Nashik, why action under Section 344 of the Criminal Procedure Code should not be taken against them and they should not be

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

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

20. Hon'ble Supreme Court in the case of **Govind Mehta Vs. State Of Bihar 1971 SCC (3)329** it is ruled as under;

"Cri. P.C. Sec. 197 – I.P.C. Sec. 167, 465, 466 and 471 – Prosecution of a Judge who made interpolation in the order sheet – The appellant was posted as first class Magistrate – Accused whose case was pending in his Court filed transfer petition before District Judge to transfer case to another Court – The appellant Judge made some interpolation in the order sheet to show that some orders had passed earlier – After enquiry ADJ sent report to District Magistrate for initiation of proceeding against appellant – Magistrate – The report of District Magistrate forwarded to state Govt., Who accorded sanction for prosecution – The senior District prosecutor filed a complaint in the court against appellant u.s. 167, 465, 466 471 of I.P.C. – Charges framed against appellant – The appellant raised objection that there is bar under sec. 195 of cri. P.C. in taking cognizance – Held – The proceeding against appellant the then Judge is valid and legal-proceeding not liable to be dropped."

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

"A Judge passing an order against provisions of law in order to help a party is said to have been actuated by an oblique motive or corrupt practice - breach of the governing principles of law or procedure by a Judge is indicative of

judicial officer has been actuated by an oblique motive or corrupt practice - No direct evidence is necessary - A charge of misconduct against a Judge has to be established on a preponderance of probabilities - The Appellant had absolutely no convincing explanation for this course of conduct - Punishment of compulsory retirement directed.

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

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

16. #CHARGE # <u>MISDIRECTING THEMSELF TO THE ISSUE OF FILING OF COMPLAINT WHERE THE ISSUE WAS ONLY DIRECTING THE ENQUIRY:-</u>

<u>SHOWS MALAFIDES OF JUSTICE A.S.OKA & SMT.ANUJA PRABHUDESAI :-</u>

That, in para 34, clause D of the impugned judgment it has been stated that-

"**34.D** ***As observed in paragraph 24 of the decision of the Constitution Bench in the case of Iqbal Singh, normally a direction for filing of a complaint is not made during the pendency of proceedings and that is done at the stage when proceeding is concluded and final judgment is rendered."***

However, as has been ruled by Constitution Bench of Hon'ble Supreme Court in Iqbal Singh Marwah's case the proceedings under section 340 of Cr.P.C. are independent proceedings and preference should be given to proceedings under Section 340 of Criminal Procedure Code over all other proceedings including Civil Proceedings and even both the proceedings can go simultaneously.

Further **Justice A.S. Oka And Justice Smt. Anuja Prabhudesai, JJ.** failed to appropriate the very fact that the prayer and action of calling enquiry report into rival allegations is different than that of discretion of the Court to file complaint afte enquiry is done and therefore the reliance on authorities is misplaced.

Same law is laid down by Hon'ble Bombay High Court in **<u>Haresh Milani Vs Union of India 2017 Mh.L.J 441</u>** where it is ruled as under;

"*18……. Thus* ***<u>the proceedings of the application under section 340 of Code of Criminal Procedure are Kangaroo Baby proceedingswithin the civil trial and still it is of an independent character and therefore, for the purpose of</u>***

<u>the said inquiry the powers under Code of Criminal Procedure can be enjoyed the Civil Court.</u>

Also, Hon'ble Bombay High court in **<u>Maud Late John Desa Vs. Gopal Leeladhar Narang 2007 (2) Mh L.J. (cri) 860</u>** had ruled as under;

"***Criminal P.C. Sec 340, 341 – Filing of false affidavit in civil suit – Proceeding under Sec 340 of Cr.P.C – The main civil suit was at the end stage and fixed for final arguments held merely because civil suit was pending that did not prevent the civil Judge from entering into an enquiry – <u>The civil Judge should register such application as Miscellaneous Judicial Case and then proceed to decide the application according to the provisions of Section 340 or Cr.P.C. has to be decided independently.</u>***"

Same law is laid down by Constitution Benches of Hon'ble Supreme Court in. **<u>M.S. Sheriff Vs. State of Madras AIR 1954 SC 397 &Iqbal Singh Marwah & Anr. Vs Meenakshi Marwah & Anr.(2005) 4 SCC 370.</u>**

However, **Justice A.S.Oka And Anuja Prabhudesai** while passing the impugned judgment has given a go-bye to the legal position and tried to project both the proceeding i.e. main proceedings &procedings under section 340 of Cr.P.C as composite/ one part which is a result of misinterpretation of the judgment to favor the Respondent wife.

17. #CHARGE# <u>JUSTICE A.S. OKA IS NOT HAVING PROPER KNOWLEDGE AND DON'T KNOW THE IMPACT OF SUPPRESSION BY ANY PARTY AND THEREFORE FAILEDTO APPRECIATION IT:-</u>

Justice A.S. Oka and Justice Anuja Prabhudesai, failed to consider the facts of petitioner that magnitude for concealment of important material facts by Respondent wife as mentioned above has prejudiced the opportunity of fair and just trial to the Petitioner.

Hon'ble High Court in **<u>Samson Arthur Vs. Quinn Logistic India Pvt. Ltd and Ors. 2015 SCC OnLine Hyd 403</u>** it is ruled as under;

Section 340 of Cr.P.C- SUPPRESSIO VERI SUGGSTIO FALSI – Suppression and false statement before Company Court.

A] Suppressio veri", i.e., the suppression of relevant and material facts is as bad as Suggestio falsi i.e., a false representation deliberately made. Both are intended to dilute- one by inaction and the other by

action. "Suppressio veri Suggestio falsi"-suppression of the truth is equivalent to the suggestion of what is false.

B] A false statement willfully and deliberately made, and a suppression of a relevant and material fact, interfere with the due course of justice and obstruct the administration of justice.
C] An enquiry, when made under Section 340(1)CrPC, is really in the nature of affording a locus paenitentiae to a person and, at that stage, the Court chooses to take action.
D] As a petition containing misleading and inaccurate statements, if filed to achieve an ulterior purpose, amounts to an abuse of the process of the court, the litigant should not be dealt with lightly. A litigant is bound to make full and true disclosure of facts.

E] It is the duty of the Court, once false averment of facts are discovered, to take appropriate steps to ensure that no one derives any benefit or advantage by abusing the legal process. Fraudulent and dishonest litigants must be discouraged. (A. Shanmugam24). It is the bounden obligation of the Court to neutralize any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process.

F]Dishonesty should not be permitted to bear fruit and confer benefit to the person who has made a misrepresentation.

G] A person, whose case is based on falsehood, can be summarily thrown out at any stage of the litigation. (S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs.). Grave allegations are levelled against the appellants herein of having deliberately and consciously made false statements on oath, of having suppressed material facts, and to have misled the Company Court into passing an order appointing a provisional liquidator and, thereafter, into passing an order of winding up. These allegations, if true, would mean that the process of the Court has been abused. It is therefore expedient, in the interest of justice, that the matter is enquired into and action is taken by lodging a complaint before the Magistrate. Compounding offences, where litigants are alleged to have abused the process of Court, may not be justified. We find no merit in the submission of Sri S. Ravi,

Learned Senior Counsel, that the offences, alleged to have been committed by the appellants, should be compounded.

But this ratio was not followed by Justice A.S.Oka either deliberately or due to lack of knowledge.

18. #CHARGE # IRRELAVANT AND UNLAWFUL OBSERVATIONS:-

That, the impugned judgment and order passed by the Justice A.S.Oka while holding that the application under Section 340 of the Cr.P.C filed by the Petitioner as pre-mature, held that if a case is made out at appropriate stage, the Court can direct recording of evidence by Family Court. That the impugned judgment and order is erroneous, unsustainable and contrary to the following decisions of this Hon'ble court-

a. **Iqbal Singh Marwah Vs. Meenakshi Marwah (2005) 4 SCC 370.**
b. **Perumal Vs. Janki (2014) 5 SCC 377.**

In the aforesaid decisions, it has been clearly held that the courts only have to see as to whether a prima facie case for initiating a case under Section 340 and 195 of Code of Criminal Procedure is prima facie made out or not and when the High Court has to take action. Moreover when false affidavit is filed before High Court then the High Court has to take the action.

The High Court cannot delegate its power to Family's Court and it will be against the provisions in Section. 195 of Cr.P.C.

In a recent judgement Hon'ble Supreme Court in the case of ___ 2019 SCC had ruled that the cognizance of offence cannot be taken by the Magistrate without complaint filed by the officer of the Court before whom said false affidavit is filed.

But Justice Oka had tried to build a new edifice of the criminal law.

In the facts of the present case, the Respondent wife committed a clear fraud on the Petitioner and on the court. The impugned judgment and order passed by overreaching the settled principle in law is wholly erroneous and unsustainable in the eyes of law.

18.1. That, Hon'ble Supreme Court in the case of **Sciemed Overseas Inc. Vs. BOC India Limited. AIR 2016 SC 345** It is ruled as under;

> ***"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 courts are further expected to do justice quickly and impartially not being biased by any extraneous considerations.

19. It is settled position of law that **reckless allegation is also** an offence Under perjury and it is a fit case to order prosecution. As wife had made reckless allegation about partnership in TATA and other Hospitals without any proof then it is a fit case to order enquiry. In**Manlayak Singh Vs. Ramkirit Singh 1940 SCC OnLine 80** it is ruled as under;

"Reckless allegations in application – Fit case to order prosecution under Section 199 of Indian Penal Code.

The rule was supported by the Crown which, on instructions received from the Magistrate, is willing to prosecute. In my order of 29th January, I referred to the tendency I have been noticing recently on the part of applicants to make reckless allegations in the affidavits filed in this Court. Having taken into consideration all the circumstances, I am of opinion that it is expedient in the interests of justice that an enquiry should be made into an offence under S. 199, I. P. C, that would appear, on the materials at present before me, to have been committed by Manlayak Singh in respect of the allegations contained in paras. 8, 12 and 13 of his transfer application of 16th October last. Let a complaint be made accordingly over the signature of the Registrar and forwarded to a Magistrate of the first class having jurisdiction."

20. **#CHARGE#- Justice A.S.Oka and Smt.Justice Anuja Prabhudesai proved to be counter- productive and non- conducive to the administration of justice:-** Justice A.S.Oka filed to formulate guidelines in order to save valuable time of all Courts in state and futher for protection of innocence and prosecution of guilty so as to increase the faith of the people in Courts of law, as mandated by Hon'ble Supreme Court of law, as mandated by Hon'ble Supreme Court and Hon'ble High Court explained in detail in **H.S. Bedi's case (Supra)**

21. 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.

22. Section 409 of Indian Penal Code reads as under;

*"**S. 409Criminal breach of trust by public servant, or by banker, merchant or agent.—** Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 1 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine".*

23. In **Emperor Vs. Bimla Charan (1913) 35 ALL 361,** where it is ruled as under;

"I.P.C. Section 406, 408 :- Criminal breach of trust

The applicant was a member of the municipality at Cawnpore and one of his duties was to supervise and check the distribution of water from the municipal water-works. In other words he had dominion over the water belonging to the municipality. He deliberately misappropriated that water for his own use and for the use of his tenants, for which he paid no tax and about which he laid no information to his employers nor obtained permission for tapping the main. In thus misappropriating municipal water the applicant clearly committed the offence described in Section 408 of the Indian Penal Code. Accused rightly convicted.

It may be that the offences of applicant may be

punishable under the Water-Works Act also, but that does not vitiate the conviction under sections, 406 and 408 of the Indian Penal Code.

In **Krishan Kumar Vs. Union of India,** in para 9 it is ruled as under;

"The question would only be one of intention of the appellant and the circumstances which have been above set out do show that the appellant in what he has done or has omitted to do was moved by a guilty mind.

If under the law it is not necessary or possible for the prosecution to prove the manner in which the goods have been misappropriated then the failure of the prosecution to prove facts it set out to prove would be of little relevance.

So the essence of the offence with which the appellant was charged is that after the possession of the property of the Central Tractor Organization he dishonestly or fraudulently appropriated the property entrusted to him or under his control as a public servant

The giving of false explanation is an element which the Court can take into consideration. ***(Emperor v. Chattur Bhuj (1935) ILR 15 Patna 108, In Rex v. William (1836) 7 C&P 338****. Coleridge, J., charged the jury as follows :"*

The circumstances of the prisoner having quit- ted her place and gone off to Ireland is evidence from -which you may infer that she intended to appropriate the money and if you think that she did so intend, she is guily of embezzlement".

In our opinion the appellant was rightly convicted and we would therefore dismiss this appeal.

9. *It is not necessary or possible in every case to prove in what precise manner the accused person has dealt with or appropriated the goods of his master. The question is one of intention and not a matter of*

direct proof but giving a false account of what he has done with the goods received by him. may be treated a strong circumstance against the accused person. In the case of a servant charged with misappropriating the goods of his master the elements of criminal offence of misappropriation will be established if the prosecution proves that the servant received the goods, that he was under a duty to account to his master and had not done so. If the failure to account was due to an accidental loss then the facts being within the servant's knowledge, it is for him to explain the loss. It is not the law of this country that the prosecution has to eliminate all possible defences or circumstances which may exonerate him. If these facts are within the knowledge of the accused then he hag to prove them. Of course the prosecution has to establish a prima facie case in-the first instance. it is not enough to establish facts which give rise to a suspicion and then by reason of s. 106 of the Evidence Act to throw the onus on him to prove his innocence. See ***Harries, C.J., in Emperor v. Santa Singh AIR 1944 Lah.339."***

23. Constitution Bench 7 –Judges in **Re: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. by him from time to time.*

44(9). *Whether all the above-mentioned conduct amounts to either "proved misbehavior" or "incapacity" within the meaning of Article 124(4) read with Article 217(1)(b) of the Constitution of India warranting the impeachment of the contemnor is a matter which requires a very critical examination."*

24.OTHER OFFENCES COMMITTED BY JUSTICE A.S.OKA& SMT.

JUSTICE ANUJA PRABHUDESAI:-

24.1. In a case of a 85 year old Senior citizen (Satyanarayan Pande) who was the complainant, the accused filed Cri WP No.520 of 2010 for quashing the FIR. There Police submitted report pointing out criminality of the accused.

Matter came up for final hearing before these two Judges on 17th February, 2017.

During the hearing advocate for accused produced some additional documents.

Adv. Mahesh Jethmalani who was representing Complainant i.e. Senior citizen, requested Justice A.S.Oka that he want to counter the said documents by producing public document and sought some time. It is right of everyone to counter the allegations made to misguide the Court.But Justice Oka, who wanted to help the accused to grab the property worth around 50 Crores got annoyed and instead of fixing the part heard matter on next day. He posted it for on weekly board of final hearing. The order dated 17th February, 2017 reads as under;

> *1. Submissions of the learned counsel appearing for the petitioners were heard. Thereafter, the submissions of the learned senior counsel appearing for the original Complainant-Respondent No.2 were heard. The reply of the learned counsel appearing for the Petitioners was also heard on 13th February 2017.*
>
> *2. During the course of the reply, a photocopy of certified copy of the agreement dated 29th August 2002 was tendered across the bar by the learned counsel for the Petitioners in Criminal Writ Petition No. 520 of 2010 only with a view to point out that the said document has been duly registered. A typed copy of the said document is already on record of the Writ Petitions. During the course of the reply, the learned counsel appearing for the Petitioners in Criminal Writ Petition No. 520 of 2010 brought to our notice for the first time that the said agreement is registered, today we had permitted the learned counsel appearing for the Complainant address us only on the said agreement, though in normal course, the Complainant being a Respondent was not entitled to be heard after to reply of the Petitioners. The learned counsel appearing for the first informant, on instructions, states that to enable him to deal with the said document, it is necessary to produce certain additional documents on records, which are orders of quasi-judicial authorities. He submits that the Petitioners are aware of the said orders. The learned counsel appearing for the Petitioners opposed the said prayer in the ground that the final hearing is virtually concluded.*
>
> *3. Submissions have been heard from time to time on two to*

three dates. Now, when the matter is about to be closed for judgment, the first informant wants to rely upon certain documents which are not part of the record of any of these petitions. The learned counsel appearing for the first informant states that he is a senior citizen and therefore, he may be permitted to file the documents. Accordingly, he is permitted to file an affidavit placing on record the said documents. Rejoinder, if any, to be filed within a period of two weeks from today.

4. As the hearing is being postponed at the instance of the Complainant/first informant, the Petitions will have to be heard in regular course. Place these petitions after two weeks on appropriate weekly board of final hearing as per its turn.

Full Bench of Hon'ble Supreme Court in the case of **Express Newspapers Pvt. Ltd. and others Vs. Union of India (1986) 1 SCC 133** had ruled that any submission has to be countered. But Justice Oka got annoyed as he was unable to execute his premediated plan. Full Bench of Hon'ble Supreme Court in Express Newspaper (supra) had read as under;

(A)Constitution of India, Art.226- Petition alleging mala fides - Pleadings of parties - Where mala fides are alleged, it is necessary that the person against whom such allegations are made should come forward with an answer refuting or denying such allegations. For otherwise such allegations remain unrebutted and the Court would in such a case be constrained to accept the allegations so remaining unrebutted and unanswered on the test of probability. It is not for the parties to say what is relevant or not. The matter is one for the Court to decide.

(B) Exercise of power in good faith and misuse in bad faith - Distinction -Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would

be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister.

A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an 'alien' purpose other than the one for which the power is conferred is mal fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power.

Worth to mention here that, based on the said illegal order by Justice Oka, the accused are delaying the case and since last 2 years the accused are trying to enjoy the fruits of stay of the investigation. It is against the Supreme Court guidelines and circular of Bombay High Court that the case of senior citizen has to be given priority over all other cases.

24.2. MISUSE OF POWER TO SAVE JUSTICE KATHAWALA WHO WAS CAUGHT IN A STING OPERATION :-

The same Bench Justice A.S.Oka & Smt. Justice Anuja Prabhudesai in the Contempt Petition No. 03 of 2017 between **Bombay Bar Association Vs. Nilesh Ojha & Ors.** had taken congnizance of Contempt and issued Show–Cause-Notice. In fact the basic case was that Justice S.J. Kathawala in order to help accused to grab a land, did not taken on record the evidence of Talathi / Tahsildar who deposed that the accused forged the Mutation Entry. This dishonesty of Justice S.J. Kathawala was recorded in the sting operation published by news channel 'Right Mirror' Anticipating the action against Justice Kathawalla. Then to save Justice Kathawalla a conspiracy was hatched by Adv. Milind Sathe known middleman, for Justice Kathawala and a Cri. Contempt Petition No. 03 of 2017 was filed before Justice A.S. Oka & Smt. Justice Anuja Prabhudesai. The matter came up for hearing.

The respondent Adv. Nilesh Ojha objected the petition of Bombay Bar Associatation (BBA) being represented by Adv. Milind Sathe, the chairman of BBA on two Grounds:-

i) The BBA is unregistered association.

ii) Adv. Milind Sathe cannot act in dual capacity of petitioner & lawyer.

In support of it Adv. Nilesh C. Ojha relied upon the case laws of Hon'ble Supreme Court & High Court. But Justice Oka tried give a go-bye to this issue and asked Adv. Nilesh C. Ojha to approach the Bar Council. It is observed by Justice Oka as under;

> ***3.*** *The first Respondent appearing in person has raised various objections. The first objection is that the Petitioners are not registered associations and in any event, there is no resolution passed by both the associations authorising its office bearers to file this contempt petition. His second submission is that the present Petitioners are guilty of making false statements and they are guilty of commission of very serious offences. His submission is that an action should be taken against the Petitioners in that behalf. He states that he is filing a separate application for that purpose. He pointed out that if the learned counsel who argued the Petition on behalf of the Petitioners are the members of one of the two associations, they are guilty of gross professional misconduct. He relies upon a decision of Madras High Court in the case of S. Sengkodi v. State of Tamilnadu represented by its Chief Secretary to Government[1] decided on 18th March 2009 in Habeas Corpus Petition No. 142/2008. He relies upon a decision of this Court in the case of Bhagwandas Narandas v. D.D. Patel & Co.[2]. He submitted that even a stranger can raise an objection regarding an offence committed by the parties to the petition. He also relied upon a decision of Calcutta High Court in the case of Sand Carrier's Owner's Union v. Board of Trustees for the Port of Calcutta[3] in support of his contention unregistered associations cannot file the present petition. He relied upon the decision of the Apex Court in the case of Indirect Tax Practitioners' Association v. R.K. Jain[4] in support of his submission that even the contemnors are required to be heard before issuing a contempt notice. He conceded that though the said proposition of law is not specifically*

laid down in the said decision, the Apex Court gave hearing to the proposed contemnors before issuing notice and ultimately dismissed the petition. Lastly, he submitted that as far as the prayer(c) is concerned, in contempt jurisdiction, this Court cannot exercise the power to grant such injunction

5. *As far the allegations of professional misconduct are concerned, it is not for this Court to go into the said aspect and it is for the concerned Respondents to take out appropriate proceedings in accordance with law before the appropriate forum.*

This observation of Justice A.S. Oka are against the law laid down by Hon'ble Madras High Court in **R.Muthukrishn Vs Union of India and Ors AIR 2014 MAD 13** had read as under;

"***The Advocate cannot appear or plead before a court of law in dual capacity, one as party and other as an Advocate - he , himself is either espousing his own cause in the proceedings cannot claim any privileges available to Advocates appearing for the litigants before the Court and cannot be permitted to appear in robes before the Court -Advocate is the agent of the party, his acts and statements, made within the limits of authority given to him, are the acts and statements of the principal, i.e., the party who engaged him – Bombay High Court in the case of High Court on its own Motion vs. N.B.Deshmukh reported in 2011 (2) Mh.L.J., 273, taken the above view.***

Similar question arose for consideration before the Karnataka High Court in the case of M.C.S.Barna vs. C.B.Ramamurthy, reported in 2002 CRI L.J.2859, the petitioner therein was a practising Advocate at Bangalore and he challenged an order passed by the Criminal Court, which rejected his application filed under Section 319 Cr.P.C. The petitioner preferred to argue his own case by wearing robes and identical question came up for consideration before the

Karnataka High Court. It was contended by the petitioner therein that the judgment in the case of T.Venganna, (supra), has not laid down the correct legal position and it requires reconsideration in the hands of the Larger Bench. The Court while considering the submissions made by the petitioner therein pointed out that the Lordships of the then Mysore High Court namely Mr.Justice G.K Govinda Bhat and Mr.Justice V.S.Malimath, were considering the provisions of Section 30 of the Advocates Act and though there are certain amendments to the Act, definition of 'Advocate' and 'Legal Practitioner" defined in Section 2 of the Advocates Act, remain unaltered.That the Advocates Act is an Act to amend and consolidate the law relating to Legal Practitioners and to provide in the constitution of Bar Councils and All India Bar. By referring to the decision of the Hon'ble Supreme Court in the case of Salil Dutta vs. T.M. and M.C. Private Limitedreported in (1993) 2 SCC 165, wherein the Apex Court observed that the ***Advocate is the agent of the party, his acts and statements, made within the limits of authority given to him, are the acts and statements of the principal, i.e., the party who engaged him****. It is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or the misdemeanour of the Advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its Advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. After referring to Sections 29 & 30 of the Advocates Act and the definition of 'Advocate', 'Pleader' etc., as per the Oxford Dictionary of Current English, rejected the contention of the petitioner therein holding that the enunciation made by the Division Bench in the case of T.Venkanna, (supra), leaves no doubt that the*

petitioner therein is not right in his submissions."

But Justice Oka acted against it.

The Division Bench of Bombay High Court in **Prerna Vs. State Maharashtra 2002, ALL MR (Cri.) 2400** where High Court itself have forwarded the complaint to Bar Council.

The other illegalities of Justice A.S.Oka in said contempt petition are mentioned in the prayers of the preliminary objection filed by Adv. Nilesh Ojha, which reads as under;

> ***P R A Y E R S:***
>
> *It is therefore humbly prayed that this Hon'ble Full Bench may be pleased to:*
>
> *a) To consider this Preliminary Objection/submission of the Respondent No. 1, and decide all the issues in view of law and ratio laid down by Hon'ble Supreme Court in* ***Ashok Agarwal's case (2014) 3 SCC 602.***
>
> *b) To appreciate all the case laws in view of Art. 141 of the Constitution and guidelines given in* ***AIR 1997 SC 2477, AIR 1990 SC 26, Dattani's case 2013, 2008 ALL MR (Cri.) 751, AIR 2008 SC (supp) 1788, 2014 ALL MR (Cri.) 4113, 2006 ALL MR (Cri.)2269 , MANU/DE/2625/2015,***
>
> *c) Record a finding that as per law laid down by Constitution Bench of Hon'ble Supreme Court in* ***Supreme Court Bar Associatio's case (1998)4 SCC 409, and in Muthu Karuppan's case AIR 2011 SC 1645*** *Criminal contempt certainly is a matter between the court and the alleged contemnor. The person filing an petition before the court does not become a petitioner in the proceedings. He is just an informer or relator. His duty ends with the facts being brought to the notice of the court. AND therefore the petitioners namely BBA & AAWI have no right of arguments in the present case.*
>
> *d) Allow this preliminary objection and discharge the notice issued to the Respondents.*
>
> *e) Record a finding that the Petition was filed against the law and procedure laid down by Full Bench*

*of Hon'ble Supreme Court in Bal Thackrey's case [**AIR 2005 SC 396**] and also against the rules made by Hon'ble Bombay High Court regulating the Contempt proceedings and therefore the proceedings under contempt is vitiated being illegal .*

*f) Record a finding that the Petition when filed was incomplete as regards the consent of Advocate General as not granted against all the respondents and therefore could not have been placed in the Court on judicial side but should have been placed in the Chamber of Hon'ble Chief Justice of this Hon'ble High Court, as per law and Rules made under the Contempt of Court's Act [Vide : **AIR 2005 SC 396**.].*

*g) To record a finding that as per law declared by Hon'ble Supreme Court in Ashok Kumar Agarwal's case **(2014) 3 SCC 602 & in MANU/OR/0003?2004,** the Contempt jurisdiction and power has to be exercised only in accordance with the law and Procedure of Contempt of Court Act. And as per law declared by Constitution Bench in **Supreme Court Bar Association's case (1998) 4 SCC 409**, the Court cannot pass any order which is beyond the purview of the Contempt of Courts Act and for which other remedies are available, and there is no section/procedure for granting any injunction in the Contempt of Courts Act, 1971 and therefore the order granting Ex-Parte Injunction on 17th Feb. 2017 and on 22nd Feb 2017 is illegal, null and void and vitiated and the petitioners and their counsels are guilty of misleading this Hon'ble Court and obtaining the order illegally and therefore the order dated 24th March, 2017 based in previous orders of injunction is illegal and liable to be recalled and set aside.*

h) Record a finding that the Petition is legally not maintainable as Petitioner though claiming to be authorized by the Association of BBA & AAWI, but they did not file any copy of the Resolution, therefore the Petition was liable to be dismissed forthwith in

view of the law laid down by Hon'ble Supreme Court in AIR 2015 SC 1198 & (2011) SCC 529, but registry and Advocate General failed to discharge their duty in ascertaining the illegality of the Petition.

i) To record a finding that the Petitioner being unregistered association of persons were not entitled to file any petition in the High Court in MANU/JH/1906/2012

j) To record a finding that in view of the provisions of Advocates Act, Bar Council of India Rules and more particularly law laid down in ***2009 (3) CTC 6*** *and* ***AIR 2014 MAD 133,*** *the Counsels who are members of the unincorporated petitioner association and who authorized the Petitioners to file the present petition cannot act in dual capacity of one as a Lawyer and one as a petitioner or defacto petitioners, but they acted against the law and they acted as petitioner and also as an advocate and therefore they are guilty of violation of law laid down by this Hon'ble High Court in the case of Court on its own Motion Vs. N.B. Deshmukh* ***2011 ALL MR (Cri) 381 (Bom) (DB)*** *and therefore they are not entitled allowed to argue the case but they argued the case on 17th February 2017 and 22nd February 2017 & 24th march, 2017 and therefore the petitioners and their Counsels are guilty of Contempt of Court.*

k) ***To record a finding that in view of law and procedure laid down by Hon'ble Supreme Court in various cases regarding the law of Contempt of Court and more particularly by Constitution Bench in AIR 2014 SC 3020 and in 2017/MANU/DE/0609, it is obligatory that while taking cognizance of the Contempt, the Ld. Division Bench was duty bound to see the circumstances in which the publication is made and the stray words cannot be taken divorced from the facts and context in which it is made,***

but the Ld. Division Bench (Coram: Shri. Justice A.S. Oka and Smt. Justice Anuja Prabhudessai) in the orders dated 17th February 2017 and 22nd February 2017 did not mentioned the main incident out of which sting operation had taken place i.e. the lapse on the part of Shri. Justice Kathawala in not recording the deposition of the Public Servant Talathi on 31st August 2016, and also did not taken into consideration the entire interview before coming to the conclusion and therefore the order dated 17th February 2017 and 22nd February 2017 are perverse and per-incurium.

l) Record a finding that as per law laid down by Hon'ble Supreme Court in ***Muthu Karuppan's case AIR 2011 SC 1645,*** *it is mandatory that while dealing with criminal contempt in terms of Section 2(c) of the Act, strict procedures are to be adhered - Any deviation from the prescribed Rules should not be accepted or condoned lightly and must be deemed to be fatal to the proceedings taken to initiate action for contempt and therefore the present proceedings are vitiated.*

m) To record a finding that, as per constitution Bench Judgment in ***AIR 1995 SCC 1729,*** *obiter dictum of the Supreme Court also act as precedent and to be followed by all the courts and therefore the view of the Hon'ble Supreme Court as published in* ***Indian Express on 22nd February 2017****, at* ***Exhibit – C - R1,*** *is binding and as per that view the interview of public regarding corruption is not a contempt on the other hand it helps the judiciary to know the problems.*

Further record that such law is already been laid down by Full Bench in ***R. K. Anand's case 2009 AIR SCW 6876*** *about interviews on news channel against malpractices in court proceedings are covered under freedom of speech as enschrgined Under Article 19(1)*

of the Constitution of India.

But then also the petitioners filed such a petition which shows the malafide intention and contemptuous act of the petitioners and their counsels.

n) To record a finding that the petitioners filed a petition with false, misleading affidavits and unconstitutional prayers. When such dishonesty, illegality is brought to the notice of Court by the respondents then petitioners BBA & AAWI instead of tendering apology and withdrawing their dishonest, illegal, unconstitutional and contemptuous submissions again stand by the same, thereby posing themselves to be above the law, above Hon'ble High Court and Hon'ble Supreme Court and therefore as per ***'Second Rule'*** *as has been laid down by Hon'ble Supreme Court in* ***Re: Mulgaonkar's case (1999) 8 SCC 308****, it is must to punish the committee members of BBA & AAWI along with their counsels to send a message that* ***the Supremacy is the rule of law over pugnacious, vicious, unrepentant and malignant gang – up of vested interests and to show that be you ever so high, the law – the people's expression of justice – is above you.***

o) To record a finding that the order dated 22nd February 2017 asking petitioners to serve private notices is against the law and procedure of Contempt of Courts Act and law declared by Hon'ble Supreme Court which mandates that in contempt proceedings there should be only two parties, one is Court and the other is contemnor and there is no justifiable reason given in the order that without deciding the objection taken by the respondents about maintainability of the petition to their locus and legality and they were illegally allowed to intervene and proceed with the petition as the case being a private litigation instead of appointing an impartial amicus curiae. And in absence of any legal justification and reason the

order is vitiated as being unjust exercise of the discretion as had been ruled in Ashok Agarwal's case (2014) 3 SCC 602, Shaima Zafri's case (2013) SCC.

p) To record a finding that the order dated 17th February 2017 and 22nd February 2017 is per-incuriam as this Hon'ble Court adopted the exact opposite procedure which is adopted and approved by Hon'ble Supreme Court in R.K. Anand's case ***[2009 AIR SCW 6876]****, where after verifying the truth and veracity of the sting operation, the persons i.e. the Senior Counsels who were found to be involved in suborning the witness were punished and the role of media exposing illegal activities of the guilty Senior Counsel were appreciated and also the Junior Advocate Mr. Arvind Nigam who argued against guilty Senior Counsel, was recommended to the Chief Justice to suo-motu consider about designating said Mr. Arvind Nigam as Senior Advocates and to strip-off the designation of guilty Senior Advocates [vide: 2009 Cri.L.J. 677], but to the contrary the Ld. Division Bench of this Hon'ble Court issued notices to the news channel and the persons who exposed the illegality and therefore the order is perverse & vitiated as being against the law and procedure set and approved by Hon'ble Supreme Court.*

q) To record a finding that the Petitioner are guilty of misguiding the Advocate General in obtaining consent and the Ld. Division Bench in initiating the present proceedings.

r) To record a finding that the Petitioners who themselves are Advocates and their Counsels representing them are guilty of withholding the true legal and factual position from the Court and they acted against the law laid down by Hon'ble Supreme Court in E.S. Reddy's case [(1987) 3 SCC 258] and against the law ruled by this Hon'ble Court relying on the duty discharged by Hon'ble Justice A.S. Oka while

performing his duty as a lawyer in the case between ***Heena Nikhil Dharia Vs. Kokilaben K. Nyak, order dated 9th December, 2016 in NOM (L) No. 3117*** *of 2016, and therefore strict action is required to be taken against petitioners and their Counsels, in view of the law laid down in* ***2011 ALL MR (Cri) 381*** *also to direct Bar Council of Maharashtra & Goa to take action against petitioners and their Counsels Mr. Milind Sathe and Ors.*

s) To record a finding that as seen from the allegations made in the interview and as seen from the order passed by Shri. Justice S.J. Kathawala, on 31st August, 2016 it is clear that the deposition of the Public Servant i.e. Talathi were not recorded by Shri. Justice S.J. Kathawala on 31st August 2016 and there is no reason given in the order dated 31st August 2016 and in the subsequent order dated 8th February 2017, on the contrary a distorted version is mentioned and therefore in view of law declared by Hon'ble Supreme Court in R.R. Parekh's case [AIR 2016 SC 3356], it can be said that Shri. Justice S.J. Kathawala acted with corrupt motive and therefore Shri. Justice S.J. Kathawala is bound to resign from his post at his own in view of law laid down by Constitution Bench of Hon'ble Supreme Court in ***K. Veerswami's case (1991) 3 SCC 655****. However if Shri. Justice Kathawala refuse to resign from the post then this Hon'ble Court may send reference to Hon'ble Chief Justice of India in view of In House Procedure and law laid down in* ***(1995) 5 SCC 457.***

t) To record a finding that in view of the other facts and materials available on record it is clear that Shri. Justice S.J. Kathawala is guilty of breach of the oath taken as a High Court Judge and acted with biased manner by doing favour to one party (accused) and disfavour to other party (applicant - Respondent No. 10) and passed an order by disregarding the evidence of a public servant i.e. Talathi who was the hub of the decision and Justice Kathawala invented

theories to read meanings in to documents while the straightforward explanation given by Talathi was ignored deliberately. further the order passed by Justice S.J. Kathawala on 8th February, 2017 is passed by ignoring relevant legal material and case laws of Hon'ble Supreme Court and considering irrelevant and unlawful materials by doing labour to help the accused and therefore the said order is in the category of fraud on power by Judge as ruled by Full Bench of Hon'ble Supreme Court in ***Vijay Shekar's case 2004 (3) Crimes (SC) 33*** *and therefore Shri. Justice S.J. Kathawala is guilty of Contempt of his own Court and also guilty of offences punishable under section 191, 193, 196, 199, 201, 218, 219, 465, 466, 471, 474 r/w 120(B) & 34 of I.P.C. and in view of law laid down by Hon'ble Supreme Court in Perumal Vs Janaki [(2014) 5 SCC 377], it is obligatory on the part of this Hon'ble Court to take suo-motu action against the persons involved in offences against administration of justice and any interpretation which leads to a situation where a victim of crime is rendered remediless, has to be discarded and therefore this Hon'ble Court is bound to take action against Justice Shri. S.J. Kathawala and in view of provisions of section 344 of Cr. P.C. as has been followed by Hon'ble Supreme Court in* ***AIR 1971 SC 1708*** *&* ***2002 ALL MR (Cri) 2640****, it is necessary to direct C.B.I. to take appropriate steps to get the proper permission and sanction from Hon'ble CJI and Hon'ble President of India to register F.I.R. and prosecute him before competent Court in accordance with the law, within a period of 3 months in view of Constitution Bench Judgment in* ***Iqbal Singh Marwah's case 2005 4 SCC 370.***

u) To record a finding that the law declared by Hon'ble Supreme Court in K. Veewswami's case (1991) 3 SCC 655 is only regarding the registration of F.I.R. against a Judge and have no bar for High Court in exercising power under section 340 & 344 of Cr. P.C. in directing action against a Judge involved in

offences against administration of justice.

v) To record a finding that as per section 3 (1) (2) of Judges Protection Act, 1985 the High Court, or Supreme Court or respective Government are having power and jurisdiction to direct prosecution of a Judge and when such power is exercised then the concerned Judge is not having Protection, as has been ruled in ***Deelip Sonawane's case 2003(1) B. Cr. C. 727****.*

w) To record a finding that as per Heydon's Mischief rule as explained by Hon'ble Supreme Court in Sanjay Dalis's case MANU/SC/0716/2015 the amendments in Cr. P.C. section 156(3) & 190 of Cr. P.C. about deemed sanction are applicable to all cases including cases against Judges and it is obligation of the State and Central agencies like C.B.I., C.I,D., police to complete the formalities of sanction and others as has been done in Justice Nirmal Yadav's case 2011 (4) RCR (Criminal) 809.

x) To record a finding that as per democratic set-up and as per concept of welfare state, it is duty and obligation of the State and more particularly of the C.B.I. and Central Vigilance Commission(C.V.C.) to keep watch on the corruption in High Courts and Supreme Court and not to wait for the complaints by the parties.

y) To give proper directions to C.B.I. & CVC to form a time bound procedure to deal with the complaints against Judges.

z) To record a finding that whenever any corruption in Court is exposed by a person either based on sting operation or on sound proofs and if his allegations are found to be sustained then the C.B.I. is bound to take action against the concerned Judge as has been done in Jagat Patel's case ***MANU/GJ/0361/2017.***

aa) To record a finding that when Respondent No. 10 Mr. Ashiq A. Merchant was aggrieved by the unjust and offensive conduct of Shri. Justice S.J. Kathawala then he was having right to make complaint against said Judge to Hon'ble Chief Justice and C.B.I. and Hon'ble Chief Justice of Bombay High

Court. And the Hon'ble Chief Justice are bound to act as per In-House-Procedure, 1999, has been ruled by Hon'ble Supreme Court in the case of ***Addl. District Judge "x" Vs. Registrar General High Court AIR 2015 SC 645.***

And therefore the prayers and motive behind filing this Petition is unlawful and was to deprive the Respondents from their fundamental rights.

bb) To record a finding that as proved from the records it is clear that Respondent No. 1 Adv. Nilesh Ojha has been falsely implicated by Smt. Justice Roshan Dalvi in 2014, then by Shri. Justice A.K. Menon in 2016 and the abovesaid false proceedings were misused by the petitioners to mislead this Hon'ble Court and this Hon'ble Court (Coram : Shri. Justice Abhay Pka & Smt. Justice Anuja Prabhudesai) by order dated 22nd Feb, 2017 issued notice to the respondent no. 1, based on the distorted false and misleading version put up by the petitioners and therefore Respondent no. 1 Adv. Nilesh Ojha is entitled for ad-interim Compensation of 10 Crores from the Petitioners.

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

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

MANU/KE /0152/1983.

ee) To record finding that through there is no provision under Contempt of Court Act, 1971 to grant of any injunction then also the ex-parte injunction in the nature of prepetual injunction is obtained by the petitioners malafidely and therefore the order dated 17th Feb,22nd Feb and 24 th March of 2017 are vitiated and therefore the said issue has to be decided urgently and within 30 days as has been ruled by Hon'ble Supreme Court in the case between Quantum Securitues Pvt. Ltd. Vs. New Delhi ***AIR 2015 SC 3699*** *and followed by this Hon'ble Court in* ***Gurudas Alavani's case 2016 (6) Bom C. R. 146.***

ff) To record a finding that the petition contain the controversial issue about malpractice/misconduct of Sr. Counsel Mr. Aspi Chinoy and other in suborning the witness and in the said case and also in the earlier cases of Contempt notice issued by the Shri. Juctice Roshan Dalvi in NOM 787/2014 related with the debatable issue where Mr. Janak Dwarkadas, Sr. Advocate is a witness and therefore he should not have appeared as a Counsel in the present matter in view of the Bar Council of India rules as has been explained in ***2009 (3) CTC 6*** *and in* ***AIR 2014 MAD 133, 2011 ALL MR (Cri) 381 (Bom) (DB)*** *but then also he appeared in the present proceeding on 17th Feb. 2017 and therefore he is guilty of acting against the law laid down by this Hon'ble High Court in 2011 ALL MR (Cri) 381 (N.B. Deshmukh's case) and therefore he is liable to be proceeded under Contempt of Courts Act and his designation as a Senior Counsel is liable to be stripped off with further action against him which this Hon'ble Court deems fit and proper.*

gg) To record a finding that in view of material placed on the record and in view of the affidavit of respondent accepted by Division Bench of this Hon'ble Court in Suo-moto Contempt petition No. 01 of 2014 in order dated 5th Feb. 2015, makes it clear that Respondent No. 1 Shri. Nilesh Ojha was falsely

implicated by Smt. Justice Roshan Dalvi and the said affidavit cum apology was only for using harsh language and therefore the reliance on the said order of Smt. Justice Roshan Dalvi dated 7th May 2014 was used to misled this Hon'ble Court by the petitioners by creating prejudice against the Respondent No. 1 and therefore the petitioners and their Counsel are guilty of committing perjury and also guilty of Contempt of Court. Moreover Mr. Janak Dwarkadas, Sr. Advocate who himself witnessed the incident of 7th May 2014, but then also he appeared to support such false petition and therefore Mr. Janak Dwarkadas is guilty of Gross Contempt and Gross professional misconduct and perjury.

hh) To record a finding that the reliance placed by the petitioner on order passed in Notice of Motion (L) No. 3457 of 2015 regarding Contempt notice to the Respondent No. 1 is illegal on the Count that the same matter is still subjudice and secondly from the material available on record it is clear that the order passed by Shri, Justice A. K. Menon is based on the false and misleading statement of Mr. Aspi Chinoy that the suppression of Plaintiffs regarding the power of attorney had no relevance to the case but in fact the suit itself contains the prayer of declaring the said power of attorney as null and void and also the other various prayers of the suit are directly or indirectly related with the said power of attorney but Shri. Justice A.K. Menon passed the order against the material on record and therefore Justice A.K. Menon is guilty of passing a wrong order with corrupt motive to help the accused plaintiffs and guilty advocate Mr. Aspi Chinoy and therefore Shri. Justice A.K. Menon is liable to be prosecuted under section 218, 219, 201, 191, 193, 465, 466, 469, 471, 474, 120(B) & 34 of I.P.C. and also he is guilty to Contempt of Court.

As the prosecution of offender is an obligation of the state, therefore C.B.I. be directed to passed further with the case against Shri. Justice A.K. Menon

*by completing all the formalities of sanction as has been done in **AIR 1971 SC 1708**.*

ii) To record a finding that the prayers of the Petitioners asking blanket injunction against Respondent No.1 who is an Advocate from approaching any civil and criminal Courts is unconstitutional and contemptuous in view of law declared in AIR 2015 SC 326, 2016 (2) Mh. L.J. 75, 1944 SCC Online ALL 34, and also against the law ruled in Raman Lal's case 2001 Cr.L.J 800, in (2014) 5 SCC 377 where it has been ruled that Court cannot pass an order which makes the victim remediless. But then also Petitioners made such prayers and this proves the falling standard of professional ethics on the part of petitioners and their Counsels and also proves lack of basic legal knowledge on the part of the Petitioners and their Counsels and therefore they are unfit to enjoy the noble profession of advocacy and therefore they should be barred to appear in the High Court and before any Court for lifetime. Further record a finding that the prayers to prevent a person from approaching a court proves that the petitioners are not having in the faith of the concerned court who is supposed to pass an order as per law.

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

kk) To record a finding that the interview given by the Respondents i.e. Adv. Nilesh Ojha and others is truth of the event based on law declared by Hon'ble Supreme Court and covered by freedom of speech and expression as guaranteed under Article 19 (1) of the Constitution of India.

ll) To record a finding that the Petitioners Mr. Nitin Thakkar, Vice- President, Bombay Bar Association and Mr. Viresh Purwant, Secretary, AAWI are guilty of suppression, twisting and dishonest concealment of fact and along with their Advocates they are guilty of drafting a Petition with a distorted version with ulterior motive and this iseue has to be decided as per guidelines of Hon'ble High Court'ble Supreme Court in para 20,21 of ***Ashok Agrawal's case (2014) 3 SCC 602*** *and after appreciatng the issue please to record a finding that Petitioners Mr. Nitin Thakkar, Vice-President, Bombay Bar Association and Mr. Viresh Purwant, Secretary, AAWI are liable to be prosecuted and they are also liable to pay the Respondents an interim compensation of Rs. 10 Crores each. In view of law and ratio laid down in* ***R.K. Jain's case (2010) 8 SCC 841*** *&* *in* ***Baduvan Kunhi's case MANU/KE/0828/2016****.*

mm) To pass appropriate order directing the Registrar of this Hon'ble High Court to make arrangement for video recording of the present proceeding in the interest of justice and equity.

nn) To pass appropriate order directing the Registrar of this Hon'ble High Court to make arrangement for display of the CD submitted by the petitioners as the version setforth in transcript is different from what has been shown in the interview.

oo) To record a finding that the submission given by Petitioners and their Counsel which is recorded by this Hon'ble Court in para 3 of the order dated 17th February 2017 that the interview of the Respondent No.1 was already on record on the Compact Disk marked at Exhibit – 'B-1' attached to the petition given to Advocate General on 14th February 2017, whose transcription is shown at "Exh. 2 - A" is an out and out false statement as the said video is infact uploaded on 15th February 2017,

Therefore the petitioners Mr. Nitin Thakkar and Mr. Viresh Purwant are guilty of misleading the Advocate General and also misleading this Hon'ble Court and therefore they are liable to be punished under sections 191, 193, 199, 196, 200, 465,466, 471, 474 r/w 120(B) of the Indian Penal Code and also guilty of committing Contempt of Court under section 14 of the Contempt of Courts Act and they are liable to be prosecuted in view of law laid down by Hon'ble Supreme Court in the case of ***2000(1) SCR 367 (Murray & Co.), (2008) 12 SCC 841 (K.D. Sharma's case), 2016(3) Punj. L. R. 28 (Sciemed Overseas case), 2013 (1) ALL MR 153, 2016/MANU/KE/0828.***

pp) Further the petitioners Mr. Nitin Thakkar, Mr. Viresh Purwant & President of BBA & President of AAWI be directed to remain present in the Court as the respondents No. 1 wants to cross-examine them and the respondent no. 1 and others be permitted to Cross-examine the witnesses.

qq) To record a finding that while making complaint and exposing illegalities done by Justice S.J. Kathawala by not recording a deposition of witness to favor the accused, the Respondents in fact performed their duty as enshrined under Article 51(A)(h) of the Constitution of India as explained by Hon'ble Supreme Court in R.K. Jain's case ***[(2010) 8 SCC 841]*** *which is upheld by Full Bench of Hon'ble Supreme Court in Arun Shourie's case.* ***AIR 2014 SC 3020*** *and also explained in Anirudha Bahal's case* ***2010 (119) DRJ 104.***

rr) To record a finding that the Petitioners made a categorical false statement in their petition in para 3.11 that Shri. Justice Kathawala done no wrong. In fact whatever is shown in video/ sting operation and in the complaint filed by the Respondent No. 10 make it clear that Shri. Justice Kathawala is guilty of Fraud

on power to help the accused and the allegations are based on factual and legal positions but the Petitioners put a distorted version before this Hon'ble Court and obtained an order by misleading this Hon'ble Court.

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

tt) To record a finding that as per Supreme Court in C. Ravichandran's case (1995) 5 SCC 457, it is duty of Judge to maintain high standard of conduct as Judicial office is a public trust. Society is entitled to except that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher standards of conduct and rectitude from a Judge. Unwritten code of conduct is writ large for judicial officers to emulate and imbibe high moral or ethical standards expected of a higher judicial functionary, as wholesome standard of conduct which would generate public confidence, accord dignity to the judicial office and enhance public image, not only of the Judge but the court itself. It is, therefore, a

basic requirement that a Judge's, official and personal conduct be free from impropriety ; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than expected of a layman and also higher than expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society.

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

To keep the stream of justice clean and pure, the Judge must be endowed with sterling character, impeccable integrity and upright behavior. Erosion thereof would undermine the efficacy of the rule of law and the working of the Constitution itself. The Judges of higher echelons, therefore, should not be mere men of clay with all the frailties and foibles, human failings and weak character which may be found in those in other walks of life. They should be men of fighting faith with tough fibre not susceptible to any pressure, economic, political or any sort. The actual as well as the apparent independence of judiciary would be transparent only when the office holders endow those qualities which would operate as impregnable fortress against surreptitious attempts to undermine the independence of the judiciary. In short, the behavior of the Judge is the bastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law.

uu) To record a finding that the present Contempt Petition is filed by petitioners with oblique motive to divert the attention from the main issue of the wrong done by Justice S.J. Kathawala, Justice V.M. Kanade, Justice A.K. Menon, Adv. Aspi Chinoy, Adv. Vishal Kanade and Ors.

vv) To record a finding that first the petitioner filed the present Contempt Petition dishonestly by putting distorted version by suppressing, twisting of the fact and the petitioner obtained first order on 17th Feb 2017 by misleding the Hon'ble Court secondly when the falsity and dishonesty of the petitioner is exposed by Respondent no.1on 17th and on 21 Feb 2017 by filing Criminal appication no. 01 of 2017, then instead of tendering apology the petitioners again filed additional affidavits and obtainded order on 22nd Feb 2017 and on 24th March 2017 and therefore the petioners are guilty of gross contempt and liablble to be punished as per law laid down by Hon'ble Supreme Court in ***Afzal's case AIR 1996 SC 2326.***

ww) To consider and decide that the application filed by the Respondent No. 1 being Cri. Application No. 1 of 2017 in present Contempt Petition No. 03 of 2017 and take appropriate action against the petitioners and their Counsels as per Section 340 of Criminal Procedure Code for their other false and misleading statements on Oath in their affidavit and also take action against persons authorizing the petitioners i.e. BBA & AAWI in filing such frivolous petition

24.3. In **Garware Polyester Ltd. and Anr.Vs.The State of Maharashtra and Ors. 2010 SCC OnLine 2223**

"***Contempt of Courts Act – All the officers/authorities are bound to follow the procedure laid down by High Court in its judgment*** **–** *The legal proceeding is initiated by the officer is against the judgment of High Court amounts to contempt of High Court – show cause notice is*

issued to Mr. 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."

24.4 #CHARGE# Justice A.S. Oka and Justice Anuja Prabhudesai liable to pay compensation to Respondents in Contempt Petition for not formulating specific charge:- Judge Bench in **Ramesh Maharaj Vs. The Attorney General (1978) 2 WLR 902** had ruled that;

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

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

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

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

determination of his case, could in theory seek collateral relief in an application to the High Court under.

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

24.5. #CHARGE#:- Justice Oka and Smt. Justice Anuja Prabhudesai are liable for action under Section. 211 of I.P.C. for unlawful action under contempt against Adv. Vijay Kurle in Cri. Contempt Petition No. 03 of 2017.

Full Bench of Hon'ble Supreme Court in **Hari Das Vs. State Case 1964 SC 1773** had ruled that false & frivolous charge of Contempt is an offence under Section 211 of Indian Penal Code;

"*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 Cri. Contempt Petition No. 03 of 2017 Justice A.S. Oka issued Contempt against Adv. Vijay Kurle without any legal base and therefore they are liable for action under Section. 211, 220, 218, 219 r/w 120(B) and 34 of I.P.C. The whole attempt of Justice A.S.Oka, Smt. Justice Anuja Prabhudesai was to silence the truth and

save Justice S.J. Kathawalla from serious fraud caught in a sting operation and for such unauthorized purpose the Court machinery was misused and therefore they are also liable for action under Section 409 of I.P.C.

Section 409 of I.P.C. reads as under;

"409. Criminal breach of trust by public servant, or by banker, merchant or agent.—Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 1 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

24.6. Needless To Mention Here That When Adv. Nilesh Ojha in his preliminary objection exposed Justice A.S. Oka, The Said Petition Never Came For Hearing Since Last 2 Years.

25) #CHARGE#- Violation of fundamental rights of Shri. Bhamburkar by issuing contempt notice in the case already decided by earlier Division bench Justice A.S. Oka guilty of offence under Section 220 of I.P.C

That on 7th March, 2017 Justice A.S. Oka issued a contempt notice to Shri. Vishwas Bhamburkar for his pleadings and other allegations on social media against High Court Judges.

Infact on the same allegations the said Bhamburkar was punished by earlier Division Bench headed by Justice V.M. Kanade. Vide order dated 28th June, 2016.

Hence the order passed by Justice Oka had violated the fundamental rights of Shri. Bhamburkar. It is against the constitution mandate of Art 20(2) of the Constitution which prohibits Double Jeopardy.

Art 20 (2) of the Indian Constitution reads as under ;

"(2) No person shall be prosecuted and punished for the same offence more than once."

Hon'ble Supreme Court in Sutluj Jd Vidyut 2018 SCC--- had ruled in para 80 as under ;

80. In K.K. Modi v. K.N. Modi, (1998) 3 SCC 573, it was observed that one of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him.

The reply affidavit filed by Shri. Vishwas Bamburkar reads as under ;

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
SUO MOTO CONTEMPT PETITION NO. 2 OF 2017
HIGH COURT ON ITS OWN MOTION
VERSUS
VISHWAS BHAMBURKAR

AFFIDAVIT

PRELIMINARY OBJECTIONS ON BEHALF OF RESPONDENT

I, Vishwas Bamburkar, adult, Indian Inhabitant, Respondent in the above matter, currently having my address at my address at B-72, Satellite Centre, Vastrapur, Ahmedabad : 380 015, Gujarat do solemnly affirm and state as under:-

1. That the present proceedings are initiated on the basis of order dated 7th March, 2017 passed by Hon'ble Division Bench (Coram: Shri Justice A.S.Oka and Smt. Justice Anuja Prabhudessai).

2. That the proceedings against the Respondent cannot be proceeded further and are liable to be dropped.

3. At the outset, it is submitted that the present Hon'ble Full Bench presided over by Hon'ble Justice A.S.Oka, as one of the member, who was also a member of the Division Bench, when cognizance of Suo-moto contempt was taken by Hon'ble Division Bench.

4. That as per the principles of natural justice and as per the law laid down by the Hon'ble Supreme Court it is humbly prayed that Hon'ble Justice A.S. Oka should recuse himself from the hearing of the present case. The legal position in this regard, is summarised as under;

5. 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."

6. Lord Justice Beweb in Lession Vs. General Council of Medical Education and 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 pecuniary 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."***

7. 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."

8. Hon'ble Apex Court in the matter of ***Mohd. Yanus Khan Vs. State of U.P. (2010) 10 SCC 539*** *has held that no person should adjudicate which he has dealt with in 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."

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.*

9. So far as the present proceedings under contempt are concerned, it is worth to mention here that the present proceedings are the outcome of misleading submissions on behalf of petitioner G.V. Sanjay Reddy, which suffers from suppressio veri and suggestio falsi.

10. That the said order takining cognizance dated 7th March, 2017, is based on the allegations made in the Affidavit dated 8th March, 2015 and 16th March, 2015, and

the writings dated 5th March, 2015, 27th March, 2015, 5th April, 2015, 9th May, 2015, 16th May, 2015, 14th June, 2015, 26th June, 2015, 3rd August, 2015 and 31st August, 2015 posted on Facebook.

11. It is worth to mention that all the Facebook posts and the scandalous submissions in the Reply Affidavit were earlier brought to notice of the Division Bench of this Hon'ble court on 28th June, 2016 (Coram: V.M Kanade and M.S Sonak, JJ), by the Advocate for the parties and upon considering the same, Division Bench of this Hon'ble Court vide order dated 28 th June, 2016 had punished the Respondent by imposing bar on the Petition to appear in the High court for the next two years. A copy of the said order dated 28 th June 2016 is annexed herewith at ***'Exhibit A'****.*

12. That as per the provisions of Contempt of Court Act, 1971 it has been ruled in various judgments of the Hon'ble Supreme Court that the order restraining a person from entering court premises is also a punishment under the Contempt of Court Act, 1971.

Reliance placed on : 1) (2009) 4 SCC 578

2) 2008 CriLJ 2523 Bom(DB)

13. In the case of Raja Ram Waman Masurkar vs Lokmanya ***2008 CriLJ 2523*** *Division bench of this Hon'ble Court had ruled in para 6 as under;*

*"****(Para 6) The power for committal in law is again a matter of power to be exercised with great care and the Court in its discretion may decline to commit, if the contempt was of minor or technical nature. On the question of procedure and even punishment, where the order of imprisonment or imposition of other punishment is contemplated in law, in a given case discretion has been vested in Court. It may grant injunction in lieu of committal. (Elliot v. Klinger, (1967) 3 All ER 141).****"*

The similar English law is taken note by Hon'ble Supreme Court in the case of ***Leila David Vs state***

***(2009) 4SCC 578**. It is observed by Hon'ble Shri. Justice A. K. Ganguly as under;*

9. Just before that, the learned Solicitor General has addressed the Court and suggested that instead of taking those persons into custody, the Court may restrain them from entering any Court premises except in cases where they have to answer any charge or defend themselves. In support of the said contention the learned Solicitor General of India relied on Arlidge, Eady and Smith on Contempt, Second Edn. 1999 paragraph 14- 106:

14-106: Against that background, the Vice- Chancellor concluded that it would be quite inappropriate to deal with the matter by way of imprisonment, the purpose of which in such a case "would be to mark the displeasure of the Court about the contempt that had been committed and to punish the perpetrator"". He said that a person suffering from the mental infirmity in question did not require punishment, and the Court's displeasure had been connoted by the judgments the Vice-Chancellor had given. He focused therefore rather upon the need to protect court officials in the future, both in the High Court and in county courts generally, and granted injunctions restraining the bringing of any action of making any claim in an action already brought except by a next friend, the persons were also restrained by injunction from "entering any court premises save as may be necessary to answer subpoenas.

Hence it is clear that, Division Bench of this Hon'ble Court though did not follow the procedures of Contempt of Court, but had punished the

Respondent on 28th June, 2016 for the same material which is subject

matter of cognizance in Second Contempt on 7th March, 2017.

14. Needless to mention here that Article 20(2) of the Constitution of India

mandates that 'No person shall be prosecuted and punished for the same offence more than once'. Hon'ble Supreme Court in the case of Kolla Veera

Raghav Rao Vs Gorantla V. Rao (2011) 2SCC 703 had ruled as under;

4. *It may be noticed that there is a difference between the language used in Article 20(2) of the Constitution of India and Section 300(1) of Code of Criminal Procedure. Article 20(2) states:*

no person shall be prosecuted and punished for the same offence more than once.

5. *On the other hand. Section 300(1) of Code of Criminal Procedure States:*

300. *Person once convicted or acquitted not to be tried for same offence-*

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Sub-section (1) of Section 221 or for which he might have been convicted under Sub-section (2) thereof.

6. *Thus, it can be seen that Section 300(1) of Code of Criminal Procedure, is wider than Article 20(2) of the Constitution. While, Article 20(2) of the Constitution only states that 'no one can be prosecuted and punished for the same offence more than once', Section 300(1) of Code of Criminal Procedure. states that no one can be tried and convicted for the same offence or even for a different offence but on the same facts. In the present case, although the offences are different but the facts are the same. Hence, Section 300(1) of Code of Criminal Procedure, applies. Consequently, the prosecution under Section 420, Indian Penal Code was barred by Section 300(1) of Code of Criminal Procedure. The Appeal is allowed and the impugned judgment of the High Court is set aside.*

Hence the present contempt proceeding is void ab initio and vitiated.

Needless to mention here, as per the Hon'ble Supreme Court's judgement in ***Sahadev Vs. State (2010) 2 SCC (Cri) 45****1, the person facing contempt proceeding is*

entitled to the protection of safeguards/rights which are provided in the criminal jurisprudence.

For this conduct of said G.V.Reddy, he is liable to be prosecuted under sec 211 of IPC. I also claim interim compensation to be paid to me .

15. That the notice issue is neither in ***Form I*** *nor it contains the Section under which the respondent is answerable.*

16. That, in Contempt of Court's Act, 1971 there were two different types of procedures, one for criminal contempt, one is under Section 14, and other is under Section 15 of the Contempt of Courts Act. Both have different procedures to be follwed.

17. Since the section is not mentioned in the notice the Respondent is greatly prejudiced and the notice is vitiated and so the proceedings are liable to be dropped and the respondent be discharged from the charges against him.

18. It is therefore humbly prayed that, this Hon'ble Full Bench be pleased to discharge the notice against the Respondent and grant interim compensation of Rs. 1 crore to be paid to the Respondent by the said petitioner Mr. G.V. Sanjeev Reddy who suppressed the earlier orders and got the present proceedings initiated against me. Also this Hon'ble Court may plesed to initiate action under sec 211 etc of IPC against petitioner Mr. G.V. Sanjeev Reddy for unlawful prosecution of the respondent.

FOR THIS ACT OF KINDNESS THE RESPONDENT SHALL EVER REMAIN GRATEFUL.

26. #CHARGE# DOUBLE STANDERDS – VIOLATION OF ARTICLE 14 OF CONSTITUTION OF INDIA – JUSTICE A.S.OKA BOUND TO GIVE COMPENSATION TO VICTIMS:-

That Justice A.S.Oka in the case of **Bombay High Court OnIts Own Motion Vs. Ketan Tirodkar 2019 Mh.L.J 252** in para 41 of his order dated 11.10.2018 had ruled as under;

"***Though we have proceeded to issue a suo-motu notice in contempt, we refrained from terming the respondent as contemnor either during the course of these proceedings or in this judgment. We have not stooped to the level to which the respondent has and we would never do so."***

Also in the case of Vishwas Bhamburkar Suo Motu Contempt Petition No.02 of 2017 , the same Judge vide order dated 13th April, 2018 called Vishwas Bhamburkar as Respondent. order dated 13th April, 2018 reads as under;

> *"From remarks on the board,it is apparent that the respondent was not present in the house and the notice was accepted by his mother Umaben. The office may say this a good service and proceed accordingly but purely by way of abundant caution we deem it fit and proper to issue fresh notice on the respondent, returnable on the 14th June 2018 at 3.00 p.m. He shall be informed that no further notice will be dispatched . Liberty to serve this notice in addition to usual mode by email."*

Even otherwise every accused has a presumption of innocence till proved guilty.

Then also the same Judge in another case i.e.in **Suo Motu Show Cause Notice No.02 of 2017** in **W.P. 2334 of 2013** vide order dated **3rd April, 2019** had called the respondent Mathew Nedumpara as a Contemnor.The order dated 3rd April 2019 reads as under;

> *"Today ,this matter is fixed under the caption of direction for fixing a date of final hearing.**The contemnor appears in person**.He states that he has filed an application for discharge dated 2nd May 2017 to the show cause notice . Both the application and he affidavit are on record. Place the Suo Motu Show Cause Notice for hearing before this Bench on 25th April, 2019 at 3.00. PM.**as the contemonor is personally present in the Court ,it is not necessary to serve a notice of the date fixed for hearing to him**. "*

Also, in **S.C.N. No. 208 of 2016** in his order dated **28th February, 2017**called the respondents as Contemnors.

The said order dated **28th February, 2017** reads as under ;

> *"1. Mr.Nilesh Oza, appears and he states that he will accept the show cause notice. **The other two contemnors are before the Court**. Preliminary submission tendered on bahlf of Shri.Kuldeep Pawar are taken on record."*

These two contrary orders by same Judge (Justice A.S.Oka) clearly shows that he is acting with malice and ill will against few persons by giving unequal treatment in similar cases. In one contempt case calling the person as respondent and in other case calling him as a contemnor this is a breach of the oath taken as a High Court Judge.

Hon'ble Supreme Court in **Indirect Tax Practitioner Associations Vs. R.K.Jain (2010) 8 SCC 281**had ruled as under;

> ***"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."***

25.1. This is also violation of Article 14 of Indian Constitution which mandates for equal treatment to all.

25.2. Hon'ble High Court in **Nanha S/o Nabhan KhaVs. State of U.P. 1992 SCC OnLine All 871**it is ruld as under;

> ***"EQUALITY OF STATUS AND OPPORTUNITY - The preamble of the Constitution states that the people of India gave to themselves the Constitution to secure to all its citizens amongst other things "Equality of status and opportunity." Thus the principle of equality***

was regarded as one of the basic attributes of Indian Citizenship.

The High Court is one Court and each Judge is not a separate High Court. It will be unfortunate if the High Court delivers inconsistent verdicts on identical facts. If the argument of the learned State Counsel is carried further it would mean that even the same Judge while deciding bail application moved by several accused, whose cases stand on the same footing, is free to reject or grant bail to any one or more of them at his whim. Such a course would be wholly arbitrary.

The public, whose interests all judicial and quasi judicial authorities ultimately have to serve, will get a poor impression of a court which delivers contrary decisions on identical facts. Hence for the sake of judicial uniformity and non-discrimination it is essential that if the High Court granted bail to one co-accused it should also grant bail to another co-accused whose case stands on the same footing. Alexis de Toqueville remarked that a man's passion for equality is greater than his desire for liberty.

<u>SUPREME COURT OBSERVED</u>;

There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however, high placed they may be. It is all the more improper and undesirable to expose the precious rights like the right of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy the high seats of power.

38. The preamble of the Constitution states that the people of India gave to themselves the Constitution to secure to all its citizens amongst other things "Equality of status and opportunity." Thus the

principle of equality was regarded as one of the basic attributes of Indian Citizenship.

39*. In a recent case of Shri Lekha Vidyarthi v. State of U.P., AIR 1991 SC 537 (para 21) the Supreme Court laid down :-*

"We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity. Contrary to the professed ideals in the preamble." (The emphasis is mine).

40*. Since judicial activity is one kind of State activity it must be held, as laid down in Shri Lakha Vidharthi's case, that courts cannot discriminate. In para 25 of the decisions the Hon'ble Supreme Court quoted with approval Wade's Administrative Law which states :-*

"The whole conception of unfettered discretion is inappropriate to a public authority which possesses power solely in order that it may use them for the public good."

41*. The Supreme Court went on to say that this principle applies not only to executive functions but also to judicial functions.*

42*. The High Court also performs sovereign functions and cannot discriminate with persons similarly situated.*

43*. In a democracy the judiciary, like any other State organ, is under scrutiny of the public and rightly so because the people are the ultimate masters of the country and all State organs are meant to serve the people. Hence the people will feel disappointed and dismayed if courts give contrary decisions of the same facts.*

44*. In this connection a reference may be made to the decision of the Supreme Court in Beer Bajranj Kumar v. State of Bihar, AIR 1987 SC 1345 in which the Supreme Court had set aside the order of the Patna High Court, dismissing the writ petition when on identical facts another writ petition had earlier been admitted. The same view was*

expressed in another case of Sushil Chandra Pandey v. New Victoria Mills, 1982 UPLBEC 211. These decisions lend support to the view I am taking. In Been Bajranj Kumar's case (supra) the Supreme Court observed :

"This, therefore, creates a very anomalous position and there is a clear possibility of two contrary judgments being rendered in the same case by the High Court."

***45**. In a very recent case of Har Dayal Singh v. State of Punjab, reported in 1992 (4) JT (SC) 353 : (AIR 1992 SC 1871) the Hon'ble Supreme Court has held that when the High Court had acquitted four accused giving reasons to discard testimony of certain witnesses the parity of reasoning should have been extended to the fifth accused also. The Supreme Court, therefore, allowed the appeal and acquitted the fifth accused as well.*

***46**. In the case of Delhi Transport Corporation v. D.T.C. Mazdoor Congress, AIR 1991 SC 101 : (1991 Lab IC 91) the Supreme Court observed at page 173 :-*

"There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however, high placed they may be. It is all the more improper and undesirable to expose the precious rights like the right of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy the high seats of power."

***47**. In his referring order the learned single Judge has referred to two conflicting views one is of Hon'ble K. K. Chaubey, J., in the case of Said Khan v. State of U.P., 1989 Allahabad Criminal Cases 98 and the other is Sobha Ram v. State of U.P., 1992 Allahabad Criminal Cases 59.*

***48**. In the case of Said Khan (supra) Mr. Justice K. K. Chaubey held that the principle of consistency or demand for parity is only a factor to be considered and not a*

governing consideration.

***49**. In the light of the discussion made in the preceding paragraphs, the view expressed by K. K. Chaubey, J. does not hold ground. Judicial consistency is a sound principle and it cannot be thrown to the winds by the individual view of judges. After all it is settled law that judicial discretion cannot be arbitrarily exercised. Moreover high aspirations of the public from the courts will sink to depths or despair if contrary decisions are given on identical facts. All judicial and quasi judicial authorities have not only to serve the public but also to create confidence in the minds of the public. Hence for the sake of uniformity and non-discrimination it is essential that uniform orders should be passed even in bail matters in case of persons who stand on the same footing. If the contrary course is adopted the public will loose confidence in the administration of justice."*

25.3. Hon'ble Supreme Courtin **Nand Lal Misra Vs.KanhaiyaLal Misra ,(1960) 3 SCR 431 ,** had ruled as under;

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

The record discloses that presumably the Magistrate was oppressed by the high status of the respondent, and instead of making a sincere attempt to ascertain the truth proceeded to adopt a procedure which is not warranted by the Code of Criminal Procedure, and to make an unjudicial approach to the case of the appellant.
Thereafter, the Magistrate considered the evidence and delivered a judgment holding that the paternity of the appellant had not been established. While there was uncontradicted evidence sufficient for the Magistrate to give notice to the respondent, he recorded a finding against the

appellant before the entire evidence was placed before him. While accepting the contention of the appellant that the procedure under Ss. 200 to 203 of the Code did not apply, in fact he followed that procedure and converted the preliminary enquiry into a trial for the determination of the question raised. Indeed, he took upon himself the role of a cross-examining counsel engaged by the respondent.

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

25.4. In**Nirankar Nath Wahi Vs. Fifth Addl. District Judge, Moradabad (1984) 3 SCC 531**case had ruled as under;

"BIAS – JUDGMENT PASSED TO HELP INFLUENTIAL PERSON IS VITIATED

Malafides of a judge - Landlords' appeal from proceeding for eviction of his tenant, a leading influential member of Bar - Refusal to grant short adjournment to landlord to engage senior counsel - Landlord's appeal dismissed by readymade judgment - No reasonable opportunity of hearing -Judgment of Addl. Dist Judge vitiated."

25.6. Hon'ble Supreme Court in**Dr. Mehmood Nayyar Azam Vs. State of Chattisgarh & Ors. (2012) 8 SCC 1** had ruled as under;

*"**Article 21 of the Constitution - RIGHT TO LIFE** includes the right to live with human dignity and all that goes along with it – If reputation is injured by unjustified acts of Public servants then Writ Court can grant compensation- Rs.5.00 lacs (Rupees five lacs only) should be granted towards compensation to the appellant - law cannot become a silent spectator - The law should not be seen to sit by limply, while those who defy if go free, and those who seek its protection lose hope - When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector- The action of the*

State, must be "right, just and fair". Using any form of torture would neither be 'right nor just nor fair' and, therefore, would be impermissible, being offensive to Article 21 - ***Any psychological torture inflicts immense mental pain. A mental suffering at any age in life can carry the brunt and may have nightmarish effect on the victim. The hurt develops a sense of insecurity, helplessness and his self-respect gets gradually atrophied- the authorities possibly have some kind of sadistic pleasure or to "please someone" meted out the appellant with this kind of treatment. It is not to be forgotten that when dignity is lost, the breath of life gets into oblivion.*** *In a society governed by rule of law where humanity has to be a laser beam, as our compassionate constitution has so emphasized, the police authorities cannot show the power or prowess to vivisect and dismember the same. When they pave such path, law cannot become a silent spectator - The law should not be seen to sit by limply, while those who defy if go free, and those who seek its protection lose hope.*

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

26. #CHARGE#:- JUSTICE OKA & JUSTTICE ANUJA PRABHUDESAI ARE BOUND TO RESIGN:-

Constitution Bench of Hon'ble Supreme Court in the Case of **K. Veeraswami Vs. Union of India (UOI) and Ors. 1991 (3) SCC 655** had ruled as under;

> ***"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. "***

27. In <u>Madhav Hayawadanrao Hoskot vs. State of Maharashtra; (1978) 3 SCC 544</u>″, <u>Justice Shri V.R. Krishna Iyer</u> 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."***
>
> *2. 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."

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

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

29. InIn "**State of Rajasthan Vs. Prakash Chand & Ors.; (1998) 1 SCC 1",** 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."

#CHARGE# 30. Need For Investigation By C.B.I. And Phone Details Justice A.S. Oka, Justice Kathawalla, Adv. Milind Sathe, Amita Shetty Etc :-

In **Jagat Jagdishchandra PatelVs.State of Gujarat and Ors.2016 SCC OnLineGuj4517** had ruled as under;

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

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

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

Not only this has a demoralising bearing on those who are ethical, honest, upright and enterprising, it is

visibly antithetical to the quintessential spirit of the fundamental duty of every citizen to strive towards excellence in all spheres of individual and collective activity to raise the nation to higher levels of endeavour and achievement.

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

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

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

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

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

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

urged that the investigation be carried out by a person having impeccable integrity.

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

From the beginning it is the case of the complainant that the conduct, which has been alleged in the complaint has brought disrepute to the investigation. It is also his say that huge amount of illegal gratification had been demanded by both the judicial officers in the pending matters and, therefore, to presume that there was no material to seek remand, is found unpalatable. It is an uncontroverted fact that the Vigilance Officer (VO-II), who has filed his affidavit-in-reply, has retired during the pendency of the investigation. While he continued to act as Investigating Officer also, he could have conducted the investigation more effectively and with scientific precision. To be complacent and/or to presume anything while handling serious investigation cannot be the answer to the requirements of law. It though may not be said to be an attempt to save the accused, it surely is an act, which would raise the eye-brows, particularly when the investigation was at a very nascent stage against the judicial officers. Recourse of the society against all kinds of injustice and violation of law when is in the judiciary, all the more care would be essential when judicial officers themselves are alleged of demand of bribe for discharging their duties under the law. Not that remand in every matter is a must to be sought. But, the stand taken by the Investigating Officer to justify his stand leaves much to be desired.

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

of the strongest grounds

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

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

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

Even when the CD did not reveal giving of illegal gratification, but only demand, how could all other angles of this serious issues be left to the guesswork. To say that after the Special Officer (Vigilance) recorded the statement of the complainant and collected some material, nothing remained to be collected, is the version of the Investigating Officer wholly unpalatable. After a thorough investigation, he would have a right to say so and the Court if is not satisfied or the complainant finds it unacceptable, he can request for further investigation under section 173(8) of the Code of Criminal Procedure. But, how could an Investigating Officer presume from the tenor of the complaint or the CD sent by the complainant about non-availability of the evidence.

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

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

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

Call data records also serve a variety of functions. For telephone service providers, they are critical to the production of revenue. For law enforcement, CDRs provide a wealth of information that can help to identify suspects, in that they can reveal details as to an individual's relationships with associates, communication and behavior patterns and even location data that can establish the whereabouts of an individual during the entirety of the call. For companies with PBX telephone systems, CDRs provide a means of tracking long distance access, can monitor telephone usage by department; including listing of incoming and outgoing calls.

In a simpler language, it can be said that the technology can be best put to use in the form of CDRs which contains data fields describing various details, which also includes not only the phone number of the

subscriber originating the call and the phone number receiving such call etc., but, the details with regard to the individual's relationships with associates, the behavior patterns and the whereabouts of an individual during the entirety of the call.

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

25. With the nature of direct allegations of demand of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32. CONCLUSION:- It is crystal clear that Jutice A.S Oka and Smt. Justice Anuja Prabhudesai have acted against the Constitutional mandate, breached the oath taken as a High Court, Judge, misused the position of a Judge to help the undeserving people, committed gross contempt of Supreme Court and Bombay High Court and proved to be counter-productive ad non-conducice to the administration of Justice and therefore liable to be removed from the judiciary forthwith by invoking provisiobs of para 7(ii) of 'In-House-Procedure'.

33. CONSTITUTIONAL & RELIGIOUS DUTY TO FIGHT AGAINST INJUSTICE BY JUSTICE A.S OKA & JUSTICE ANUJA PRABHUDESAI :-

Constitution duty:-

Hon'ble Supreme Court in **R.K.Jain's case(2010) 8 SCC 281** had ruled that, it is duty of every citizen to raise vice and expose malfunctioning of Judicial officers. This is constitutional duty as per Article 51(A) (h) of the Constitution of India.

Same law is reiterated in **Anirudha Bahal's case 2010 (119) DRJ 104,** where it is ruled as under;

"***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."

34. <u>Religious Duty</u>:-

(I) In Geeta, there are following verses which mandates that it is everyon's religious duty to fight against injustice and it will open the door for heaven and running from this duty is worst than death.

2.33. *If you don't do war for this religion, then (as per religion laws which God has fixed for you,(you will) lose (your) reputation, and (you) will gain sin (also).*

"2.33. अथ चैत्त्वमिमं धर्म्यं संग्रामं न करिष्यसि। ततः स्वधर्मं कीर्तिं च हित्वा पापमवाप्स्यसि।।।।

2.34. *And certainly all people will always talk about this humiliating incidence, and humiliation (is) worse than death.*

2.34. अकीर्तिं चापि भूतानि कथयिष्यन्ति तेऽव्ययाम्। संभावितस्य चाकीर्तिर्मरणादतिरिच्यते।।

2.32. *O partha (Arjun) getting unsought (by its won), this way, opportunity of war is good thing, and open door for heaven.*

2.32. यदृच्छया चोपपन्नं स्वर्गद्वारमपावृतम्।सुखिनः क्षत्रियाः पार्थ लभन्ते युद्धमीदृशम्।।

2.31. *Certainly the religious rules (which God has fixed for) yourself , except thinking about them(you) should not think anything else. No doubt, for a warrior nothing else is better than fighting for establishing divine religion.*

2.31. स्वधर्ममपि चावेक्ष्य न विकम्पितुमर्हसि। धर्म्याद्धि

युद्धाछ्रेयोऽन्यत्क्षत्रियस्य न विद्यते।।

(II) In **A.S. Narayana Deepakshitula Vs. State of A.P. (1996) 9 SCC 548** it is ruled as under;

> **"*66.*** *The Brhadaranyakopanisad identified Dharma with Truth, and declared its Supreme status :*
>
> "***सनैवव्य भवतक्होयो रूपमत्य धर्मतदेतन्क्षत्रस्यक्षत्र यद्दर्मस्तत्माद्व नास्ति अथो अबलोयान्तलीया संमाशसते धर्मने यथा राजा.एवं यो वै स धर्मः सत्य वै तत् तस्मात्सव्य वदन्त माहु धर्म वदतीति धर्म वा वदन्त सत्यं वदतो त्येतद् ध्येवैतमदमय भवति.***"
>
> *"Sanaib Vyabhawatchhreyo Rupamatyasrijat Dharmam Jadetatkshtrasya Kshatram Yaddharmastasmad Dharmat Param Nasti Atho Abaliyan Samashaste Dharmen Yatha Ragya. Aidam yo bai sa Dharmah Satyam baitat tasmat Saryam.Badantmahur Dharmamwa badntnam. Satyam badutityetadhyai bai tadubhayam bhawati."*
>
> *(There is nothing higher than dharma. Even a very weak man hopes to prevail over a very strong man oh the strength of dharma, just as (he prevails over a wrong-does) with the help of the King. So what is called Dharma is really Truth. Therefore, people say about a man who declares the truth that he is declaring dharma and about one who declares dharma they say he speaks the truth. These two (dharma and truth) are this)*
>
> ***69.*** *It is this stress on the identification of Dharma with truth and social well being, Duty and Service that impelled Yudhisthira to express his own ambition, as Dharmaraja, in the words :*
>
> ***नत्वहं कामयं राज्ययां न स्वर्ग न पुनर्भवम।कागद्धे दुःश्व तप्ताना प्राणिनां भाति नाशनम्।।***
>
> *Natwaham Kamaya Rajyam Na Swargam Na Punarbhawam Kamye Dukh Taptanam Praninam Artnashnam.*

I seek no kingdoms nor heavenly pleasure nor personal salvation, since to relieve humanity from its manifold pains and distresses is the supreme objective of mankind.

70. *It is in this context that the phrase* **"धर्म विजय"** *"Dharm Vijayah" 'Victory of Dharma' could be understood, as employed by the Mauryan Emperor, Ashoka, in his rock edict at Kalsi which proclaimed his achievement in terms of moral and ethical imperatives of Dharma, and exemplified the ancient dictum* **"यतो धर्मस्ततो जयः** *"Yato Dharmastato Jayah (where there is Law, there is Victory).*

141. *It is a different matter that the word dharma has now been accepted even in English language, as would appear from Webster's New Collegiate Dictionary which has defined it to mean : "Dharma : n. (Skt. fr. dharayati be holds;) akin to L firmus firm : custom or law regarded as duty : the basic principles of cosmic or individual existence : nature : conformity to one's duty and nature." The Oxford Dictionary defines dharma as : "Right behavior, virtue; the Law (Skt = a decree, custom)".*

145. *The essential aspect of our ancient thought concerning law was the clear recognition of the supremacy of dharma and the clear articulation of the status of 'dharma', which is somewhat akin to the modern concept of the rule of law, i.e. of all being sustained and regulated by it.*

146. *In Verse-9 of Chapter-5 in the Ashrama Vasika Parva of the Mahabharata, Dhritrashtra states to Yudhisthira : "the State can only be preserved by dharma - under the rule of law."*

147. *Ashoka mentioned about victory of dharma in his rock edict at Kalsi which proclaimed his achievement in terms of the moral and ethical imperatives of dharma, and exemplified the ancient dictum : (where there is Law, there is Victory).*

154. *Thus, having love for all human beings is dharma. Helping others ahead of one's personal gain is the dharma of those who follow the path of selfless service. Defending one's nation and society is the dharma of soldiers and warriors. In other words, any action, big or small, that is free from selfishness is part of dharma.*

155. *Swami Rama has further stated that dharma has been a great force in uplifting the human race. Dharma can help up today as it did in ancient times, but only if we start living by truth, not merely believing in truth. Turning away from dharma and distancing oneself from the Truth is not a desirable way of living. It ultimately leads to misery.*

In the practice of dharma, one is advised to shed the veil of ignorance and practice truthfulness in one's thoughts, speech, and actions. How can dharma be secret, having revelation as its source? Withholding nothing, all the great sages in the world shared their knowledge with humanity. In the Bhagavad Gita, the Bible, Koran, and Dhammapada - Knowledge, like the sun, shines for all. "

Full Bench of Supreme Court in **Maria Margarida's case AIR 2012 SC 1727** referred to " Sanskrit Shloka" under;

43*. "**Satyameva Jayate** "(**Literally:** "Truth Stands Invincible") is a mantra from the ancient scripture Mundaka Upanishad .Upon independence of India , it was adopted as the national motto of India. It is inscribed in Devanagari script at the base of the national emblem. The meaning of full mantra is as follows:*

" Truth alone triumphs; not falsehood . Through truth the divine path is spread out by which the sages whose desires have been completely fulfilled, reach where that supreme treasure of Truth resides."

Truth is the way of **"Moksha".** Truth is the religion.

Whenever ill-powers (Aasuri Shakti) try to suppress truth and support injustice then God supports good soul to fight against injustice. For a warrior nothing else is better than fighting for establishing divine religion.

35. Similar principle is laid down by All Mighty God in Holy Quran. Prophet Muhammad (pbuh) said;

"One days justice is equivalent to 60 years of worship (Ibadat)"

"O you who believe! Stand out firmly for justice, as witnesses to Allah, even if it be against yourselves, your parents, and your relatives, or whether it is against the rich or the poor..." (Quran 4:135)

Prophet Muhammad (saw) said:'Allah said "By my dignity and holiness I will punish the oppressor sooner or later and I will punish with him whosoever saw the oppressed and did nothing.'"

One days Justice is better than sixty years of worship . So if you do justice to anyone or help anyone in getting justice then it is equivalent to at least 60 years of worship. But if keep silence at the time of injustice despite of your ability to stop or protest it, means that you have choosen the side of oppressor. Your silence it will destroy your worship and you are equally guilty as that of oppressor.

It is not sufficient that we do not commit any injustice towards another Muslim. That will not secure our salvation. Our duty and our obligation in not harming another Muslim, as great as that is, equally great and obligatory is our duty in not abandoning our fellow Muslims. The Prophet says: "Assist your brother, regardless of whether he is the oppressor or the oppressed." When we stay the hand of the oppressor, we are assisting him. As Muslims, we have a duty. We can't be ignorant and oblivious to the plight of our fellow Muslims. We can't be impervious to injustice, though the victims may

be others, because one day it will visit us.

The Prophet SAW said, "Which ever Muslim abandons his fellow citizens on an occasion and at a time when the latter's dignity is being violated and his honour is being attacked, then Allah will abandon him when he most desiredly seeks the assistance of Allah. When he most needs the assistance of Allah, Allah will abandon him just as he abandoned his fellow. We abandon our fellow citizens, Allah will abandon us. "

Prophet Mohammed SAW said, "Assist your brother regardless of whether he is the oppressor or the oppressed." Listen to the words. The Prophet doesn't mention the oppressed first. Who does he mention first? The companions said: "We can understand how we can assist the oppressed, but how do we assist the oppressor?" The Prophet said: "You physically prevent him from is injustice. If you can't physically stop them, then you speak out against their injustice. If you can't even speak out, then you pray in your heart."

You prevent his from his tyranny, you stay his hand, you prevent his hand from injustice. As for the oppressed, you go to his assistance. Today, we neither assist the oppressor, nor do we assist the oppressed. We remain silent. We feel that, as long as I am living the good life...hey, I'm married, I've got a nice life, I'm enjoying myself. Why do I want to rock the boat and interfere in the lives of others? Right? Well, remember the Aayah "Kullu nafsin zaaykatul maut, thumma ilayna yarjaoun"

According to another Quranic passage:

"Let not the hatred of a people swerve you away from justice. Be just, for this is closest to righteousness..." (Quran 5:8)

With regards to relations with non-Muslims, the Quran further states:

"God does not forbid you from doing good and being just to those who have neither fought you over your faith nor evicted you from your homes…" (Quran 60:8)

"What will explain to you what the ascent is? (13)It is the freeing of a slave; (includes slavery mindset of public like fear/inability to say truth and seek justice against injustice by mighty people like Chief Justice Of India)

(14)*or the feeding in times of famine* ***(15)****of an orphaned relative* ***(16)****or some needy person in distress,* ***(17)****and to be one of those who believe and urge one another to steadfastness and compassion."*

(Quran 90:12-90:17)

*A man asked the Messenger of Allah, peace and blessings be upon him, "What is the best jihad?" The Prophet said, "****A word of truth in front of a tyrannical ruler.****"*

Source: Musnad Aḥmad 18449

Thus Muhammad (SAW) has clarified the command in clear language and specifically ordered holding the hands of the tyrant, enjoining the ruler to do good and forbid him from evil.

"Nay, by Allah, you have to enjoin the ma'roof and forbid the munkar, and hold the hand of the tyrant, and force him on the truth and restrict him to the truth." (Reported by Abu Dawud and Tirmizi)

And he (SAW) has described this as the best Jihad. Jihad is the peak of the deen and the Prophet (SAW) commended the work of uttering a word of truth before a tyrant as the best of Jihad.

"The best of Jihad is (to say) a word of truth before an

oppressor ruler". (Reported by Abu Dawud Tirmizi, Ibn Maja)

Furthermore he (SAW) descried the person who got killed while performing this task as the master of martyrs, comparing him with the master of martyrs, Hamza (RA).

"The master of martyrs is Hamza, and a man who stood up to a tyrant ruler to enjoin him (with the good) and forbid him (of the evil) and got killed." (Reported by al-Haakim)

Do we need say anymore? The command is decisive, the value of this work is high and the reward for its performance is great and the punishment for non-performance is severe.

"And whosoever does not rule by that which Allah has revealed, such are the Zalimun." [Al-Ma'idah: 45]

Privatizing public property is an act of zulm.

Harassing, arresting, abducting and torturing people for criticizing government's policies is an act of zulm

- Establishing a network of spies to spy on the people and thus making the people live their life in fear of being abducted and tortured is an act of zulm.

"And fear the Fitnah (affliction and trial) which falls upon not in particular (only) those of you who do wrong (but it affects all the good and bad people), and know that Allah is Severe in punishment." [Al-Anfal: 25]

"Alms are only for: the poor and the destitute, for those who collect zakat, for conciliating people's hearts, ***for freeing slaves****, for those in debt, for spending for God's cause, and for travelers in need. It is a legal obligation enjoined by God. God is all-knowing and wise."* ***(9:60)***

"Fir'aun said: Leave me to kill Musa, and let him call

his Lord! I fear that he may change your religion, or that he may cause mischief to appear in the land!" [Ghaffir: 26]

"And a believing man of Fir'aun's family, who hid his Faith said: "Would you kill a man because he says: 'My Lord is Allah,' and he has come to you with clear signs (proofs) from your Lord?" [Ghaffir: 28]

This is the correct course of action for you to follow. Allah (SWT) named an entire Surah in the noble Qur'an - Surah Mu'min - after this believer, who stood in front of the tyrant of tyrants, Fir'aun, the tales of whose tyranny are vividly remembered till this day and he took him to task in the most exemplary way. We do not call you stand in front of Fir'aun or his likes. We are calling you to stand in front of CJI Ranjan Gogoi, who is a minor, compared to Fir'aun.

"It is only Shaitan (Satan) that suggests to you the fear of his Auliya' (supporters and friends), so fear them not, but fear Me, if you are (true) believers." [Ali-Imran: 175]

Thus fear Allah (SWT) alone, and start uttering the word of Truth.

"Let not anyone of you belittle himself. They said: Ya RasulAllah, how can anyone of us belittle himself? He said: He finds a matter concerning Allah about which he should say something, and he does not say it, so Allah (azza wa jalla) says to him on the Day of Qiyamah: What prevented you from saying something about such-and-such and such-and-such? He says: out of fear of people. Then He says: Rather it is I whom you should more properly fear." (Reported by Ibn Majah)

The Prophet (SAW), has obliged upon you the task of enjoining the ma'roof and forbidding the munkar.

"By the One in whose hand is my soul, you have to command the good and forbid the evil or Allah will be

about to send a punishment upon you then you will ask Him for help and He will not answer you." (Reported by Tirmizi)

Listen to his words; he (SAW) swears by Allah (SWT) that if you do not enjoin the ma'roof and forbid the munkar then your dua will not be answered by Allah (SWT). How true are his words, is it not the case that day by day your lives are becoming more miserable and your sufferings increase while every day, fives time a day or even more you make the dua, "Rabbana aatinaa fiddunya hasanatan," O our Lord! Grant us the good in this dunya?

Let there be no misconception in your minds that the order to enjoin the good and forbid the evil is an individualistic work and is only to be carried out amongst yourselves where you enjoin each other but keep the ruler out of the ambit of this. Islam is a political deen and its commands cover the ruling and the rulers.

O People of Power!

What applies to the people applies to you and what applies to you is more than what applies to the people. The Prophet (SAW), whom you love the same as the people do, more than yourselves and more than anyone or anything else in this world, has obliged upon you the task of using your hands to remove the munkar.

"Whoever of you sees evil, let him change it with his hand, and if he is not able then with his mouth and if he is still not able then let him hate it within his heart and that is the least of Iman." (Reported by Muslim)

There is no question that you are able to use your hands. You posses the material power in your hands to overthrow the CJI Ranjan Gogoi and his , the killer of democracy and killer of rule of Law. Therefore your accountability is this much more. Words of protests or

hatred in the heart will not absolve you from the sin, not mention that it is the least of Iman. Therefore extend your hands to overthrow this regime of zulm, and to re-establish the Rule of Law.

So it is pious duty *of* everyone to raise their voice against injustice.

"If one choose to remain silent in the situation of injustice; means he had choosen the side of the oppressor" – **Desmond Tutu.**

36. Citizens Right under **section 43 of Code of Criminal Procedure;**

" 43. Arrest by private person and procedure on such arrest.

(1) Any private person may arrest or cause to be arrested any person who in his presence commits a non- bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.

(2) If there is reason to believe that such person comes under the provisions of section 41, a police officer shall re- arrest him.

(3) If there is reason to believe that he has committed a non- cognizable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 42; but if there is no sufficient reason to believe that he has committed any offence, he shall be at once released."

If no action is taken within reasonable time then citizens, activists will be compelled to exercise those rights. A seprate representation is being made to your goodself.

37. REQUEST :- It is therefore humbly requested for ;

1. Taking action against Shri. Justice A.S.Oka, Chief

Justice Karnataka High Court & Smt. Anuja Prabhu Desai, Judge Bombay High Court as per law laid down in K.K.Dhawan's case(1993) 2 SCC 56 and direction to withdraw all judicial works by invoking provisions of para 7 (ii) of 'In-House-Procedure', as their misconduct, incapacity, breach of oath taken as a Judge, serious criminal offences against administration of justice and lack of knowledge is ex- facie proved from their act of passing various orders with ulterior motive to save the accused in utter disregard and defiance and deliberate misinterpretation of Constitution Bench's judgment of Hon'ble Supreme Court in Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah (2005) 4 SCC 370, Maria Margarida Sequeira Fernandes (2012) 5 SCC 370, Sarvapalli Radhakrushnan University 2019 SCC OnLine SC 51,Perumal Vs. Janaki (2014) 5 SCC 377, Kishore Samrite (2014)15 SCC 156, and also acting against the judgment of co-ordinate Bench of Hon'ble Bomaby High Court in Bhavesh Doshi 2016 SCC Online Bom 12799 (D.B.), Haresh Milani 2018 SCC Online Bom 2080, Mahadeo Savla Patil 2016 ALL MR (Cri.) 344.

2. Taking action under Contempt of Courts Act against Shri. Justice A.S.Oka & Smt. Justice Anuja Prabhudesai in view of law laid down in Somabhai Patel AIR 2000 SC 1975 where it is

ruled that, the misinterpretation of Supreme Court's judgement is Contempt and punish them (Justice A.S Oka and Smt Justice Anuja Prabhudesai) in view of law laid down by Costitution Bench in Re: C.S.Karnan (2017) 7 SCC m1.

3. Direction to C.B.I for registration of FIR and take action under section 109, 201, 218 , 219, 192 , 167,409, 466, 471,474, r/w 120 (B) & 34 of IPC against Shri. Justice A.S.Oka, Smt.Justice Anuja Prabhudesai, and Ors. for their abatement, conspiracy and act of commission and omission and further their involvement in serious offences against administration of justice.

4. Direction to committee under 'In-House-Procedure' to enquire the following charges against the Shri. Justice Abhay Oka & Smt. Justice Anuja Prabhudesai.

#CHARGE# 1:- Misuse of power and passing of illegal order to save influential accused and to harass Social Activist Shri. Anna Hazare:-

Justice A.S. Oka proved to be counter productive and non-conducive to the administration of Justice. He passed an illegal order to harass social activist Shri. Anna Hazare and to save influential accused like Sharad Pawar and Ajit

Pawar. In order dated 6th January, 2017 passed by Justice Oka in P.I.L (ST) No. 42 of 2016, directed Shri. Anna Hazare to approach Police and first register and then only issue for transfer to C.B.I. be considered, but said observation by Justice Oka were against the law laid down by Hon'ble Supreme Court and Hon'ble Bombay High Court more particularly by Justice Chandrachud's Division Bench in Provident Investment Co. Case MANU/MH/0054/2012 where Hon'ble Bombay High Court directed C.B.I to register F.I.R. and investigate the case, similary in Charu Kishore Mehta vs. State of Maharshtra 2011 ALL MR (Cri) 173 where it is ruled that the High Court has to direct F.I.R in such serious economic offences. It is not mandatory to go to the Police First.

But Justice Oka acted against the law and with ulterior motive to help the influenctial accused, the petition of social activist Shri. Anna Hazare was kept pending and he was asked to approach the Police. This itself reflects that Justice Oka is not interested in doing justice but misusing his position for ulterior purposes and misusing the Court machinery to help the accused and harass the victim like Shri. Anna Hazare and many others including men's right activists. Hence Justice Abhay Oka is proved to be counter productive and non conducive to the

administration of justice.

#CHARGE# 2:- Deliberate misinterpration of Constitution Bench judgement in Iqbal Singh Marwah (2005) 4 SCC 370 to help accused (women), from serious offences.

Constitution Bench in M.S.Sheriff case 1954 SCR 1144 specifically laid down the ratio that, the proceedings under section 340 of Cr.P.C. has to be decided first and all other proceedings should be stayed.

Said law is followed in Iqbal Singh Marwah Vs. Meenakshi Marwah (2005) 4 SCC 370 where in para 32 same law is approved. But Justice A.S.Oka & Justice Anuja Prabhudesai in their judgement in the case between Dr. Santosh Shetty Vs Anita Shety 2019 SCC Online Bom 99 in order to save lady from enquiry and action under perjury and contempt had passed the order by misinterpreting Iqbal Singh Marwah's judgment saying that the application under section 340 of Cr.P.C. has to be decided at the end of the case.

Hon'ble Supreme Court in Somabhai Patel's case AIR 2001 SC 1975 had ruled that misinterpretation of Supreme Court judgement by a Judge shows his mental ability and is Connitempt of Court. Such Judges need to be removed from judiciary. Here around 9 offences

on different occasion are committed by Justice A.S.Oka and Smt. Justice Anuja Prabhudesai therefore they need to be removed from judiciary forthwith.

Their such conduct make them liable for offences under section 218, 219, 201, 409, 192, 167, r/w 120 (B) 34 of IPC.

#CHARGE# 3 :- <u>OFFENCE UNDER SECTION 218, 211, 220, 219 r/w 120(B) OF I.P.C</u>.

Unlawful order of contempt notice against social activist Vishwas Bhamburkar with ulterior motive to save influential accused in a case of corruption of around 40,000 Crores.

The PIL was filed for action against GVK for a fraud of around 40,000 Crores. The petitioner made some allegations against Judges in the year 2015. For that allegation action already action has been taken by earlier division bench headed by Justice V.M. Kanade on 28 th June,2016. But after a perod of one year Justice A.S. Oka issued second contempt Notice on 7th June, 2017 on the same groud to social Activist Vishwas Bhamburkar.

As per Art. 20(2) of Indian Constitution and as per Section. 300 of Cr.P.C second action was totally barred. It is also an offence under section 211, 220, 218, 219 r/w 120(B) and 34 of I.P.C. on the part of Justice A.S Oka and Justice Smt.

Anuja Prabhudesai.

Full Bench of Hon'ble Supreme Court in Hari Das Vs. State Case 1964 SC 1773 ruled that frivolous charge of contempt makes such person liable for action under Section 211 of I.P.C.

This ex-facie proves that Justice A.S. Oka is misuing his post as a Judge to help influential people involved in commiting fraud, misappropriation of public property of thousand of Crores.

#CHARGE 4 # Discrimination, unequal treatment, double standerd and thereby violation of Article 14 of the Constitution and also breach of Oath taken as a High Court Judge.

In Suo-Motu Contempt case No.1/2017OF Ketan Tirodkar in the order that Court will not in the order it is mentioned that Court will not term him as a Contemnor even if it is a Suo Motu case.

However in another matter in Adv. Methews Nedumpara case in SM SCN No.02 of 2017 in W.P. No. 2334 of 2013 the same Judge (Justice A.S.Oka) in order dated 3rd April, 2019 called the respondent as contemnor. This proves unequal treatment to different people and is violation of Article 14 of the Constitution which mandates for equality before law and equal protection of the law. Justice Oka is also guilty of breach of

the oath taken as a High Court Judge which mandates for doing justice without fear or favor or disfavor.

#CHARGE 5#: <u>MALICE IN LAW</u> - hearing the case where he is disqualified. Guilty of Judicial Bias and contempt of Supreme Court judgment in <u>Davinder Pal Bhullar (2011) 14 SCC 770.</u>

In W.P. NO. 2334 of 2013 (W.P. (L) No. 665 of 2013) Justice A.S. Oka vider his order dated 21st March 2013 recused himself and passed following order:

> ***"Mr. Mathews J. Nedumpara for the petitioner.***
>
> ***Mr. Ashish Kamath for the respondent***
>
> ***CORAM: A.S.OKA & MRS. MRIDULA BHATKAR, JJ***
>
> ***DATE; 21ST MARCH 2013***
>
> ***P.C.:***
>
> ***Not on board. Taken on board.***
>
> ***2. Not before the Bench of which one of us (A.S.Oka, J.) is a Member. Registry to take steps for placing the matter before the appropriate Bench."***

Once he recused from the case then he is disqualified to try any matter connected with that case. A law in this regard is made clear by Hon'ble Supreme Court in Davinder Pal Singh

Bhullar case *(supra).* Also by Justice A.S.Oka in Suresh Ramchandra Palande 2016(2)Mh.L.J.918

But he (Justice A.S. Oka) acted in utter disregard and defiance of law laid down by Hon'ble Supreme Court and by a Bench of Hon'ble Bombay High Court headed by himself and heard the case as a Judge in SMSCN No. 02 of 2017 in same writ Petition i.e. W.P. No. 2334 of 2013.

This is gross misconduct and offence under section 220, 219 etc. of IPC. On the part of Justice A.S. Oka.

#CHARGE 6 # <u>HEARING A CASE AS A JUDGE WHERE HE HIMSELF HAD TAKEN COGNIZANCE:-</u>

As per provisions of law and more particularly laid down by Full Bench in **<u>Vinay Chandra Mishra's case AIR 1995 SC 2348</u>** relying on **<u>Balogh *V.* St. Albans Crown Court</u> [1974] 3 WLR 314: <u>[1975] 1 QB 73</u>** ,it is trite law that the Judge who had taken the cognizance of Contempt cannot hear the case as a Judge. It is ruled as under;

> ***"9. ..... <u>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</u>***

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 ...”

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 Education and 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 pecuniary 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."**

But Justice A.S.Oka acted in utter disregard of the abovesaid law on many occasion and more particularly in 2 cases.

> **(i) Bombay Bar Association Vs. Adv. Nilesh C. Ojha Cri. Contempt Petition No. 03 of 2019.**
>
> **(ii) Suo Motu Vs. Ketan Tirodkar S.M.C.P. No. 1 of 2017.**

In both the cases Justice A.S.Oka had taken the cognizance by issuing notice on 17th February 2017.

Later he (A.S.Oka) himself was a member of 5-Judge Bench formed to hear the case.

The principle that a Judge must not have an interest or bias in the subject matter of a decision us so sacrosanct that even if one of many Judges has bias it upsets the fairness of the judgement. In **R. Vs. Commissioner of pawing (1941) 1QB 467.,** William J. Observed :

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

#CHARGE# 7:- Fraud on Power:-

Deliberate ignorance of argument advanced by the advocate and they also ignored the material on record and passed the order by considering the factors which were never argued nor refelected from material on record.

They are guilty of 'Fraud on Power' and 'Malice in law & facts.

In the case of Dr.Santosh Shetty 2019 SCC OnLine Bon 99 the arguments advanced by his counsel were also published in newspaper. On 24.10.2018. The order passed on 25th January,2019 is not havingthe actual arguments but a deliberate distorted version is mentioned to suit their angle .This is a classic example of abuse of power by Justice A.S.Oka & Justice Smt Anuja Prabhudesai.

 # CHARGE 8 # Misuse of High Court machinery and process to save Justice S.J.Kathawala whose corruption in a case of around 5000 Crores is exposed in sting operation and published by 'Right Mirror'.

Justice A.S.Oka & Justice Anuja Prabhudesai liable to be prosecuted under section 409 of Indian Penal Code.

The Corrupt practices of Justice S.J.Katahwala in not taking on record the statement of a public servant with ulterior motive to help his close parsi Adv. Aspi Chinoy and another Parsi advocate Federal Rashmikant and discrimination of non-parsi advocates was exposed by news channeal 'Right Mirror'.

Duo to which Justice Kathawala was likely to be prosecuted and removed from the post of Judge. The middleman Adv. Milind Sathe then hatched conspiracy and filed one criminal contempt petition No.3 of 2017 against Complainant , witnesses, Advocate and social activist and reporter. Justice A.S.Oka & Justice Anuja Prabhudesai joined the conspiracy and to save and suppress the corruption of Justice Kathawala deliberately not mentioned the circumtances under which interviews were given. They ,passed an order issuing notice of Contempt with ulterior motive to pressurize the witnesses and silence their voice. When

Respondent No.1 filed his detail reply with proofs expossing corrupt practices of Justice Oka, the said case is not taken on board since last two years.

Adv.Nilesh Ojha wrote letter to all Judges including accused Justice A.S.Oka for early hearing of the case and granting compensation of Rs. 100 Crores but that matter is not being heard for the reason best known to them.

#CHARGE# 9 :- Justice Oka and Smt. Anuja Prabhudesai are not interested in advancement of course of justice and not passing orders for welfare of all the litigants and failed to perform their singular and paramount duty to discovery of truth but misused their power and Court machinery to pass a judgment to encourage the fraudsters and to discourge the honest litigants and therefore they are guilty of offence under section 409 of IPC.

4) Direction to Justice Oka & Smt Justice Anuja Prabhdesai to resign forthwith from their post as per law laid down by Constitution Bench in K. Veeraswami's case (1991) 3 SCC 655 and also by invoking provisions of 'In-House Procedure' as their dishonesty, incapacity, malafides, Contempt and offences against administration of justice, breach of oath taken as a Judge, violation of Art. 14 of the Constitution, double

standards, conduct of giving unequal treatment to different litigants, discrimination etc. are ex-facie proved.

5) Granting sanction to the applicant to prosecute Justice A.S. Oka & Smt. Justice Anuja Prabhdesai under offences disclosed in the Complaint.

Date:29.06.2019

Place : Mumbai

Adv.Vijay S.Kurle

State President

Maharashtra & Goa

Indian Bar Association