INDIAN BAR ASSOCIATION

(THE ADVOCATES' ASSOCIATION OF INDIA)

Regional Office: Office No. 2 & 3, Kothari House, A. R. Allana Marg, Fort, Mumbai – 400 023

Tel:+91-22-49717796, Cell: +91-9594837837

Email:- indianbarassociation.mah@gmail.com

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GUJRAT HIGH COURT HAS COMMITTED CONTEMPT OF SUPREME COURT WHILE TAKING SUO MOTU COGNIZANCE OF CONTEMPT OF COURT AGAINST SR. ADV. YATIN OZA

On **09.06.2020** Gujrat High Court **[Coram- Sonia Gokani and N.V. Anjaria, JJ.]** taken suo-moto cognizance of Contempt against **Sr. Adv. Yatin Oza,** President of **Gujrat High Court Bar Association**.

The said proceeding is itself illegal, **void-ab initio and vitiated**. Also, the proceeding is initiated in utter disregard and defiance of law laid down by Full Bench of Supreme Court in **Bal Thackrey (2005) 1 SCC 254.**

A] The judgement is ex-facie illegal on following main ground :-

I) Suo - moto cognizance not by Chief Justice and therefore vitiated as against rules laid down by Full Bench of Supreme Court in **Bal Thackeray's case (2005) 1 SCC 254.**

II) Reliance on per- incuriam judgment in **Re : Vijay Kurle in SMCP (Cri) No. 02 of 2019** by observing that, no one can attribute motive to the Judge which is against binding precedent of Constitution Bench of Seven Judges in **Re : C.S.Karnan (2017) 7 SCC 1, Subramanian Swamy Vs. Arun Shourie (2014) 12 SCC 344**

III) The order taking cognizance is itself suffered from inherent

defect of Judge using his own documents without disclosing the source which is not permissible as per law laid down in **Murat Lal 1917 SCC OnLine Pat 1**, **Subramanian Swamy Vs. Arun Shourie (2014) 12 SCC 344 (para 6).**

IV) Searching on internet and taking note of earlier Contempt proceedings is highly illegal and reflect personal prejudice & bias on the part of Judge taking cognizance and therefore cognizance is vitiated, in view of law laid down by Constitution Bench in **Baradkanta Mishra (1974) 1 SCC 374, Davinder Pal Singh Bhullar (2011) 14 SCC 770, Registrar of Supreme Court (2016) SASC 93, Benbrika vs. R (2010) 29 VR 593, 644.**

IV) Unilateral injunction like gag order is beyond the preview of Contempt Court as ruled in **Tamilnad (2009) 2 SCC 784.**

1. The cognizance is against the mandatory guidelines of Full Bench in **Bal Thackrey (2005) 1 SCC 254 ,**where it is mandated for all Judges to place the information before **Chief Justice only,** and if cognizance is taken by any other **Judge/Bench** against this guidelines then such **order is vitiated**.

It is ruled as under;

> ***"3.*** *The Delhi High Court in the case of Anil Kumar Gupta v. K. Suba Rao [ILR (1974) 1 Del 1] issued the following directions: (ILR p. 7 A-C)*
>
> *"The office is to take note that in future* ***if any information is lodged even in the form of a petition*** *inviting this Court to take action under the Contempt of Courts Act or Article 215 of the Constitution, where the informant is not one of the persons named in Section 15 of the said Act,* ***it should not be styled as***

a petition and should not be placed for admission on the judicial side. Such a petition should be placed before the Chief Justice for orders in chambers and the Chief Justice may decide either by himself or in consultation with the other judges of the Court whether to take any cognizance of the information."

4. *In P.N. Duda v. P. Shiv Shanker [(1988) 3 SCC 167 : 1988 SCC (Cri) 589] this Court approving the aforesaid observation of the Delhi High Court directed as under: (SCC p. 201, para 54)*

"[T]he direction given by the Delhi High Court sets out the proper procedure in such cases and may be adopted, at least in future, as a practice direction or as a rule, by this Court and other High Courts."

*"**11.**The nature and power of the Court in contempt jurisdiction is a relevant factor for determining the correctness of observations made in Duda's case (supra). Dealing with the requirement to follow the procedure prescribed by law while exercising powers under Article 215 of the Constitution to punish for contempt, it was held by this Court in Dr. L.P. Misra v. State of U.P. [(1998) 7 SCC 379] that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution of India but such a jurisdiction has to be exercised in accordance with the procedure prescribed by law. The exercise of jurisdiction under Article 215 of the Constitution is also governed by laws and the rules subject to the limitation that if such laws/rules stultify or abrogate the constitutional power then such laws/rules would not be valid. In L.P.Misra's case*

(supra) it was observed that the procedure prescribed by the Rules has to be followed even in exercise of jurisdiction under Article 215 of the Constitution. To the same effect are the observations in Pallav Sheth's case (supra).''

14. *The direction issued and procedure laid down in Duda's case is applicable only to cases that are initiated suo motu by the Court when some information is placed before it for suo motu action for contempt of court.*

26. *Before parting, it is necessary to direct framing of necessary rule or practice direction by the High Courts in terms of Duda's case. Accordingly, we direct Registrar-General to send a copy of this judgment to the Registrar-Generals of the High Courts so that wherever rule and/or practice direction on the line suggested in Duda's case has not been framed, the High Courts may now frame the same at their earliest convenience.''*

2. In **Narendra D.V. Gowda Vs. Vineet Jain (2012) 6 Kar LJ 502 (DB),** it is ruled as under;

''*Contempt of Court Act, 1971 – Sec. 15(1) –The registry instead of placing the matter before Chief Justice placed the matter before Bench hearing the case – Contempt Petition liable to be dismissed. Bench cannot cure the defect of mandatory provision of Contempt of Court Act - After considering the ratio laid down by Supreme Court in* ***Bal Thackrey's case (2005) 1 SCC 254****,* ***Prashant Bhushan's case (2010) 7 SCC 592*** *and* ***P.N. Duda's Case (1988) 3 SCC 167*** *the law for taking Suo -Moto cognizance of contempt on any*

information is summarized as under;

1. *Any information or petition regarding contempt without consent of Attorney General is received by the court then the registry should place it before Chief Justice in his chamber and not before the Bench hearing the case*

2. *No Bench (appropriate Bench) of this Court can take suo - motu cognizance of the criminal contempt, on the basis of the "information disclosed" in a petition filed without the written consent of the Advocate General, unless such petition is placed before the said Bench by Hon'ble the Chief Justice.*

3. *If the "information disclosed" in the petition and annexures thereto deserve suo motu action, Hon'ble the Chief Justice, after forming a prima-facie opinion, can make an order, on the administrative side, to place such information before the "appropriate Bench" as has been held in P.N. Duda's case. Thus, it is only when Hon'ble the Chief Justice on the administrative side takes "cognizance of the information" the petition would go before "the appropriate Bench". No Bench (appropriate Bench) of this Court can take suo motu cognizance of the criminal contempt, on the basis of the "information disclosed" in a petition filed without the written consent of the Advocate General, unless such petition is placed before the appropriate Bench by Hon'ble the Chief Justice.*

4. *If the procedure laid down in Bal Thackray's Case are overlooked then continuation of proceedings under*

Contempt amount to curating the defect without following the due procedure.

> *"We are satisfied that the provisions of the Act and the Rules had not been strictly adhered to either by the petitioners or by the office before placing the petition before us. The procedure laid down by the Supreme Court in P.N. Duda's case and in Bal Thackrey's case was also completely overlooked by them. Therefore, in our opinion continuation of this petition in the present form would amount to curating the defect without following the due procedure. The Registry ought to have placed the petition filed by the complainants before the Hon'ble Chief Justice on administrative side since it was filed without obtaining written consent of the Learned Advocate General. There was no reason for the Registry to place the matter before the appropriate Bench raising an objection about its maintainability for want of written consent of the Advocate General. We are not adopting such course (directing the Registry to place it before Hon'ble the Chief Justice) since there is no prayer in the petition seeking suo motu action of contempt (criminal) against the alleged contemnors."*

5. *The office should place such a petition before Hon'ble the Chief Justice on administrative side for appropriate action/order. The law laid down by the Supreme Court in P.N. Duda's case and in Bal Thackrey's case has not*

been disturbed either in Prashant Bhushan case or any other case so far. In other words, it is not brought to our notice by Learned Counsel for the complainants any Judgment of the Supreme Court taking contrary view or upsetting the view taken and/or upsetting the procedure laid down in P.N. Duda's case. Moreover, in the present case, we cannot overlook the fact that the complainants have not made any prayer in the petition for taking suo motu cognizance on the basis of the "information disclosed" in the petition and the annexures thereto. In Bal Thackrey's case, the Supreme Court has indicated that suo motu cognizance can be taken only if the complainants make such prayer if the petition is filed without written consent of the Attorney General. If such prayer was made, the office, perhaps, would have placed the petition before Hon'ble the Chief Justice on administrative side. In the present case though the Advocate General rejected the application of the complainants, who are Advocates practicing in this Court, seeking written consent to file this petition, they did not make prayer to take suo motu cognizance of the "information disclosed" by them in the petition."

3. In **Gokul Dairy, Allahabad Vs. State of U.P. 2002 SCC OnLine All 3,** it is ruled as under;

"Contempt – Order without jurisdiction – Single Judge was not assigned with the jurisdiction of contempt proceedings by the chief Justice – Suo-motu cognizance and punishment is illegal – Order set aside."

7. *"We are, however, surprised that the learned single Judge*

instead of considering the problem, involved in the matter, issued contempt notice in the writ petition by passing the impugned order dated 7.12.2001 and ultimately sent him to jail. That apart on 10.12.2001, the learned single Judge has also passed a very drastic order. In our view, the learned single Judge has no jurisdiction to pass such orders, as he had no jurisdiction to entertain, hear and decide contempt matters both arising under the provisions of the Contempt of Courts Act or under Article 215 of the Constitution of India, as no such jurisdiction or authority was conferred upon the learned single Judge by the Chief Justice."

8. "*It is well-settled that the power under Article 215 of the Constitution of India, as was sought to be exercised by the learned single Judge, cannot be exercised in the manner as has been done by the learned single Judge. Such a power, as contemplated, cannot be exercised by the learned single Judge without being conferred upon such authority or jurisdiction by the Chief Justice."*

3. *"That puisne Judges can only do that work which is allotted to them by the Chief Justice or under his directions. No Judge or a Bench of Judges can assume jurisdiction in a case pending in the High Court unless the case is allotted to him or them by the Chief Justice."*

4.*" Any order which a Bench or a single Judge may choose to make in a case that is not placed before them or him by the Chief Justice or in accordance with his direction is an order without Jurisdiction and void."*

***5**." Contempt jurisdiction is an independent jurisdiction of original nature whether emanating from the Contempt of Courts Act or under Article 215 of the Constitution of India."*

***6.** "For exercising the jurisdiction under Article 215 of the Constitution of India, the procedure prescribed by law has to be followed."*

***11."** Following the aforesaid decision, we are of the view that the same principle will also apply to the facts and circumstances of the instant special appeals, as the jurisdiction to entertain, hear and decide contempt matters had not been assigned to the learned single Judge by the Chief Justice."*

***12.** "We, accordingly, hold that the orders passed by the learned single Judge impugned in the instant special appeals are without jurisdiction, and nullity and as such no effect can be given to the same."*

4. In **State Vs. Mamta Mohanty (2011) 3 SCC 436,** it is ruled as under;

***"37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage.** A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin.*

(Vide Upen Chandra Gogoi v. State of Assam [(1998) 3 SCC 381 : 1998 SCC (L&S) 872 : AIR 1998 SC 1289] , Mangal Prasad Tamoli v. Narvadeshwar Mishra [(2005) 3 SCC 422 : AIR 2005 SC 1964] and Ritesh Tewari v. State of U.P. [(2010) 10 SCC 677 : (2010) 4 SCC (Civ) 315 : AIR 2010 SC 3823])

*"**57**....This principle also applies to judicial pronouncements. Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same. While dealing with a similar issue, this Court in **Hotel Balaji & Ors. v. State of A.P. ., AIR 1993 SC 1048** observed as under:*

> *"...To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in Pierce v. Delameter (A.M.Y. at page 18: `a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors''.*

5. In the case of **Nandlal Sharma vs. Chief Secretary 1984 WLN 161 (DB), is** ruled that, the meaning of **suo- moto means Chief Justice only** it is ruled as under;

*"**13.** We are in respectful agreement with it & hold that Section 15 is not violative of Article 14 of the Constitution. In view of the plain readings of Section 18 (sic) ad with Section 17 & 18 of the Contempt of Courts Act, we are of the opinion (sic)at,*

unless the proceedings of ***contempt which are criminal in nature are (sic) initiated by the Court suo moto which means the initiation by the Chief Justice of the High Court or an application, is moved by the Advocate General or private party with the consent of the Advocate General, this Court is not competent to entertain direct application.*** *Admittedly, none of the requirement mentioned above, has been fulfilled in the present case. We have, therefore, no hesitation in accepting objections of Shri. Mathur, the learned Addl. Govt. Advocate, and, dismiss the application for initiating the proceeds under the Contempt of Courts Act summarily."*

6. Constitution Bench of Hon'ble Supreme Court in **Campaign for Judicial Accountability and Reforms Vs. Union of India (2018) 1 SCC 196, (5-Judge Bench)** it is ruled as under;

''10. *The rules have been framed in that regard. True, the rules deal with reference, but the law laid down in Prakash Chand [State of Rajasthan v. Prakash Chand, (1998) 1 SCC 1] has to apply to the Supreme Court so that there will be smooth functioning of the Court and there is no chaos in the administration of justice dispensation system. If any such order has been passed by any Bench, that cannot hold the field as that will be running counter to the order passed by the Constitution Bench. Needless to say, no Judge can take up the matter on his own, unless allocated by the Chief Justice of India, as he is the Master of the Roster.''*

7. Full Bench in the case of **Rehim Vs. M.V. Jayarajan 2010 SCC OnLine Ker 3344 (Vol. 5 Page 1205)** ruled as under:

"28.*In substance, Pallav Sheth's case (supra) establishes the*

principle that the power of the High Courts to punish for contempt, either for itself or of the Courts subordinate to it, though cannot be taken away, can be regulated by an appropriate law. It also establishes the principle that such a law can provide for inter alia the definition of contempt, the procedure that is to be followed for punishing a contemnor and the period of limitation for taking cognizance of the acts of contempt of Court, etc.

29. *Section 15 of the Contempt of Courts Act regulates the mode of taking cognizance by the High Court of any criminal contempt. The Section in so far as it pertains to the High Court provides that a High Court can take cognizance of a criminal contempt either on its own motion or on a motion made by the Advocate General or any other person with the written consent of the Advocate General.*

34. *It can be seen from the above Rule that the rule prescribes that any information (obviously regarding the commission of contempt by any person) received by the High Court, except by way of a petition contemplated under R. 3, is required to be placed before the Chief Justice in the first instance on the Administrative side. Such information may be examined either by the Chief Justice or by a Judge designated by him to take an administrative decision whether it is expedient or proper to take action under the Act on the basis of the said information. Such a decision making process requires consideration of various factors, like the basic trustworthiness of the information, a prima facie satisfaction that the allegations, if proved, constitute contempt of the Court and whether it is expedient or proper to take action for contempt having regard*

to the facts and circumstances of the case. The decision on the question of expediency or propriety, in our opinion, depends greatly on the facts and circumstances of each and every case. We do not propose to examine the complete scope of enquiry in this regard in the present proceedings. After the above mentioned examination if the Chief Justice or the Judge designated by the Chief Justice considers it necessary to take action, then suo motu contempt proceedings of Court are to be initiated. Upon such a consideration if it is found expedient or proper to take action under the Act, the Chief Justice is required to direct the information to be placed for preliminary hearing……..”

8. Full Bench in the case of **Official Liquidator Vs. Dayanand (2008) 10 SCC 1** it is ruled as under;

‘‘91. *We may add that in our constitutional set-up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and* ***who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the courts command***

<u>others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.</u>

92. *In the light of what has been stated above, we deem it proper to clarify that* ***<u>the comments and observations made by the two-Judge Bench</u>*** *in U.P. SEB v. Pooran Chandra Pandey [(2007) 11 SCC 92 : (2008) 1 SCC (L&S) 736]* ***<u>should be read as obiter and the same should neither be treated as binding by the High Courts, tribunals and other judicial foras nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench.''</u>***

9. Furthermore, as per section **15 [3]** of the Contempt of Courts Act, 1971, it is cognizance to mention specific charge in the order taking cognizance and then Registry be directed to reproduce it in the notice as per **'FORM-I'**

In **<u>Suo Motu Vs. Nandlal Thakkar, Advocate 2013 Cri. L.J. 3391 (D.B),</u>** it is ruled as under;

''11. *What can be deduced from the judgment of the apex Court in the case of Muthu Karuppan (supra) is that any violation or deviation from the Rules which are framed by the High Court in exercise of powers under Section 23 of the Act should not be accepted or condoned lightly and must be deem to be fatal to the proceedings taken to initiate action for contempt. In the present case also, we are convinced that there is gross violation of the Rules, 1984. No notice at any point of time was drawn and served upon the respondent in the model form, Form No. I, as* provided in the Schedule to the Rules.

12. *In a very recent pronouncement of the Supreme Court in*

the case of Anup Bhushan Vohra (supra), which has been referred to earlier, the Supreme Court has quoted with approval the view in Muthu Karuppan's case (supra) and has once again reiterated that 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.

13. *We have also examined the issue in question from a little different dimension. What will be the effect of the words "as far as may be" as provided in Rule 13 clause (1) of the 1984 Rules. The expression "as far as may be" at the first brush would suggest that it is not mandatory but directory. However, this would not save the situation because if it is held to be directory, then in that case the simple notice without the requisite and necessary particulars will be bereft of the charge of the acts for which proceedings are intended to be launched against the alleged contemnor. Even if it is believed that the rule is directory and not mandatory keeping in mind the nature of the proceedings, the rule needs to be interpreted very strictly. There is nothing on record to show as to what was that impediment in the way of the Registry in not issuing the notice in Form I as prescribed under the Rules. In a given case if there is any practical difficulty, then the lapse perhaps may be excused, but the term "as far as may be" itself suggests that it is only in the rarest of the rare cases that the notice under Form I can be avoided.* ***At this stage, we may quote paragraph 22 of the decision of the Supreme Court in J.R. Parashar, Advocate v. Prasant Bhushan, Advocate, reported in AIR 2001 SC 3395.*** *It reads as under:-*

"The actual proceedings for contempt are quasi-criminal and summary in nature. Two consequences follow from this. First, the acts for which proceedings are intended to be launched must be intimated to the person against whom action is proposed to be taken with sufficient particularity so that the persons charged with having committed the offence can effectively defend themselves. ***It is for this reason S. 15 requires that every motion or reference made under this section must specify the contempt of which the person charged is alleged to be guilty.*** *The second consequence which follows from the quasi-criminal nature of the proceedings is that if there is reasonable doubt on the existence of a state of facts that doubt must be resolved in favour of the person or persons proceeded against. In addition this Court has framed Rules under, inter-alia S. 23 of the Act providing in detail for the procedure to be followed by the Court and its Registry on the one hand and the complainant/respondent on the other."*

We would also like to quote a part of para 35 where the Supreme Court has observed as under:-

*"**35. ……..** It is true that the notice did not specify the contumacious acts with which the respondent was charged in terms of Rule 6 read with Form 1. Only a copy of the petition had been served on the respondents along with the notice. It would not be unreasonable for the respondent No. 2 to assume that every statement contained in the petition formed part of the charge."*

Since we have relied upon the decision in J.R. Parashar's case (supra) we also looked into the Supreme Court Rules

regulating proceedings for contempt of the Supreme Court, 1975. ***We looked into the language used in the Rules and we found that Rule 6 clause (1) in the following language:-***

"Notice to the person charged shall be in Form-I".

The language used indicates that the same is mandatory and that is the reason why Supreme Court in paragraph 22 of J.R. Parashar has led much emphasis on the procedural aspect.

We also take judicial notice of a very important fact. We have gone through the Rules of practically all High Courts and we have noticed that all High Courts have said in the Rules that the notice shall be in Form-I as prescribed under the Rules. It is only in the 1984 Rules of our High Court that the language employed is "as far as may be". Be that as it may, we have explained the importance of the notice and the contents of the same keeping in mind that the actual proceedings for contempt are quasi-criminal and summary in nature.

14. *In the above view of the matter, and more particularly in view of the dictum as laid down in Muthu Karuppan (supra) and Anup Bhushan Vohra (supra), we are left with no other option but to discharge the notice issued upon the respondent for contempt. It is bit disturbing to discharge the notice due to a serious lapse in strictly following the procedure as laid down under the Act and the Rules. This is an eye-opener for the Registry of this High Court to ensure that henceforth any notice issued by the High Court, be it on its own motion or otherwise, has to be in model Form No. I and all other Rules governing the procedure should be scrupulously followed and observed. We therefore, deem fit to direct the Registry of the High Court*

to ensure that the notice for contempt issued by the High Court shall be drawn in the model Form No. I annexed to the Contempt of Courts (Gujarat High Court) Rules, 1984, and other Rules of 1984 are followed without any deviation. It is also not permissible for us now at this stage to ask the Registry to issue notice in Form No. I as prescribed in Rule 13 of the Rules, as fresh contempt action would be time barred under Section 20 of the Contempt of Courts Act, 1971.''

10. Such procedure is followed in **Archit Goyal Vs. State 2005 SCC OnLine P & H 174** the relevant para reads as under;

"15. *A number of other submissions were made orally followed by in writing and decisions were cited at the Bar by the learned counsel, but* ***we do not consider appropriate to deal with many of them without first framing the charge under Section 15(3) of the Act as its framing is mandatory.***

21…….. Thus, we proceed to take action on our own motion as envisaged under Section 15(1) of the Act.

22. *We proceed to formulate and specify the charge under Section 15(3) of the Act against Shri Munjal as follows :—*

"Whether in stating in our note dated 2.11.2004 "as per the oral directions of the Hon'ble Bench, the petitioner Anil Midha is not to be arrested till the next date of hearing" prepared in the capacity of Additional Advocate General of Punjab in the Police file in relation to Crl. Misc. No 48428-M of 2004, who, as admitted by you before the High Court is brother of the wife of your own maternal brother and in intimating that fact to the Police you have scandalised and attempted to interfere in the

administration of justice of the Court (M.M. Kumar, J.) as envisaged under Section 2(c)(i) & (iii) of the Contempt of Courts Act, 1971 and have thereby committed Criminal Contempt as defined under Section 2(c) of the Act and suitably punished under Section 12(1) of the said Act?"

23. Let the office register this case as Criminal Contempt Case and issue notice to Shri Munjal in terms of the Rules incorporating the charge aforementioned and hand over to him to have his show cause fixing Friday dated 11.2.2005 as the next date."

11. In recent case also Division Bench of Punjab & Haryana High Court recalled its own order for its mistake to frame the wrong charge. In **Court on its Own Motion Vs. Harmeet Singh, Nazir, Court of ACJ (SD), Budhlada, Mansa** judgment dated **04.06.2020** is ruled as under;

''This is in continuation of order dated June 03, 2020.

While pronouncing the aforesaid order, we passed an order of framing the following charge against the respondent - contemnor :-

"1. That you have made a 'YouTube' account titled 'Ugly face of Indian Judiciary, Ludhiana' and uploaded videos lambasting the judicial officers by levelling false allegations and conveyed wrong message to the public and discouraged the public from getting justice from the Court of Law;

2. That, by uploading video clips on social media, you have stressed on the matter of your transfer from Sessions Division, Ludhiana and tried to lower the dignity of this Court as well as scandalize the names of Hon'ble sitting Judges;

3. That uploading such videos which scandalize the whole

judicial institution and particularly the names of the Hon'ble Judges of this Court do not come under the purview of liberty of free expression. Such unfounded, unwarranted and irresponsible aspersions against the Judges or Courts, which sub-serve the public interest in reasonable measure, is certainly an attack on the Judges' integrity and is offensive, intimidatory and malicious;

4. That, you have concocted stories of corruption, bribery and nepotism prevailing in the District Judiciary, which are nothing but a figment of your imagination;

5. That, you have uploaded videos on social media and made statements in the media without previous sanction of the competent authority.

RO & AC

Question:- *The contents of the aforesaid charge have been read over and explained to you?*

Answer:- *Yes*

Question:- *Whether you plead guilty or claim trial?*

Answer:- *I do not plead guilty and claim trial."*

The aforesaid order dated June 03, 2020 was passed presumingly that the respondent would come present in person and the contents of the chargesheet would be read over and explained to him. On account of the prevailing Pandemic, Covid-19, the presence of either the Advocate or the respondent could not be ensured. Inadvertently, the aforesaid charge was framed and it was ordered to be read over and explained but the requirement of the law is that the charge should be read over and explained to the respondent in person. This inadvertent mistake took place only account of the

pronouncement of the aforesaid order through Video Conferencing.

In order to impart fair and substantial justice and to give an appropriate opportunity to the respondent to deny or admit the contents of the charge, it would have been appropriate to pronounce the order of framing of charge in the presence of the respondent. In the given circumstances, order dated June 03, 2020 passed to the extent of framing of charge, reproduced above, is recalled and an opportunity is given to the respondent to be present in the Court on the next date of hearing i.e. 24.09.2020 to admit or deny the aforesaid charge, in accordance with law.

Registry is directed to inform the counsel for the parties including the respondent.''

12. In **State Bank of Travancore Vs. Mathew K.C (2018) 3 SCC 85** has ruled as under:

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

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

***16.** It is the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the*

relevant law. In financial matters grant of ex-parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order.

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

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

13. Reliance on per-incuriam and impliedly overruled judgment of **Re: Vijay Kurle** and **Dr. D.C. Saxena Vs. Hon'ble The Chief Justice of India (1996) 5 SCC 216**

That, the Bench relied on the **'para 12'** of judgment dated **27.04.2020** passed in the case of **Re: Vijay Kurle in SMCP (Cri) No.02 of 2020,** for the legal position that, no one can attribute motive to the Judges. Said judgment is a per-incuriam judgment as it is passed by ignoring the binding precedents of Constitution Bench judgment in **i) Re: C.S. Karnan (2017) 7 SCC 1, ii) Subramanian Swamy Vs. Arun Shourie (2014) 12 SCC 344, iii) Bathina Ramakrishna Reddy AIR 1952**

SC 149.

14. That, in **Re: C.S. Karnan (2017) 7 SCC 1,**it is ruled as under;

> ***"70.*** *In a judgment rendered almost a decade back, one of us (Gogoi, J.) sitting in the Gauhati High Court in* ***Lalit Kalita ,In Re(2008) 1 Gau LT 800*** *had ruled that;*
>
> ***"14. Judiciary is not over-sensitive to criticism; in fact, bona fide criticism is welcome, perhaps, because it opens the doors to self-introspection. Judges are not infallible; they are humans and they often err, though, inadvertently and because of their individual perceptions. In such a situation, fair criticism of the viewpoint expressed in a judicial pronouncement or even of other forms of judicial conduct, is consistent with public interest and public good that Judges are committed to serve and uphold. The system of administration of justice, therefore, would receive due impetus from a realization amongst Judges that they can or have actually erred in their judgments; another perspective, a new dimension or insight must, therefore, always be welcome. Such a realization which would really enhance the majesty of the Rule of Law, will only be possible if the doors of self-assessment, in the light of the opinions of others, are kept open by Judges.***
>
> ***16.But when should silence cease to remain an option?Where is the line to be drawn?*** *A contemptuous action is punishable on the touchstone of being a wrong to the public as distinguished from the harm caused to the individual Judge. Public confidence in the judicial system is indispensable. Its erosion is fatal. Of course, Judges by their own conduct, action*

and performance of duties must earn and enjoy the public confidence and not by the application of the rule of contempt. Criticism could be of the underlying principle of a judicial verdict or its rationale or reasoning and even its correctness. Criticism could be of the conduct of an individual Judge or a group of Judges. Whichever manner the criticism is made it must be dignified in language and content because crude expressions or manifestations are more capable of identification of the alleged wrong with the system as a whole. ***Motives, personal interest, bias, pre-disposition etc. cannot be permitted to be BAd as being responsible for the judicial verdict, unless, of course, the same can be established as an existing fact."***

15. Constitution Bench in **Subramanian SwamyVs.Arun Shourie (2014) 12 SCC 344** where it is ruled as under;

"12. In Wills (Nationwide News Pty. Ltd. v. Wills; [(1992) 177 CLR 1].) the High Court of Australia suggested that truth could be a defence if the comment was also for the public benefit. It said, "…The revelation of truth – at all events when its revelation is for the public benefit – and the making of a fair criticism based on fact do not amount to a contempt of court though the truth revealed or the criticism made is such as to deprive the court or judge of public confidence…".

16. A Seven Judge Bench in **Nationwide News Pvt. Limited V. Wills (1992) 177 CLR 1,** it is ruled as under;

"Contempt-A person is immune for making scandalous allegations and criticism of a Judge which are accurately stated and based on rational ground and fact, though the

truth revealed or the criticism made is such as to deprive the court or Judge of public confidence.

"The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion. ... an enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect". So long as the defendant is genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, he or she is immune.''

17. Constitution Bench of Supreme Court in **Bathina Ramakrishna Reddy AIR 1952 SC 149** had read in **para 12** as under;

*"**12. Scandalous News published against a Judge**.....If the allegations were true obviously it would be to the benefit of the public to bring these matters in to light....."*

18. In **Rama Surat Singh Vs. Shiv Kumar Pandey 1969 SCC OnLine All 226,** it is ruled as under;

"Contempt of Courts Act (32 of 1952), S.3- Comlaint against Judge alleging corrupt practices and malfides - Is no contempt - The contempt is not available as a cloak for judicial authorities to cover up their inefficiency and corruption or to stiffle criticism made in good faith against such officers. - Vindication of prestige is not the object of Contempt. - If a particular judge or magistrate is corrupt and sells justice, then a bona fide complaint to higher authorities to take necessary action against the delinquent judicial officer is also an act to maintain the purity of the

administration of justice, for it is unthinkable that a judicial officer should be allowed to take bribes and if anybody makes a grievance of the matter to the higher authorities, he should be hauled up for contempt of Court. Contempt law does not mean that if a Magistrate or judge acts dishonestly or is corrupt then too, he is beyond the reach of law and can take protection under the threat of prosecuting those who bona fide raise their voice against him.

- In the light of the law as laid down by the Supreme Court and interpreted by this Court these opposite parties should not be prosecuted for contempt, particularly when the allegations of corruption made by the first opposite party against the applicant are still under investigation and it cannot be said, at this stage that they were either untrue or mala fide.

The Committee of International Jurists 1959 Lord Shaw Cross at page 15 desired a more progressive view when he stated :-

> *". . . . . Clearly* ***if someone wishes in good faith to make a charge of partiality or corruption against Judge he ought to have the opportunity of making it : .....***

We consider that he should be able to do so by letter to the Lord Chancellor or to his Member of Parliament without fear of punishment and would deplore the use of the law of contempt to prevent him from doing so. The charges could then be considered either administratively or in the House of Commons or in the House of Lords."16. In Ram Pierra Comrade

19. Hon'ble High Court in **Harihar Shukla 1976 Cri. LJ 507,** it is read as under;

"When law provide a remedy-the conduct of even a member

of a highest judicial tribunal in the exercise of his judicial office may be the subject of enquiry with a view to see whether he is fit to continue to hold that office then if action under contempt is taken for such complaints then no one should be able to initiate proceeding for enquiry by a complaint to the appropriate authority by reason of a fear of being punished for contempt. There is no justification for this view.

The learned Government Advocate was unable to point to any decision in which action might have been taken for contempt of court in such circumstances. All the case that were placed before us were cases in which public criticism was made of the conduct of a judicial officer in the newspaper or in speeches.

Where a complaint containing defamatory allegations against a presiding officer of a court, is made to a superior authority, requesting it to take appropriate administrative action in the matter and a copy of the same is not communicated to the officer concerned [accused Judge] then no contempt is made out. Contempt Notice discharged.

A libel, attacking the integrity of a Judge may not, in the circumstances of a particular case, amount to contempt at all although it may be the subject-matter of a libel proceeding. This is clear from the observation of the Judicial Committee in the case of the matter of Special Reference from Bahama Island, 1893 AC 188....."

20. That, in Contempt proceedings, if the basic order is found to be defective and illegal then the Court at its own cannot correct it.

20.1. In **State Vs. Baldev Raj 1991 SCC OnLine All 1070** it is ruled as under;

> *"In Contempt Proceedings Court cannot go against its own earlier orders. It can only be done by the Court of Higher judgment''*

20.2. Full Bench in **Sudhir Vasudeva (2014) 3 SCC 373,** has ruled as under;

> ***''.....Decided issues cannot be reopened; nor can the plea of equities be considered. The Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above.....***
>
> ***19. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution****. ……..*
>
> *……* ***Decided issues cannot be reopened; nor can the plea of equities be considered. The Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to***

what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. *The above principles would appear to be the cumulative outcome of the precedents cited at the Bar, namely, Jhareswar Prasad Paul v. Tarak Nath Ganguly [(2002) 5 SCC 352 : 2002 SCC (L&S) 703] , V.M. Manohar Prasad v. N. Ratnam Raju [(2004) 13 SCC 610 : 2006 SCC (L&S) 907] , Bihar Finance Service House ConstructionCoop. Society Ltd. v. Gautam Goswami [(2008) 5 SCC 339] and Union of India v. Subedar Devassy PV [(2006) 1 SCC 613] .''*

21. Hence, proceedings are illegal & vitiated.

The Reliance of earlier Contempt against **Adv. Yatin Oza** in **para 1** is also not permissible. Constitution Bench of this Hon'ble Court in **Baradakanta Mishra Vs. Registrar of Orissa High Court (1974) 1 SCC 374**, had ruled as under;

"59…..On the facts, we agree that the spirit of defiance, extenuated partly by a sense of despair, is writ large in the writings of the appellant but wish to warn ourselves that his reported past violations should not prejudice a judicial appraisal of his alleged present criminal contempt. And the benefit of doubt, if any, belongs to the condemner in this jurisdiction."

22. The Court taking cognizance is not supposed to use his personal knowledge of past cases of Contempt pending/decided against the alleged contemnor. If any Judge does it then said Judge is disqualified to proceed

further in the case and any order passed is vitiated due to Judicial Bias as the **''Coram –non – Justice.'' [Relied on:- 1) Davinder Pal Singh Bhullar (2011) 14 SCC 770]**

Needless to mention that, all over the world there are specific Acts and law made for prohibiting the jury to take any information by researching on internet etc.

The **'Supreme Court of South Australia',** found two jurors in a criminal case guilty of Contempt in year **2016** after they contravened the trial judge's direction by researching trial matters online and discussing the information they found with other jurors. **(Registrar of Supreme Court of South Australia Vs S [2016] SASC 93**.)

The **Victorian Court** of Appeal in the case of **Benbrika Vs. R (2010) 29 VR 593, 644** observed as under;

> *"In recent years, there have been occasions when jurors have engaged in inappropriate conduct with the potential to compromise a trial.* ***Internet searches relating to information that is both inadmissible at trial, and prejudicial to the accused, may necessitate a discharge of the jury or, failing that, on appeal an order for a new trial.*** *In general, these cases have involved internet searches of a kind that bear specifically upon the evidence in the trial, and the particular circumstances and history of the accused.''*

23. In **New Delhi Municipal Council Vs. M/S Prominent Hotels Limited 2015 SCC Online Del 11910,** had ruled as under;

> ***''22.2.*** *In East India Commercial Co. Ltd. v. Collector of Customs, Calcutta, AIR 1962 SC 1893, Subba Rao, J. speaking for the majority observed reads as under:*

*—31. .....**This raises the question whether an administrative tribunal can ignore the law declared by the highest Court in the State and initiate proceedings in direct violation of the law so declared under Art. 215,** every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. Under Art. 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government within its territorial jurisdiction. Under Art. 227 it has jurisdiction over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. **It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that Court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate Courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate Courts.** It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefore, hold that the law declared by the highest*

Court in the State is binding on authorities, or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, ***the notice issued by the authority signifying the launching of proceedings, contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction."***

(Emphasis supplied)''

Adv. Nilesh Ojha
National President
Indian Bar Association